



PUBLIC NOTICE

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Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal lands Bidding Credit and List of Tribal Lands

Data to be used in calculating tribal land bidding credit amounts in auctions where licenses are issued by Economic Areas (EA)

This Public Notice provides additional information regarding the application process for applicants seeking a tribal lands bidding credit. In its *Report and Order and Further Notice of Proposed Rulemaking*, adopted June 8, 2000, the Commission established a tribal lands bidding credit program for future auctions to provide incentives to wireless telecommunications carriers to serve tribal lands.¹ Under this program, a winning bidder who commits to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that either are unserved by any telecommunications carrier or have a wireline telephone subscription equal to or below 70 percent is eligible to receive a tribal lands bidding credit. The rules took effect on October 2, 2000.

On September 28, 2000, the Wireless Telecommunication Bureau released a Public Notice providing basic information for future applicants on requesting and qualifying for a tribal lands bidding credit, as well as the performance requirements applicable to the winning bidder when a tribal lands bidding credit is awarded.² In this Public Notice, we provide further information on the procedures for obtaining a tribal lands bidding credit and the procedures that the Bureau will employ in processing applications for tribal lands bidding credits.

Notification of Intention to Seek Tribal lands Bidding Credit. Winning bidders interested in receiving a tribal lands bidding credit must indicate on the long-form application (FCC Form 601, Schedule B) each market for which they will seek the credit. After the long-

¹ Extending Wireless Telecommunications Services to Tribal lands, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-266, 15 FCC Rcd. 11,794 (rel. June 30, 2000).

² Public Notice, Wireless Telecommunications Bureau Announces Availability of Bidding Credits for Providing Wireless Services to Qualifying Tribal lands, DA 00-2219 (rel. Sept. 28, 2000).

form application filing deadline, applicants will not be permitted to amend their application to seek a tribal lands bidding credit for any additional market.

We recognize that some bidders may win multiple spectrum blocks in the same market. For each radio service, winning bidders may seek a tribal lands bidding credit for each spectrum block that it obtains in a particular market. In such instances, we will aggregate the winning bid amounts for these spectrum blocks and apply our bidding credit limit against the aggregated amount.³ Applicants should note that if a credit is requested and approved with respect to multiple spectrum blocks within the same market, the construction certifications and performance penalties set forth in 47 C.F.R. § 1.2110(e)(v)-(v)() shall apply with respect to each spectrum block, *i.e.*, the licensee must construct and operate a system, utilizing each spectrum block, capable of serving seventy-five percent of the population of the qualifying tribal land(s) for which the credit was awarded.

Separate Applications Seeking the Tribal Lands Credit. The Bureau anticipates that some applicants will not have obtained the necessary certifications from tribal authorities by the long-form application deadline. Commission rules provide applicants an additional 90 days after the long-form deadline within which to secure the necessary certifications from tribal authorities and amend their long-form application to provide the requisite tribal information and documentation.⁴

In order to ensure efficient and consistent treatment of all similarly-situated long-form applications, the Bureau may process applications seeking a tribal lands bidding credit separately from those applications not seeking a credit. In instances where an applicant is the winning bidder in multiple markets and decides to seek the tribal lands credit for some, but not all, markets, we encourage such applicants to file a separate long-form application for markets where they seek the tribal lands credit. The Bureau also prefers that applicants submitting more than one application send only one wire transfer that includes the requisite payments for all applications at the long-form stage.

Applications That No Longer Seek the Tribal Lands Credit. Applicants that elect to seek the tribal lands bidding credit may subsequently decide not to seek the credit. Applicants should amend their long-form application to delete the request for the tribal lands bidding credit.

Tribal Certifications. The tribal certification must be signed by an officer of the tribal government. In the case of Indian allotments, it must be signed by the allotment owner(s). In the case of Alaska Native lands, it must be signed by a corporate officer of the governing corporation. The tribal certification must state the following: (1) the tribal land is a federally-recognized

³ For example, a bidder in Auction #36 (SMR Lower 80 channels) wins spectrum blocks G, H, I and J in EA 1. The bidder may seek a tribal land bidding credit for blocks G, H, I and J. In determining the bidding credit limit, we would total the winning bid amounts for blocks G, H, I and J and then apply the applicable percentage cap, pursuant to 47 C.F.R. § 1.2110(e)(3)(iv).

⁴ 47 C.F.R. § 1.2110(e)(3)(ii). Note that the Commission's rules limit applicants' ability to make other major amendments to their long-form applications after the long-form deadline. Applicants are advised to consult Commission rules in this regard prior to filing any other amendment.

Indian tribe's reservation, Pueblo, Colony, Alaska Native region or Indian allotment, and has a wireline telephone subscription rate at or below seventy (70) percent; (2) the tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land; and (3) the tribal government will permit the applicant to site facilities and provide service on the tribal land.

U.S. Census Bureau Data. Section 1.2100(e)(3)(i) of the Commission's rules requires that a tribal land meet the following requirements to be considered a qualifying tribal land: (1) be a federally-recognized tribe, and (2) have a wireline telephone subscription rate at or below 70 percent based on the most recently available U.S. Census data.⁵ Section 1.2110(e)(3)(ii) requires the applicant to provide a certification from the tribal authority that these requirements are met. The Bureau has determined that the U.S. Census Bureau does not have telephone penetration data for a number of federally-recognized tribal lands. Accordingly, in instances where no Census Bureau penetration data is available, the Bureau will rely on the tribal certification, which must include a statement from the governing tribal authority that the telephone subscription rate is at or below 70 percent.

Calculation of Bidding Credit. Section 1.2110(e) of the Commission's Rules, 47 C.F.R. § 1.2110(e), describes the method for calculating the tribal land bidding credit for each license auctioned. In order to calculate the credit, interested parties must know the winning bid for the license, the qualifying tribal land(s) to be served, and the number of square kilometers within the market for each tribal land to be served. Attachment 1 to this Public Notice lists each tribal land as defined in the *Report and Order*,⁶ and wireline subscription rate data where available.⁷ The list of tribal lands was obtained from the U.S. Department of Interior's Bureau of Indian Affairs (BIA). Attachment 2 is intended to help potential bidders prepare for upcoming auctions where Economic Areas define the available market areas.⁸ Attachment 2 lists each of the 175 Economic Areas containing tribal lands, the tribal lands in each, and the number of square kilometers of each tribal land within the market. The number of square kilometers of each tribal land within the Commission-defined market areas was estimated by comparing spatial data provided by BIA with the relevant market boundaries. To simplify matters, we have rounded the number of square

⁵ 47 C.F.R. § 1.2110(e)(3)(i)

⁶ *Id.* Note: Not all of the tribal lands listed in the attachments are "qualifying tribal lands" as defined in 47 § C.F.R. 1.2110(e)(3)(i). Potential bidders must determine independently whether a particular tribal land is a "qualifying tribal land," *i.e.*, whether it is a federally-recognized tribal land that has a wireline telephone subscription rate equal to or less than 70%.

⁷ Wireline subscription rate data was provided to the Commission by the Census Bureau. However, Census Bureau data is not available for all federally recognized tribal lands and, in some cases, the rate data is based on additional areas such as trust lands or off reservation lands. Therefore, we are providing the rate data for informational purposes only. In all cases, regardless of the rate data described in this public notice, parties seeking a credit must submit a certification by the applicable tribal government(s) pursuant to 47 C.F.R. § 1.2110(e)(3)(ii) that the tribal land wireline subscription rate is equal to or less than 70%.

⁸ The Bureau will provide similar information by public notice for future auctions that use other market area definitions.

kilometers up to the nearest integer. If a market is not included in the attachment, this means that the market does not contain any federally-recognized tribal land. These data are available in electronic format at <http://www.fcc.gov/wtb/auctions>. Attachment 3 provides three examples of how the data may be used to calculate the bidding credit.

Additional Credit. Applicants seeking a higher credit than calculated pursuant to the Commission's bidding credit formula must file a waiver request demonstrating that their infrastructure costs exceed the available credit under the formula. This waiver must include a certification by an independent auditor that the estimated costs are reasonable. These waiver requests will be subject to the percentage caps set forth in Section 1.2110(e)(3)(iv) of the Commission's rules.

Trust Lands. Carriers receiving a tribal lands credit to serve Indian allotments or other trust lands⁹ must obtain approval from the Department of Interior, Bureau of Indian Affairs (BIA) prior to physically siting any facilities on these lands. Whether or not BIA approval is obtained, the carrier remains obligated to provide coverage to 75 percent of the population of these tribal lands within three years in order to maintain eligibility for the bidding credit. Carriers failing to do so will have to repay the bidding credit plus interest.

For further information, please contact Davida Grant, Commercial Wireless Division, at (202) 418-7050 or Denise Walter, Commercial Wireless Division, at (202) 418-0359.

⁹ We define "trust lands" as lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to restriction by the United States against alienation. 25 U.S.C. § 2201(4).