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October 3, 2019

Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: OMB Control Number 3060-1094
Transforming the 2.5 GHz Band
ICR Reference 201909-3060-001

Comments of the Benton Institute for Broadband & Society

Dear Mr. Fraser:

The Benton Institute for Broadband & Society (Benton)¹ respectfully urges the Office of Information and Regulatory Affairs (OIRA) to deny the Federal Communications Commission's (FCC or Commission) request for emergency approval of the above-listed information collection. The request falls far short of the burden necessary to obtain emergency treatment and, on the merits, should in no event be approved in the form submitted.

There Is No Emergency, Much less One That Requires Waiving Ordinary OMB Procedures.

5 CFR §1320 sets forth specific and stringent standards for an agency to demonstrate entitlement to the extraordinary relief of emergency processing of an information collection. An agency must establish that

¹The Benton Institute for Broadband & Society is a non-profit organization dedicated to ensuring that all people in the U.S. have access to competitive, high-performance broadband regardless of where they live or who they are. It believes communication policy - rooted in the values of access, equity, and diversity - has the power to deliver new opportunities and strengthen communities. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, is not intended to reflect the views of its individual officers, directors, or advisors.

1) The collection of information:

- (i) Is needed prior to the expiration of time periods established under this Part; and
- (ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this part because:

- (i) Public harm is reasonably likely to result if normal clearance procedures are followed;
- (ii) An unanticipated event has occurred; or
- (iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

The FCC has not even attempted to meet that standard. Its one sentence justification, in its entirety, reads as follows:

Requiring the Commission to seek OMB's approval for this collection under the regular PRA processing procedures would significantly delay the [2.5 GHz] auction and the provision of service in Tribal lands.

Even if this were true, and it is not, the Commission does not say, much less prove, that a possible delay in the forthcoming spectrum auction would in fact delay the auction, that approval of the information collection is needed to prepare for the auction while the normal information collection schedule proceeds, that auction of the 2.5 GHz band is truly "essential," as opposed to "desirable." Nor does it identify any "public harm" that might flow from the use of normal procedures. And, most certainly, there is no unanticipated event that requires extraordinary relief or that normal clearance will "prevent or disrupt" information collection. Since there is no statutory or judicial deadline for conducting the proposed auction, the Commission is unable to cite to any such requirement.

Far from advancing the Commission's supposed goals, expedited approval and an expedited auction will actually impede them. In adopting its 2.5 GHz order, FCC Chairman Pai said that

the digital divide is most keenly felt in Indian Country. I want to make sure that those committed to connecting Tribal members in rural areas are given a strong opportunity to succeed. A Tribal priority filing window will help the most marginalized communities in the country gain access to services using this transformative spectrum band.

A headlong rush to approving the information collection will greatly impede the goal of giving members of Tribal nations a meaningful opportunity to take advantage of the priority they have received. Educating and informing them will take time, especially since, after all, the point of establishing the priority is that many of these people do not have broadband. Taking the time for effective outreach is essential to making this priority a meaningful right.

The Request For Approval Reveals That The FCC Does Realize The Scope Of Its Action And Greatly Underestimates The Burden It Will Impose.

The FCC's representations about the burdens to be imposed by the proposed collection are highly flawed. The Commission's estimates of the number of Tribal applicants likely to seek priority licenses appear to be dramatically lower than the established record shows. To some degree, the estimates may reflect a self-fulfilling prophecy. If the Commission does, indeed, receive emergency approval status and rushes to hold an auction before there is adequate outreach to affected parties, the number of applicants will be lower than would otherwise be the case. However, if the Commission is true to the Chairman's expressed desire to promote access in marginalized communities and it engages in a meaningful education and outreach program, there will be many more applications than the Commission projects.

The FCC also understates the burden in completing the collection requirements. Leaving aside that Tribal applicants may not be as sophisticated as wireless carriers familiar with FCC regulatory processes, the FCC's estimates do not account for the substantial burdens placed on tribal applicants, auction winners, and incumbent licensees who must navigate an FCC process that licenses slivers of spectrum that—as a result of the Order—will be in close to proximity to, or even overlap, each other.

For these reasons, Benton asks that OIRA reject the request for emergency processing and that it deny the request as presently formulated based on its inadequacies.

Respectfully submitted,

/s/

Andrew Jay Schwartzman
Senior Counselor
Benton Institute for Broadband & Society

cc. Alexander Hunt, OIRA
Cathy Williams, FCC