



Federal Communications Commission
Washington, D.C. 20554

November 30, 2004

Small Entity Compliance Guide

THIRD REPORT AND ORDER

In the Matter of Extending Wireless Telecommunications Services to Tribal Lands

DA 04-3713

WT Docket No. 99-266

This Guide is prepared in accordance with the requirements of Section 212 of The Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the above-referenced FCC rule. This Guide is not intended to replace the rule, and final authority rests solely with the rule. While we have attempted to cover all parts of the rule that might be especially important to small entities, the coverage may not be exhaustive. In any civil or administrative action against a small entity for a violation of a rule, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be made based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update text. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

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COMPLIANCE REQUIREMENTS

Objectives of the proceeding

In the tribal lands bidding credit proceeding, WT Docket No. 99-266, the Commission seeks to expand telecommunications service to severely underserved tribal lands. The Commission has instituted a program of bidding credits to provide incentives for licensees that build on and provide service to such tribal areas. In the *Third Report and Order* of the proceeding, the Commission increased the amount of credit available to licensees that provide such service, and raised the wireline penetration a tribal area must have to qualify for this program from 70 percent to 85 percent.

Rules That the Commission Amended

- The Commission **raised the wireline telephone subscription rate** for an area to qualify for the tribal lands bidding credit from 70 percent or less to 85 percent or less (47 C.F.R. § 1.2110(f)(3)(i)). Increasing the wireline telephone subscription rate at which tribal lands are eligible for a bidding credit to 85 percent or less will have the effect of increasing participation in the program by increasing the number of qualifying tribes and providing additional incentives to carriers to enter into agreements with tribal governments to deploy wireless services within Indian Country.
- The Commission **increased the amount of bidding credit** available that may be awarded to auction high bidders for deploying facilities on and providing service to qualifying tribal lands (47 C.F.R. §§ 1.2110(f)(3)(iii)-(iv)). Now, a winning bidder may receive a \$500,000 credit for the first 200 square miles (518 square kilometers) of qualifying tribal land within its license area. In instances where qualifying tribal lands within a license area exceed 200 square miles (518 kilometers), a winning bidder may receive an additional \$2500 per square mile (2.59 square kilometer), or \$500,000 for each additional 200 square miles (518 square kilometers). All credits are subject to a maximum limit based on the gross bid amount for the license for which the credit is sought. Where the gross bid amount is \$1 million or less, the cap will be 50 percent of the gross bid. Where the gross bid amount is greater than \$1 million and equal to or less than \$2 million, the cap will be \$500,000. Finally, where the gross bid amount exceeds \$2 million, the cap will be 35 percent of the gross bid.

Impact on Small Business

These two modifications of the rules will have no significant adverse impact on small entities.

Steps a Small Entity Must Take to Receive Tribal Land Bidding Credits

In order to receive a tribal lands bidding credit, a small entity must:

- Qualify for, participate in, and be the high-bidder in an auction where tribal lands bidding credits are available; these bidding credits are not available in all FCC auctions, so applicants are advised to carefully review the auction's procedures public notice
- Indicate on the FCC Form 601 that will be due shortly after the close of the auction that it intends to serve a qualifying tribal land, and that it is seeking a tribal lands bidding credit for certain markets
- Secure, within 180 days, a certification from the tribal government that the tribal government authorizes the applicant to site facilities and provide service on its tribal land; that the tribal area to be served meets basic qualifications (*i.e.*, that the tribal area, according to the most recent Census, has a wireline penetration rate at or below 85 percent); and that 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 qualifying tribal land (47 C.F.R. § 1.2110(f)(3)(ii)(A)).
- Submit, within 180 days, a certification that it will comply with the construction requirements of the program (*see* 47 C.F.R. § 1.2110(f)(3)(iv); licensees have three years to construct and operate a system capable of serving 75 percent of the population of the qualifying tribal land, regardless of service) (47 C.F.R. § 1.2110(f)(3)(ii)(B)).

Recordkeeping and Other Compliance Requirements

The Commission does not propose any additional reporting, recordkeeping or compliance requirements.

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Third Report and Order - FCC 04-202, released on September 2, 2004.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-202A1.doc

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