3060-0600 **May 2021**
Application to Participate in an FCC Auction,
FCC Form 175

SUPPORTING STATEMENT

The Federal Communications Commission (Commission) requests approval from the Office of Management and Budget (OMB) for a revision to a currently approved collection on FCC Form 175 under OMB Control Number 3060-0600, with no change in burden estimates. The currently approved collection requires a minor revision to include an additional certification on FCC Form 175 that requires an Auction 110 applicant to certify that it has read the public notice that describes procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45-3.55 GHz band.

A. Justification:

1. *Circumstances that make this collection necessary.* The Commission seeks emergency processing under the Paperwork Reduction Act (PRA), 5 C.F.R. § 1320.13. The Commission is requesting approval from the Office of Management and Budget (OMB) for this revised information collection no later than 26 days after it is received at OMB.

FCC Form 175 is used by the public to apply to participate in auctions for Commission licenses and permits. The information collection requirements reported under this collection implement the Commission's competitive bidding authority under the Communications Act of 1934, as amended (Communications Act), and the Commission's competitive bidding rules.

The Beat CHINA for 5G Act of 2020, which was included in the Consolidated Appropriations Act, 2021, requires the Commission to begin an auction to grant new initial licenses for the use of a portion or all of the 3.45-3.55 GHz band no later than December 31, 2021.[1] To begin the process of implementing this Congressional mandate, on March 17, 2021, the Commission adopted the *3.45 GHz Second Report and Order*, in which it established a new 3.45 GHz service and adopted rules to make licenses in the 3.45-3.55 GHz band available for flexible use wireless services throughout the contiguous United States.[2] The Commission contemporaneously adopted the *Auction 110 Comment Public Notice* in which it announced that an auction for licenses in the 3.45-3.55 GHz band will begin in early October 2021 and requested comment on proposed procedures for the auction.[3] Among other things, the *Auction 110 Comment Public Notice* proposed that, in addition to making the certifications already required by the Commission's rules in its FCC Form 175 auction application, each auction applicant also certify that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the

[1] *See* Consolidated Appropriations Act, 2021, Beat CHINA for 5G Act of 2020, Pub. L. 116-260, § 905(d)(1)(B).

[2] *See Facilitating Shared Use in the 3100-3550 MHz Band,* Second Report and Order, Order on Reconsideration, Order of Proposed Modification, FCC 21-32 (rel. March 18, 2021) (*3.45 GHz Second Report and Order*).

[3] *Auction of Flexible Use Licenses in the 3.45-3.55 GHz Band For Next Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 110*, AU Docket No. 21-62, Public Notice, FCC 21-33, (rel. Mar. 18, 2021) (*Auction 110 Comment Public Notice*).

auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45-3.55 GHz band.

On May 19, 2021, the Commission's Office of Economics and Analytics and Wireless Telecommunications Bureau released a Public Notice (DA 21-567) adopting the proposed additional certification requirement for applicants seeking to participate in Auction 110. Accordingly, the Commission seeks OMB approval for a revision to its currently approved information collection to include this additional certification on FCC Form 175. The revised collection will enable the Commission to confirm that an auction applicant has read the public notice adopting procedures for the auction and has familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45-3.55 GHz band through the applicant's certification to that effect.

Statutory authority for this information collection is contained in Sections 154(i) and 309(j)(5) of the Communications Act, as amended, and sections 1.2105, 1.2110, 1.2112 of the Commission's rules, as amended. *See* 47 U.S.C. §§ 4(i), 309(j)(5), 47 C.F.R. §§ 1.2105, 1.2110, 1.2112.

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

2. *Use of information.* The Commission's auction rules and related requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, deter possible abuse of the bidding and licensing processes, and enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest. The information collected on FCC Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in an auction for Commission licenses or permits. Additionally, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses information collected on FCC Form 175 to determine whether the applicant is eligible for the status requested. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held. Staff determines whether each applicant satisfies the Commission's requirements to participate in the auction and, if an applicant claims status as a particular type of auction participant, whether that applicant is eligible for the status claimed. The Commission plans to continue to use the Form 175 for its upcoming auctions for Commission licenses and permits, including the forward auction component of any incentive auction, collecting only the information necessary for each particular auction.

3. *Technological collection techniques.* Pursuant to the Commission's rules, an auction applicant is required to complete and submit its FCC Form 175 electronically through the FCC Auction System. The Commission developed a centralized electronic system for collecting the information to reduce both public and agency administrative burden.

4. *Efforts to identify duplication.* There will be no duplicative information collected. The information sought is unique to each respondent and is not already available because the Commission does not impose a separate similar information collection on the respondents. Thus, there is no similar data available under another information collection. Moreover, the information collected under this collection implements statutory requirements.

5. *Impact on small entities.* In conformance with the Paperwork Reduction Act of 1995, the Commission has made an effort to minimize the burden on all respondents regardless of size by limiting the information collected on Form 175 to that which is necessary to evaluate and process

the application, deter possible abuse of the processes, and confirm applicants' compliance with various applicable regulatory and statutory spectrum auction requirements. In addition, the Commission makes available tutorials and related information to assist respondents, including small entities, in understanding what information should be submitted on FCC Form 175.

Decisions regarding whether to submit an application to participate in a given auction rest exclusively with the respondents. Thus, the frequency of filing is determined by the respondent. Filing information to support an applicant's qualification as a designated entity and eligibility for a small business bidding credit or a rural service provider bidding credit, either generally or with respect to specific licenses, is also determined by the respondent/applicant. Small business ownership and gross revenues information/calculations and rural service provider ownership and subscriber information must be updated when changes occur, and the need to make filings to reflect such changes are generally determined by the respondent/applicant.

6. *Consequences if information is not collected.* The Commission's auction program could not function in its current form without the collection of information on FCC Form 175. Licensing access to the public spectrum resource and recovery for the public of a portion of the value of the public spectrum resource depends in large part on the information collected on FCC Form 175. Without the information collected on FCC Form 175, the Commission would not be able to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction and has complied with the various applicable regulatory and statutory spectrum auction requirements.

7. *Special circumstances.* FCC Form 175 as currently approved does not have any of the characteristics that would have required separate justification under 5 C.F.R. § 1320.5(d)(2), and the proposed revision to FCC Form 175 does not change the characteristics such that a separate justification is now required.

8. *Federal Register notice; efforts to consult with persons outside the Commission.* Emergency approval is being sought for the above-described information collection requirements, and the Commission seeks waiver of the 60-day notice requirement due to the emergency nature of this request under 5 C.F.R. § 1320.8(d). However, the Commission has published a 21-day emergency PRA notice in the Federal Register announcing submission of this emergency request and seeking public comment on the revised information collection (*see* 86 FR 28102) (May 25, 2021).

The Commission will conduct all of the regular OMB clearance processes and procedures for the revised information collection upon approval of the emergency request, and will publish the necessary notices in the Federal Register when seeking regular OMB approval.

The Commission invited comment in the *Auction 110 Comment Public Notice* on the proposed additional certification requirement for applicants seeking to participate in Auction 110, and a summary of the *Auction 110 Comment Public Notice* was published in the Federal Register on April 7, 2021 (*see* 86 FR 18000). The Rural Wireless Association, Inc. (RWA) and T-Mobile USA, Inc. (T-Mobile) filed comments regarding proposed additional certification requirement in response to the *Auction 110 Comment Public Notice*.[4] In opposing the additional certification requirement, RWA claims, among other things, that the Commission underestimates the burden

[4] Comments of the Rural Wireless Association, Inc., AU Docket No. 21-62 (filed Apr. 14, 2021) (RWA Comments); Reply Comments of T-Mobile USA, Inc., AU Docket No. 21-62 (filed Apr. 29, 2021) (T-Mobile Reply Comments).

of participating in an auction, stating that small entities rely on outside consultants to fully comply with Commission auction requirements.[5] In its reply comments, T-Mobile expressed support for the additional certification requirement.[6]

We are unpersuaded by RWA's objections to the additional certification requirement. We do not believe that outside consultants are necessary for an applicant to comply with the additional certification requirement. Typically, the auction procedures inform prospective applicants that they should familiarize themselves with the Commission's general competitive bidding rules, Commission decisions regarding competitive bidding procedures, application requirements, obligations of Commission licensees, and the Commission's service rules for the frequency band available in the auction, and that they must be thoroughly familiar with the procedures, terms, and conditions contained in the public notice adopting procedures for the auction.[7] The additional certification requirement therefore does not increase the level of applicant education or due diligence beyond what was required of applicants prior to the adoption of the additional certification requirement, and thus an applicant's burden is not increased by the certification requirement irrespective of whether an applicant chooses to use outside consultants in connection with participating in an auction. Further, the additional certification requirement is intended to ensure that the applicant itself is familiar with the procedures and requirements so that it understands the consequences of its actions, regardless of whether such actions may have been undertaken pursuant to any advice from attorneys, engineers, or other consultants. The public notice adopting the procedures for Auction 110 will be released before the window for filing applications to participate in the auction opens and made publicly available on the Commission's Auction 110 web page, and the *3.45 GHz Second Report and Order* adopting the requirements for obtaining a license and operating facilities the 3.45-3.55 GHz band is already publicly available on both the Commission's main website and the Auction 110 web page.[8] The Commission makes this information publicly available and easily accessible and without charge to benefit all potential Auction 110 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules and the procedures and requirements for an auction. We note that small entities and other auction participants may seek clarification of, or guidance regarding, auction procedures and the service rules for the 3.45-3.55 GHz band rules prior to the Auction 110 application filing window, and that an FCC Auctions Hotline is available to provide these entities with one-on-one access to Commission staff for this purpose. We believe that these materials and resources are sufficient to ensure that an Auction 110 applicant can certify truthfully that it has read the public notice adopting procedures for Auction 110 and that it has familiarized itself with both the procedures for Auction 110 and the requirements for obtaining a license and operating facilities in the 3.45-3.55 GHz band.

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[5] RWA Comments at 9.

[6] T-Mobile Reply Comments at 5-6 (stating that the additional certification requirement is both important and consistent with the Commission's usual directive that applicants and bidders be aware of the nature of the licenses they seek to acquire in an auction and the obligations associated with the licenses they may ultimately be issued if they are winning bidders).

[7] *See, e.g.*, *Auction of Flexible Use Licenses in the 3.73.98 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 107; Bidding in Auction 107 Scheduled to Begin December 8, 2020*, AU Docket No. 20-25, Public Notice, 35 FCC Rcd 8404, 8407, para. 5 (2020); *Auction of Priority Access Licenses in the 3550-3650 GHz Band; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 2140, 2143, para. 5 (2020).

[8] *See* Federal Communication Commission, Office of Economics and Analytics, Auction 110: 3.45 GHz Service website, www.fcc.gov/auction/110.

The additional certification, along with the other certifications an applicant is required to make on FCC Form 175 pursuant to section 1.2105(a), help ensure that auction applicants are sincere about their interest in the auction, and may discourage the filing of frivolous applications that waste Commission resources. By ensuring familiarity with the Commission's rules and procedures governing Auction 110, we are taking steps to help bidders avoid the consequences to them associated with defaults, as well as the consequences for other applicants, the public, and the Commission associated therewith.

9. *Payments or gifts to respondents.* Respondents will not receive any payments or gifts.

10. *Assurances of confidentiality.* Information collected on FCC Form 175 is made available for public inspection, and the Commission is not requesting that respondents submit confidential information to the Commission as part of the pre-auction application process. However, to the extent that a respondent seeks to have certain information collected on FCC Form 175 withheld from public inspection, the respondent may request confidential treatment pursuant to section 0.459 of the Commission's rules for such information. *See* 47 C.F.R. § 0.459.

11. *Questions of a sensitive nature.* The information collection requirements do not ask questions of a sensitive nature.

12. *Estimate of the time burden of this collection on respondents.* Auctions occur on an irregular schedule. The Commission estimates that up to 500 respondents/ applicants may submit a FCC Form 175 each year, depending on the number and nature of the auctions in any given year. Respondents/applicants determine whether to apply to participate in a Commission auction and, therefore, applicants determine the frequency of filing. The Commission estimates that it will require up to 90 minutes for respondents/applicants to report the information requested on FCC Form 175 under the currently approved collection.

a. *Number of estimated annual applicants/respondents*: 500 applicants/respondents.

b. *Total number of responses:* 500.

c. *Frequency of response*: On-occasion.

d. *Total estimated annual burden hours*: 1.5 hours per applicant/respondent for an estimated 500 annual responses. The total estimated annual hour burden is calculated as follows:

   500 estimated annual responses x 1.5 hours per response = 750 total estimated annual burden hours.

e. *Total estimate of annualized "in-house" cost to respondents for the hour burden*: $29,632.50.

f. *Explanation of calculation*: The Commission expects that FCC Form 175 will typically be prepared by the respondent using existing in-house staff (e.g., paralegal or other legal staff member) at a rate equivalent to the hourly rate of a GS-11, Step 5 government staff member ($39.51/hour). Therefore, the in-house cost is as follows:

500 estimated annual responses x 1.5 hours per response x $39.51/hour = $29,632.50.

13. *Estimate of the cost burden of this collection to respondents.* There is no external cost burden to the respondents. Respondents should not incur capital and start-up costs or operation and maintenance costs for purchase of services in connection with responding to the information collection on FCC Form 175. The information collected on FCC Form 175 should be collected and maintained as part of the customary and usual business or private practice of the respondent.

TOTAL CAPITAL AND START-UP COSTS OR OPERATION AND MAINTENANCE (O&M): $0.

14. *Estimate of the annual cost burden of this collection to the Commission.* The Commission estimates that, on average, staff review of the information collected on FCC Form 175, including time spent by staff attorneys, will take 30 minutes per application, including time to identify any deficiencies in an initial application, review resubmitted applications as necessary, and identify the nature of any legal issues requiring policy review.

Total Estimated Annual Cost to the Federal Government: 500 applications x 0.50 hours x $66.54 (Attorney, GS-14, Step 5) = **$16,635.**

15. *Program changes or adjustments from this collection.* The Commission is reporting no change in burden for the collection. Therefore, there are no program changes or adjustments to this collection.

16. *Collections of information whose results will be published.* The information collection will not be published for statistical use.

17. *Display of expiration date for OMB approval of information collection.* The Commission seeks continued approval to not display the OMB expiration date on FCC Form 175 for this information collection. The Commission will continue to use an edition date on FCC Form 175 in lieu of the OMB expiration date. Continued approval to not display the OMB expiration date on FCC Form 175 will prevent the Commission from having to constantly update the OMB expiration date on the electronic FCC Form 175 whenever a revision or three-year extension of this collection is submitted to OMB for review and approval. The Commission will continue to publish the OMB control number and OMB expiration date for the FCC Form 175 in the list of all OMB-approved information collections contained in section 0.408 of the Commission's rules, 47 C.F.R. § 0.408.

18. *Exceptions to certification statement for Paperwork Reduction Act submissions.* There are exceptions to the certification statement.

B. <u>Collections of Information Employing Statistical Methods:</u>

This information collection does not employ statistical methods, and the use of such methods would not reduce the burden or improve accuracy of results.