

SUPPORTING STATEMENT

Construction requirements; Interim reports -- Sections 27.14(g)-(l)

A. Justification:

1. On July 31, 2007, the Commission adopted a Second Report and Order, in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, WT Docket No. 07-166, FCC No. 07-132 (2007 Report and Order), which established rules governing wireless licenses in the 700 MHz spectrum. The 700 MHz spectrum was made available for wireless services, including public safety and commercial services, as a result of the digital television (“DTV”) transition. Title III of the Deficit Reduction Act of 2005 (“DRA”), Pub. L. 109-171, 120 Stat. 4 (2006), (titled the Digital Television Transition and Public Safety Act of 2005 [“DTV Act”]), accelerated the DTV transition completion date to February 17, 2009.

In light of the change to the DTV transition, as well as developments in commercial wireless communications and evolving needs of the public safety community, the Commission re-examined its 700 MHz rules and combined the following three interrelated proceedings: 1) The 700 MHz Commercial Services proceeding, 71 FR 48506 (2006), 2) the 700 MHz Guard Bands proceeding, 71 FR 57455, and 3) the 700 MHz Public Safety proceeding, 72 FR 1201 (2007); 71 FR 17786 (2006), which yielded in April 2007 both a Report and Order and Further Notice of Proposed Rulemaking (the 700 MHz Report and Order, 72 FR 27688 (2007), and 700 MHz Further NPRM, 72 FR 24238 (2007), respectively. (See FCC 07-72.)

Among the many actions taken in the 2007 Report and Order, the Commission: adopted a mix of geographic license area sizes for the commercial services, including Cellular Market Areas (CMAs), Economic Areas (EAs), and Regional Economic Areas (REAGs); eliminated rules that permit comparative hearings for license renewal, and clarified the requirements and procedures of the license renewal process; shifted the license termination date from January 15, 2015 to February 17, 2019, thus granting licensees an initial license term not-to-exceed ten years after the end of the DTV transition; adopted a power spectral density model to provide greater operational flexibility to licensees operating at wider bandwidths; continued to allow a 50 kW effective radiated power level for base station operations for auctioned licenses and unpaired spectrum in the lower 700 MHz band (TV Channels 52-59); modified power limits for upper 700 MHz band (TV Channels 60-69), and; permitted 700 MHz licensees to meet radiated power limits on an average, rather than peak, basis.

Further, in order to promote access to spectrum and the provision of service, the 2007 Report and Order adopted revised performance requirements for certain 700 MHz

licensees, including the use of interim and end-of-term benchmarks. The 2007 Report and Order also imposed interim reporting requirements on licensees to provide the Commission with information concerning the status of licensees' efforts to meet performance requirements and the manner in which their spectrum is being utilized.

On February 20, 2009, the Commission adopted a Second Report and Order and Notice of Proposed Rulemaking in MB Docket No. 09-17, MB Docket No. 07-148, MB Docket No. 07-91, MB Docket No. 08-255, WT Docket No. 06-150, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, FCC 09-11, to implement the DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009), which extended the DTV transition deadline from February 17, 2009, to June 12, 2009. Steps taken by the Commission to conform with the DTV Delay Act included the extension of applicable 700 MHz construction benchmarks and reporting requirements by a period of 116 days.

On October 29, 2013, the Commission issued a Report and Order and Order of Proposed Modification in WT Docket No. 12-69 and WT Docket No. 12-332, FCC 13-136 (700 MHz Interoperability Order), in which it revised certain technical rules and extended or waived construction deadlines for certain licenses in order to resolve issues resulting from the lack of interoperability in the Lower 700 MHz Band. The Report and Order did not revise any of the information collection requirements that are contained in this collection. It simply waived or revised the dates on which the information collection requirements are required.

Information Collection Requirements

a. **700 MHz Construction Notification - 47 C.F.R. § 27.14(k)**. 47 C.F.R. § 27.14(k) requires certain 700 MHz licensees to file a construction notification with the Commission within 15 days of the expiration of the relevant benchmark in accordance with the provisions set forth in 47 C.F.R. § 1.946(d), demonstrating compliance with performance requirements or, if they have not met the performance requirements, a description and certification of the areas for which they are providing service. In the construction notification, a licensee must certify whether it has met the applicable performance requirement as set forth below. The licensee must file a description and certification of the areas for which it is providing service, using electronic coverage maps, supporting technical documentation and other information as the Wireless Telecommunications Bureau may prescribe by Public Notice.

47 C.F.R. § 27.14(g). 47 C.F.R. § 27.14(g) requires 700 MHz licensees holding EA authorizations for Block A in the 698-704/728-734 MHz bands ("Block A"), CMA authorizations for Block B in the 704-710/734-740 MHz bands ("Block B"), and EA authorizations for Block E in the 722-728 MHz band ("Block E"), where the results of the first auction in which licenses for such authorizations were offered satisfy the reserve price for the applicable block, to file construction notifications with the Commission within 15 days after:¹

¹ The interim deadline has passed for existing licensees. However, licensees are still subject to the final deadline and must file a second construction notification.

1) June 12, 2013, or the fourth anniversary of initial license grant if the initial authorization in a market is granted after June 12, 2009. In the construction notification, licensees must certify and demonstrate that they are providing signal coverage and offering service over at least 35 percent of the geographic area of each of their license authorizations.²

2) The end of the applicable license term. In the construction notification, licensees must certify and demonstrate that they are providing such service over at least 70 percent of the geographic area of each of these authorizations.

47 C.F.R. § 27.14(h). 700 MHz licensees holding REAG authorizations for Block C in the 746-757/776-787 MHz bands (“Block C”), as well as 700 MHz licensees holding REAG authorizations for Block C2 in the 752-757/782-787 MHz bands (C2), must file construction notifications with the Commission within 15 days after:

1) June 12, 2013, or the fourth anniversary of initial license grant if the initial authorization in a market is granted after June 12, 2009. In the construction notification, licensees must certify and demonstrate that they are providing signal coverage and offering service over at least **40 percent of the population in each EA comprising the REAG license area.**

2) The end of the applicable license term. In the construction notification, licensees must certify and demonstrate that they are providing such service over at least 75 percent of the population of each of these EAs.

47 C.F.R. § 27.14(i). 700 MHz licensees holding EA authorizations for Block A, CMA authorizations for Block B, and EA authorizations for Block E where the results of the first auction in which licenses for such authorizations in Blocks A, B, and E were offered did not satisfy the reserve price for the applicable block, as well as EA authorizations for Block C1 in the 746-752/776-782 MHz bands (“Block C1”) must file construction notifications with the Commission within 15 days after:³

1) June 12, 2013, or the fourth anniversary of initial license grant if the initial authorization in a market is granted after June 12, 2009. In the construction notification, licensees must certify and demonstrate that they are providing signal coverage and offering service over at least 40 percent of the population in each license area.

2) The end of the applicable license term. In the construction notification, licensees must certify and demonstrate that they are providing such service over at least 75 percent of the population of the areas.

47 C.F.R. § 27.14(j). 47 C.F.R. § 27.14(j) provides that, in the event that a licensee's authority to operate in an area terminates automatically for failure to comply with the applicable construction requirements identified in 47 C.F.R. § 27.14(g), (h), or (i), the

² Pursuant to the 700 MHz Interoperability Order, Block E licensees may choose to demonstrate that they are providing signal coverage and offering service over at least 40 percent of the population of a market.

³ *Supra* note 1.

unserved area will become available for relicensing to third parties. A 700 MHz licensee holding an authorization granted pursuant to the unserved area licensing procedures set forth in 47 C.F.R. § 27.14(j) must file a construction notification with the Commission within 15 days after **the one-year anniversary of initial license grant**. In the construction notification, a licensee must certify and demonstrate that it is providing signal coverage and offering service over 100 percent of the geographic area of the new license area.⁴

700 MHz Interoperability Order. Pursuant to the 700 MHz Interoperability Order, the interim construction deadline for Block A and Block B licensees was extended to December 13, 2016. The 700 MHz Interoperability Order waived the interim construction requirement for certain Block A licensees due to technical issues arising from their proximity to Television Channel 51 stations. Further, the interim construction deadline for Block E was extended to March 7, 2017, and the final Block E construction deadline was moved to March 7, 2021.

b. 700 MHz Interim Reporting Requirement - 47 C.F.R. 27.14(l). Pursuant to 47 C.F.R. § 27.14(l), 700 MHz licensees with authorizations in the spectrum blocks identified above (Blocks A, B, E, C, C1 and C2), excluding any licensee that obtained its license pursuant to the procedures set forth in 47 C.F.R. § 27.14(j), must file interim reports with the Commission that provide the Commission, at a minimum, with information concerning the status of their efforts to meet the performance requirements applicable to their authorizations in such spectrum blocks and the manner in which that spectrum is being utilized.

Required Information. Licensees must identify the date the license term commenced, and provide a description of the steps the licensee has taken toward meeting its construction obligations in a timely manner, including the technology or technologies and service(s) being provided, as well as the areas within their license areas in which those services are available.

Deadlines. Pursuant to 47 C.F.R. 27.14(l), licensees were required to file their first interim report with the Commission **no later than June 12, 2011 and no sooner than 30 days prior to this date**. Licensees that meet their interim construction benchmarks must file a second interim report with the Commission **no later than June 12, 2016, and no sooner than 30 days prior to this date**. Licensees that do not meet their interim construction benchmarks must file their second interim report **no later than on June 12, 2015, and no sooner than 30 days prior to this date**.

However, the 700 MHz Interoperability Order waived the second interim report requirement for Lower 700 MHz band A and B Block licensees subject to the extended interim construction benchmark deadline. The 700 MHz Interoperability Order did not waive the reporting requirement for Lower 700 MHz band A Block licensees subject to a waiver of the interim construction benchmark deadline because of Channel 51 interference protection requirements. That order also extended the deadline until March

⁴ *Id.*

7, 2019, for Lower 700 MHz band E Block licensees to file a second status report regarding the licensees' efforts to meet their performance requirements.⁵

Statutory authority for this information collection is 47 U.S.C. 154, 301, 302(a), 303, 309, 332, 336, and 337 unless otherwise noted.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

2. The information acquired through the filing of interim reports is used by the Commission to determine the progress made by licensees to meet specific performance requirements, and the manner in which their spectrum is being utilized. The Commission will also use the information to evaluate whether further assessment of the rules or other actions are necessary in the event spectrum is being stockpiled or warehoused, or if it is otherwise not being made available despite existing demand. Further, the information filed by licensees in support of their construction notifications will be used to determine whether licensees have complied with the Commission's performance benchmarks.
3. The Commission's Wireless Telecommunications Bureau conducts an analysis to ensure that improved information technology may be used to reduce the burden on the public. This analysis considers the possibility of obtaining and/or computer-generating the required data from existing data bases in the Commission or other Federal Agencies.
4. This agency does not impose a similar information collection on the respondents. There is no similar data available.
5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents, regardless of size. The Commission has limited the information requirements to those absolutely necessary.
6. If the information required were not made available the Commission would not be able to determine whether spectrum is being used intensively. Less frequent collection of the information would inhibit the Commission's ability to ensure that licensees provide service to the majority of consumers in their license areas in a timely manner and to promote the provision of innovative services to the public.
7. There are no special circumstances which would require collections to be conducted in a manner inconsistent with the guidelines in 5 C.F.R. 1320.
8. The Commission initiated a 60-day public comment period, thereby giving the public an appropriate amount of time in which to comment on this information collection as required by 5 C.F.R. § 1320.8, via publication of the Notice in the Federal Register on July 21, 2020 (85 FR 44075). No comments were received as a result of the Notice.

⁵ The interim reporting requirements have now passed (or were waived) for existing licensees.

9. Respondents will not receive any payments.
10. There is no need for confidentiality with this collection of information.
11. This does not address any private matters of a sensitive nature.
12. **There are an overall of 1,174⁶ licenses involved with this collection. The annual burden is calculated as follows:**

a. Construction Notification. As of the date of this submission, there are approximately 83⁷ licensees holding 1,163 700 MHz geographic area licenses which, pursuant to section 27.14(k), require a notification demonstrating compliance with the construction benchmarks set out in sections 27.14(g), (h), and (i). The interim construction deadline for the 1,174 licenses have either been met or have been waived. All 1,174 licenses have final deadlines at the end of their license term: currently, licensees holding approximately 27 licenses must complete their final performance requirements by 2021, two licenses in 2022, and 168 licenses in 2023. However, to the extent that a licensee subject to the requirements of sections 27.14(g), (h), and (i) does not satisfy its interim construction benchmark, that licensee’s license term is accelerated by two years. The Commission estimates that, at most, 168 licenses will have deadlines subject to the construction notification requirement in any given year.

Unserved area licenses subject to construction benchmarks specified in section 27.14(j) are available only after a geographic area license terminates. Therefore, the frequency of construction notification filings regarding these licenses is dependent on whether unserved areas become available, and whether entities seek authorization for such licenses. There are currently 11 licenses subject to the construction deadline set out in section 27.14(j).⁸ The 11 licenses must be constructed by 2021.⁹

The Commission estimates that it will take approximately 15 hours per license for engineers to prepare the requisite maps and other documents. The Commission anticipates that of the 168 licenses, those holding approximately 90 percent (151) of the licenses, will employ in-house engineering resources, and those holding 10 percent (17) licenses, will contract out for engineering staff. Further, we estimate that each of the 168 licenses will require an attorney to prepare, review, and submit filings for each submission. See question #13 for the cost that respondents will pay the contract engineers and attorneys to fulfill the notification requirements on their behalf.

$$151 \text{ licenses} \times 15 \text{ hours (in-house engineers)} = 2,265 \text{ hours}$$

Total Notification Burden to Respondents (per benchmark) = 2,265 hours.

⁶ There are 19 additional licenses since the previous submission for this information collection, which is a result of license partitioning and/or disaggregation, as well as unserved area licensing.

⁷ There are approximately 3 additional licensees since the previous submission, resulting from license assignments.

⁸ The licensees holding the 11 unserved area licenses also hold geographic market licenses.

⁹ The 11 unserved area licenses are part of the 27 licenses that must be constructed in 2021.

b. 700 MHz Interim Reports. The Commission anticipates that a licensee, in order to provide documentation regarding its network deployment and service offerings as required pursuant to section 27.14(l), will employ an in-house engineer to examine records and collect required data associated with the licensee's operations. The Commission estimates that engineering personnel will require up to 5 hours to complete these tasks.

The interim reporting requirement has been met by or waived for all 1,174 licenses subject to section 27.14(l).

$$0 \text{ licenses} \times 5 \text{ hours (in-house engineering)} = 0 \text{ hours}$$

Total Reporting Burden To Respondents (per benchmark) = 0 hours

TOTAL ANNUAL HOUR BURDEN: (a) 2,265 + (b) 0 = 2,265 hours.

“In-House Cost”: The in-house staff is estimated to have an hourly wage \$36/hour. Therefore, the in-house cost is as follows: **2,265 hours x \$36/hour = \$81,540.**

TOTAL NUMBER OF RESPONDENTS:

a. $168 \text{ licensees} + 0 \text{ licensees} = \mathbf{168 \text{ respondents.}}$

TOTAL NUMBER OF RESPONSES:

a. $168 \text{ licenses} \times 1 \text{ notice per year} = 168 \text{ notices}$

b. $0 \text{ licenses} \times 1 \text{ report per year} = \frac{0 \text{ reports}}{\mathbf{168 \text{ responses.}}}$

13. Provide an estimate of total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

Estimated Cost to the Respondents: The Commission estimates that entities holding approximately 10 percent of the maximum number of 700 MHz licenses subject to this information collection annually, or **17**, will contract out for engineers to prepare the requisite construction notification filings, and that 700 MHz licensees holding approximately 90 percent, or 151, of these licenses will use in-house engineering

analysis.¹⁰ The Commission anticipates that **all** licenses will require outside legal staff to review and submit the construction notifications. The hourly wage for a contract engineer/attorney is estimated at \$250/\$300 respectively hour.

Because the interim reporting requirement has been met by or waived for the 1,174 licensees, there will be no contract engineering or legal costs associated with preparation and submission of the interim report.

Accordingly, the Commission estimates that this collection will have the following cost impact:

a. 700 MHz Construction Notifications:

17 licenses x 15 hours (contract engineers) x \$250/hr = \$63,750.00
168 licenses x 3 hours (contract legal) x \$300/hr = \$151,200.00

Notification Cost Burden: \$214,950.00

b. 700 MHz Interim Reports:

Reporting Cost Burden: \$0.00

TOTAL ANNUAL COST BURDEN: \$214,950.00

(a) \$214,950.00 + (b) \$0 = \$214,950.00

14. Estimated annual cost to the Federal Government:

a. 700 MHz Construction Notifications:

The government review time per response for this submission is estimated at 1 hour for a GS-12, Step 5 reviewer per application.

168 applications x 1 hour x 46.88/hr. = \$7,875.84

b. 700 MHz Interim Reports:

The government review time per response for this submission is estimated at 1 hour for a GS-12, Step 5 reviewer per application.

0 applications x 1 hour x 46.88/hr. = **\$0.00**

¹⁰ See question #12 for the burden for the 151 respondents.

Total Annual Cost to the Federal Government:

$$(a) \$7,875.84 + (b) \$0.00 = \$7,875.84$$

15. There are no program changes to this collection. There are adjustments to this collection as a result of the re-evaluation of the figures for this collection. There are as follows:
-950 to the number of respondents, -950 to the annual number of responses, -8,995 to the annual burden hours and -\$1,678,750 to the annual cost.
 16. The data will not be published for statistical use.
 17. We do not seek approval to not display the expiration date for OMB approval of the information collection.
 18. There are no exceptions to the certification statement.
- B. Collections of Information Employing Statistical Methods:
- No statistical methods are employed.