

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Cross Telephone Company, L.L.C. Request for) FCC File No. 0009225866
Waiver of Tribal Land Bidding Credit Rule)
Concerning Osage County, OK)

ORDER

Adopted: December 9, 2021

Released: December 9, 2021

By Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order grants a request for waiver filed by Cross Telephone Company, L.L.C. (Cross) concerning section 1.2110(f)(3)(i) of the Commission’s Tribal Land Bidding Credit (TLBC) rules with respect to the definition of “qualifying tribal land.”

1 Cross first filed its long-form application for licenses it won in Auction 105 – Application for 3.5 GHz Service Licenses, Form 601, ULS File No. 0009225866 – on September 17, 2020, but subsequently amended it five times (Cross Application). One of those amendments involved submission of the waiver request.

2 See Auction of Priority Access Licenses for the 3550-3650 MHz Band Closes – Winning Bidders Announced for Auction 105, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 9287, Attach. A (OEA & WTB 2020).

3 An applicant for the TLBC must also meet other requirements set forth in the TLBC rules. See 47 CFR §§ 1.2107(e), 1.2110(f)(3)(ii). Cross has complied with these other requirements with respect to the Osage Licenses.

4 The Cross Application, which also covers other PALs for which Cross was the winning bidder, remains under review for compliance with all Auction 105 requirements.

II. BACKGROUND

2. In 2000, the Commission adopted the TLBC rules and policies to encourage wireless telecommunications carriers to deploy facilities and provide service to individuals living on Tribal lands.⁵ The Commission recognized lower-than-average telephone service penetration rates, noting that “Indian tribes live in some of the most isolated areas of the United States, locations that telecommunications carriers find especially expensive to serve.”⁶ The Commission further observed that “communities on tribal lands have had less access to telecommunications services than any other segment of the U.S. population.”⁷ It concluded that offering “properly targeted [Tribal land] bidding credits” would serve the public interest “because they will encourage participation in auctions by those businesses, both tribal and non-tribal, that are most likely to be interested in and capable of serving tribal lands, . . . and will help to mitigate the economic risk associated with this type of service.”⁸ The Commission noted that obtaining the lowest cost for providing basic telephone service to such Tribal areas might require use of a terrestrial wireless technology, a satellite technology, or a combination thereof.⁹

3. To “ensure that credits are targeted to those tribal communities with the greatest need for access to telecommunications service,” the Commission established a threshold wireline telephone penetration rate well below the national average penetration rate based on the U.S. Census Data as a criterion for TLBC eligibility, i.e., a threshold wireline telephone penetration rate of 70% or less for a “qualifying Tribal land, noting that 70% was “equivalent to 75% of the average nationwide telephone penetration rate (94%)” (based on the 1990 U.S. Census Data).¹⁰ The Commission noted that “*by virtually any measure*, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population,” likely due to their “geographic remoteness, sparse population clusters, low income levels and high unemployment rates.”¹¹ Continuing its efforts in that same proceeding to “further [the] goal of ensuring that tribal lands have access to affordable, quality telecommunications services,”¹² the Commission subsequently modified the rules and procedures to enhance the incentives to auction participants. This included raising the wireline penetration rate threshold to 85% or less to increase the number of qualifying Tribal lands and further encourage participation in the TLBC program, noting that 85% was still well below the national average penetration rate (based on the 2000 U.S. Census Data) and would achieve the Commission’s objective to target Tribal communities with the greatest need.¹³

⁵ See generally *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794 (2000) (*TLBC First R&O*).

⁶ *TLBC First R&O*, 15 FCC Rcd at 11797, para. 5 and n.7 (citation omitted).

⁷ *Id.* at 11798, para. 8.

⁸ *Id.* at 11800, 11802, paras. 16, 19.

⁹ *Id.* at 11797, para. 5 and n.7 (citation omitted).

¹⁰ *Id.* at 11798, 11802-83, paras. 8-9, 22 (discussing the penetration rates among Tribal communities).

¹¹ *Id.* at 11798-99, paras. 8-10 (emphasis added).

¹² *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Third Report and Order, 19 FCC Rcd 17652, 17652, para. 1 (2004) (*TLBC Third R&O*).

¹³ *TLBC Third R&O*, 19 FCC Rcd at 17658-59, paras. 16-18. The other rule modifications (i) provided more time for applicants to negotiate service with Tribal government authorities and submit the requisite certifications to the Commission, see *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Second Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 4775, 4778-79, para. 10 (2003) (*TLBC Second R&O*), and (ii) increased the credit amounts available, see *TLBC Third R&O*, 19 FCC Rcd at 17658-59, paras. 16-18.

4. Under the Commission's current rules, a winning bidder seeking a TLBC must certify (among other points) that it intends to provide telephone service to a "qualifying tribal land," defined as a "federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma . . . that has a wireline telephone subscription rate equal to or less than eighty-five (85) percent based on the most recently available U.S. Census Data."¹⁴ Any Tribal land with a higher wireline telephone subscription rate is not "qualifying" under the rule, rendering an applicant proposing to serve such area ineligible for the TLBC.¹⁵

5. Cross is a privately held, family-controlled entity that, together with its affiliates, currently holds spectrum authorizations in predominantly rural areas in Oklahoma, offering a variety of telecommunications services in rural and remote areas, including the Osage Nation former reservation in Osage County, Oklahoma (Osage OTSA) and other qualifying Tribal lands.¹⁶ Cross's affiliate, Cim Tel Cable, LLC, plans to use the Osage Licenses to provide a wireless telecommunications and broadband network serving parts of the Osage OTSA.¹⁷

6. The most recent official U.S. Census Data that show wireline telephone subscription rates as a discrete data point are from 2000.¹⁸ According to the 2000 U.S. Census Data, the wireline telephone penetration rate for the Osage OTSA is 95.20% – above the "85% or less" requirement for a qualifying Tribal land under section 1.2110(f)(3)(i).¹⁹ Cross argues that such data are "inaccurate and overstate[]

¹⁴ 47 CFR § 1.2110(f)(3)(i). Reflecting the Commission's recognition that "the tribal governments are uniquely situated to monitor the deployment of service on their lands and ensure that carriers who obtain [the TLBC] meet the requirements of the program" (*TLBC First R&O*, 15 FCC Rcd at 1800-01, para. 17), the rules also require the applicant to provide certification from the Tribal government authority that: (i) it will allow the bidder to site facilities and provide service on its Tribal land(s), in accordance with Commission rules; and (ii) it has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate against any carrier. 47 CFR § 1.2110(f)(3)(ii). Cross has provided this certification with respect to the Osage Licenses. See Cross Application, "Osage Nation Tribal Certification" (filed March 15, 2021).

¹⁵ The TLBC is in addition to, and separate from, any other bidding credit offered in an auction and for which a winning bidder may qualify, e.g., small business credits and rural service provider credits. See, e.g., *Auction of Priority Access Licenses for the 3550-3650 MHz 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, 2204, para. 225 (2020). Not all auction applicants proposing to serve Tribal lands within their license areas apply for the TLBC.

¹⁶ The various services offered by Cross and its affiliates include Internet access, wireline, voice, and video services as well as fixed and mobile wireless voice and data services. See Cross's Auction 105 Ownership Disclosure Information, Form 602, ULS File No. 0009261908 (filed Oct. 14, 2020) (Cross Ownership Report). The Commission's definition of "qualifying tribal land" in 47 CFR § 1.2110(f)(3)(i) includes former reservations in Oklahoma. The Census Bureau has established Oklahoma Tribal Statistical Areas (OTSAs) in consultation with federally recognized Tribes in Oklahoma to represent the former reservation boundaries that existed prior to Oklahoma statehood. See United States Census Bureau, *Definitions of the American Indian and Alaska Native Geographic Areas* (Aug. 30, 2018), <https://www.census.gov/programs-surveys/geography/about/glossary/aian-definitions.html>. We thus use the term Osage OTSA to describe the Tribal land at issue here, which is coextensive with Osage County.

¹⁷ Cross and Cim Tel Cable, LLC (Cim Tel) are commonly owned and controlled. See Cross Ownership Report. Cross plans to lease the Osage Licenses to Cim Tel for deployment of a telecommunications and broadband network. See Waiver Request, Attach. C (Letter from Robert Mark Kirk, Director, Osage Nation Information Services, to FCC (March 11, 2021) (Osage Nation Letter)).

¹⁸ The U.S. Census Bureau previously (including the 2000 Census) asked a separate question that isolated wireline subscription rates. In the 2010 Census and 2020 Census, persons were not surveyed about wireline telephone subscriptions separately.

the telephone penetration rate within the Osage Nation,” and provides more recent data, including, among other sources, a study by the Tribal authority and Commission-published reports, “showing rates well below the 85% threshold to be accurate.”²⁰

7. Specifically, Cross cites the Commission’s own Voice Telephone Services (VTS) report, compiled by the Office of Economics and Analytics (OEA) using Form 477 submissions by wireline carriers, as of December 2018.²¹ The VTS reports include tables sorted by county for fixed voice services. The report as of December 2018 shows a wireline penetration rate for Osage County, Oklahoma, of 33%, and as Cross notes, Osage County is coterminous with the Osage OTSA.²² Cross further states that the rate has declined in every reporting period since 2014.²³ The most recent VTS report released by OEA (after Cross submitted its Waiver Request) indicates a wireline penetration rate of 32% for Osage County as of June 2019, declining steadily from 52% as of June 2014.²⁴

8. In further support of the Waiver Request, Cross attaches a letter signed by Robert Kirk, the Director of Information Services for the Osage Nation. Kirk states he is “responsible for communications and information services for the Osage Nation’s various agencies and [is] generally familiar with both the communications services available around Osage County and Osage Nation members’ usage of communications services.”²⁵ He agrees “with the FCC’s recent data which show landline penetration rates lower than 40% in Osage County.”²⁶

9. The Osage Nation Letter also describes a study commissioned by the Osage Nation to determine the feasibility of deploying a broadband network to serve its members (Study). Cross provides a copy of the Study and asserts that it is “relevant concerning telephone penetration and the overall connectivity status of the Osage Nation community.”²⁷ Kirk explains that the Study “included forecasted penetration rates in each community in Osage County, several of which were in the 40-50% range and all of which were well under the 95.2% figure from the 2000 Census.”²⁸ He states that the Osage Nation

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¹⁹ The 2000 U.S. Census Data is posted on the FCC’s webpage, *Tribal Lands Bidding Credits*, <https://www.fcc.gov/tribal-lands-bidding-credits>, “Cross References” tab (last visited Dec. 2, 2021).

²⁰ Cross Waiver Request at 1, 6. *See also, generally*, Cross Waiver Request.

²¹ The VTS reports are posted on the FCC’s webpage, *Voice Telephone Services Report*, <https://www.fcc.gov/voice-telephone-services-report> (last visited Dec. 2, 2021).

²² *See* Jon D. May, *Osage County, The Encyclopedia of Oklahoma History and Culture*, <https://www.okhistory.org/publications/enc/entry.php?entry=OS004> (last visited Dec. 2, 2021); Waiver Request at 1 n.2.

²³ Waiver Request at 3.

²⁴ This latest report, released May 7, 2021, includes county data going back to June 2014. Cross also cites an article and chart published by Statista showing the same situation on a national level: a significant decline in U.S. households with landline telephones starting at nearly 100% in 2004 and plummeting to below 40% in 2019. Statista indicates that its chart reflects data from the Centers for Disease Control and Prevention, based on tracking of landline and wireless phone ownership in the United States since 2004 as part of its biannual National Health Interview Survey. *See* Waiver Request at 3 (citing, *id.* n.5, Felix Richter, *Landline Phones Are a Dying Breed* (June 15, 2020), <https://www.statista.com/chart/2072/landline-phones-in-the-united-states/>).

²⁵ *See* Osage Nation Letter at 1.

²⁶ *Id.*

²⁷ Waiver Request at 5 and Exh. B. Cross states that the Study, issued in 2015, “indicates that it relied on multiple sources of data, including U.S. Census data from 2009 to 2013, to compile variables for developing subscriber penetration rates,” and that “its final subscriber forecast for the Osage Nation resulted in an overall average take rate of 44% for all residences and 58% for all businesses.” Waiver Request at 6.

“fully support[s] Cross Telephone’s request to waive the requirement to use 2000 Census data for purposes of determining qualifying tribal lands and to use more recent FCC data instead,” as his “local knowledge and Osage Nation’s penetration forecasts align with the FCC’s data.”²⁹

10. Cross also provides recent data based on the U.S. Census Bureau’s 2019 American Community Survey (ACS) for the Osage OTSA, “indicating smartphone ownership rates of 75.3%, which includes a 12.3% rate of ‘smartphone with no other type of computing device,’” as well as “an ‘Internet subscription rate of 72.5% and a ‘cellular data plan’ rate of 59.1%, which includes a 15.3% rate of ‘cellular data plan with no other type of Internet subscription.’”³⁰ Although these alternative data points do not isolate wireline telephone subscriptions. Cross argues that they are also pertinent as they “provide equivalent telephonic connectivity and/or access to voice services as wireline telephone service,” because “people tend to drop landline service as they adopt mobile service.”³¹ And yet, Cross contends, even these metrics demonstrate that the Osage Nation “remains underserved as all of these ownership and subscription rates fall well below the 85% wireline telephone penetration threshold of the current rule.”³²

11. According to Cross, based on these more recent various alternative sources and metrics, a waiver is appropriate and “squarely within the public interest.”³³ Specifically, Cross argues that there is good cause under section 1.3 of the Commission’s rules to permit reliance on more recent alternative data, and adds that using these data sources would better serve the purpose of the TLBC rules in this case.³⁴

III. DISCUSSION

12. Section 1.925(b)(3) of the Commission’s rules states that the Commission may grant a request for waiver when either (i) “[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and . . . grant of the requested waiver would be in the public interest,” or (ii) “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”³⁵

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²⁸ Osage Nation Letter at 1.

²⁹ *Id.*

³⁰ Waiver Request at 4-5 (citing and providing U.S. Census Bureau, American Community Survey, 2019 ACS 5-Year Estimates Subject Tables, Table S2801, *Types of Computers and Internet Subscriptions*, <https://data.census.gov/cedsci/table?q=Telephone,%20Computer,%20and%20Internet%20Access&g=2500000US2595&tid=ACSST5Y2019.S2801&hidePreview=true>).

³¹ Waiver Request at 4.

³² *Id.* at 4-5.

³³ *Id.* at 4, 6.

³⁴ *Id.* at 1-2 (citing 47 CFR § 1.3), 4, 6.

³⁵ 47 CFR § 1.925(b)(3).

13. Based on the facts of this case and evidence that this specific Tribal land is underserved, we find that waiver relief is warranted pursuant to section 1.925(b)(3)(i).³⁶ As discussed above,³⁷ the underlying purpose of the TLBC rules and policies is to promote the deployment of telecommunications services on underserved or unserved Tribal lands and to provide incentives to carriers to provide such service and mitigate the economic risks of doing so. In establishing the TLBC program, the Commission stated that “we have a duty to do all that we can to ensure that access to [telecommunications] services on tribal lands is increased well beyond current levels.”³⁸ When it modified the TLBC rules and procedures to further enhance the incentives, the Commission emphasized “the seriousness with which we approach the subject of providing telecommunications service to underserved Americans.”³⁹ It stated that “more can be done to increase access to telecommunications and information services in Indian Country and that it is continually appropriate to develop and apply policies aimed at promoting further deployment of wireless services to tribal lands.”⁴⁰ We continue to place a high priority on ensuring that Tribal communities have improved access to advanced wireless telecommunications services.

14. As noted above, in its surveys for 2010 and 2020 (following the Commission’s adoption of the TLBC rules and policies), the U.S. Census did not include a question about wired telephone subscriptions as a stand-alone data point. Notably, in seeking comment on modifications to the TLBC rules and policies, the Commission invited proposals to use data sources other than the U.S. Census Data. Specifically, the Commission stated that, while it had determined penetration levels according to Census Data in administering the TLBC, “we are not opposed to considering other methods of determining the actual telephone penetration rate on tribal lands. Accordingly, we welcome comments proposing the use of other sources of data that accurately reflect penetration rates.”⁴¹ In taking this approach, the Commission was focused on using accurate and current data in determining whether a Tribal community is unserved or underserved to achieve the Commission’s purpose in targeting those Tribal communities with the greatest need for access to telecommunications service.⁴² We find that, under the circumstances of this case and for the reasons discussed below, the underlying purpose of the rule would not be served by application to the instant case, and grant of the requested waiver would be in the public interest.⁴³

³⁶ While Cross based its Waiver Request on 47 CFR § 1.3, which allows the Commission to waive its rules for good cause shown, we evaluate the request under the provisions of 47 CFR § 1.925, which apply specifically to wireless radio services applications and proceedings. The Commission has found that “the material provisions” of the waiver standards under sections 1.925 and 1.3 are “virtually identical.” *See, e.g., Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16889, 16891, para. 7 (2003); *TerreStar Corporation Request for Temporary Waiver of Substantial Service Requirements for 1.4 GHz Licenses*, WT Docket No. 16-290, Order on Reconsideration, 35 FCC Rcd 4354, 4359 n. 41 (WTB MD 2020) (citations omitted). In finding that Cross has met the burden of justifying a waiver under section 1.925, our reasoning applies equally to a determination under section 1.3 of the rules.

³⁷ *See supra* paras. 2-3.

³⁸ *TLBC First R&O*, 19 FCC Rcd at 11798-99, para 10.

³⁹ *TLBC Third R&O*, 19 FCC Rcd at 17658, para. 13.

⁴⁰ *Id.* at 17659, para 16.

⁴¹ *TLBC Second R&O*, 18 FCC Rcd at 4786 n.46.

⁴² In the *TLBC Third R&O*, the Commission retained without discussion the “most recently available U.S. Census Data” in the rule’s definition of “qualifying tribal land.” *TLBC Third R&O*, 19 FCC Rcd at 17663, App. A (Final Rules); 47 CFR § 1.2110(f)(3)(i).

⁴³ *See* 47 C.F.R. § 1.925(b)(3)(i).

15. More specifically, in the instant case, we are persuaded by the evidence presented by the Tribal authority and Cross that the 2000 U.S. Census Data, which are “the most recently available” data, do not accurately reflect the wireline penetration rate for the Osage Nation today. Cross has provided various data that are more recent from alternative credible sources, including the Study done for the Osage Nation and testimony from the Tribal authority itself, as well as the Commission’s own published VTS reports, which, we note, the Commission has cited in other contexts.⁴⁴ All of these various data belie the accuracy today of the 92.5% wireline penetration rate reported in the 2000 U.S. Census Data. Indeed, these various data on the record show that residents within the Osage OTSA are underserved in terms of their access to telecommunications services – exactly the type of Tribal community envisioned by the Commission in establishing the TLBC program.⁴⁵ Based on the totality of the data presented by Cross and the Osage Nation authority, we find that strict application of the rule in this case would frustrate the underlying purpose of the TLBC rules to encourage and facilitate the deployment of wireless services to underserved Tribal lands, and more specifically, would frustrate the Commission’s purpose – i.e., measurement accuracy and reliability – in adopting section 1.2110(f)(3)(i)’s requirement to use the “most recently available U.S. Census Data.”

16. The TLBC rules expressly require the participation of the relevant Tribal government, and Cross timely filed the requisite Tribal certification executed by the Osage Nation authority.⁴⁶ Additionally, in the Osage Nation Letter filed in support of the Waiver Request, Mr. Kirk states they are “deeply interested in [the Cross affiliate’s] plans to deploy a network in Osage Nation providing additional connectivity options to our members” and they “look forward to the opportunities presented by CBRS spectrum and [such] deployment.”⁴⁷ Cross has engaged the Osage Nation Tribal authority consistent with the Commission’s vision in establishing the TLBC program, and we give considerable weight to the Osage Nation’s comments supporting the Waiver Request.⁴⁸ Allowing Cross to rely in this case on the more recent credible data sources discussed in this Order (versus the 2000 U.S. Census Data) will facilitate realization of the plan to use the Osage Licenses to offer advanced wireless services within the Osage OTSA, thus meeting an important policy goal of the TLBC rules. We therefore also conclude that a waiver of section 1.2110(f)(3)(i) serves the public interest. Accordingly, for all the reasons

⁴⁴ See, e.g., *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Report and Order, 35 FCC Rcd 12425, 12453-54 (2020) (discussing changes in the marketplace for voice telephone services, the decline in wireline switched access lines, and increased competition faced by local exchange carriers (LECs), citing (*see id.* nn. 231, 233-234) OEA’s published VTS report as of Dec. 31, 2018, and “FCC Form 477 Local Voice Subscription Data, preliminary data as of Dec. 31, 2019”) (preliminary data are subject to corrections by the providers before the final reports are published); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Memorandum Opinion and Order, 34 FCC Rcd. 6503, 6508-11 (2019) (discussing, in decision to forbear from certain legacy obligations imposed on incumbent LECs, a transition from switched access voice services to alternative voice services, citing (*see id.* nn.36, 38-45, 48-49) the VTS report as of June 30, 2017).

⁴⁵ Cf. *Request for Waiver of the Definition of “Federally Recognized Tribal Land” Under Section 1.2110(f)(3)(i) of the Commission’s Rules to Include Additional Areas within the Eastern Navajo Agency of the Navajo Nation*, AU Docket 14-78, Order, 29 FCC Rcd 13769, 13774, para. 12 (WTB 2014) (waiving 47 CFR § 1.2110(f)(3)(i) to expand the definition of “qualifying tribal land” to include additional areas within the Eastern Navajo Agency of the Navajo Nation, thereby allowing any winning bidder in Auction 97 to seek eligibility for the TLBC in those underserved areas of New Mexico) (*Eastern Navajo Waiver Order*).

⁴⁶ See *supra* note 14.

⁴⁷ Osage Nation Letter at 1-2.

⁴⁸ See, e.g., *Eastern Navajo Waiver Order*, 29 FCC Rcd at 13773, para. 10.

described herein, we grant the Waiver Request.⁴⁹ We emphasize that the waiver relief we provide today is limited to Cross's Auction 105 Osage Licenses.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 309, and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the request filed by Cross Telephone Company, L.L.C. for waiver of section 1.2110(f)(3)(i) of the Commission's rules, 47 CFR § 1.2110(f)(3)(i), is GRANTED as described herein.

18. IT IS FURTHER ORDERED that the Mobility Division of the Commission's Wireless Telecommunications Bureau shall process the pending Auction 105 long-form application of Cross Telephone Company, L.L.C., ULS File No. 0009225866, consistent with this Order and the Commission's rules.

19. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

20. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

⁴⁹ In its pending Application, Cross identifies a specific portion of the Osage OTSA it proposes to serve. Assuming that Cross meets all other auction-related requirements and is granted the Osage Licenses, Cross will be subject to the normal TLBC-recipient performance requirements under the rules. Specifically, it will be required to file, no later than the third anniversary of license grant, a notification that it has constructed facilities using the Osage Licenses and is providing service to 75% of the population of the area for which the credit is awarded. If Cross fails to meet those requirements, it will be obliged to repay the TLBC amounts with interest, and failure to repay that amount timely will result in automatic termination of the Osage Licenses. 47 CFR §§ 1.2110(f)(3)(vii)-(viii). An applicant that does not receive a TLBC is not subject to these more stringent build-out and notification requirements.