

(iii) The grantee may be required to submit quarterly progress and financial reports under part 92 of this title.

(b) *Grantees letter of acceptance.* Grantees must submit a letter of acceptance to CMS' Acquisition and Grants Group within 30 days of the date of the award agreeing to the terms and conditions of the award letter.

(Catalog of Federal Domestic Assistance Program No. 93779, Centers for Medicare and Medicaid Services Research, Demonstration, and Evaluations)

Dated: March 16, 2003.

**Thomas A. Scully,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: April 18, 2003.

**Tommy G. Thompson,**  
*Secretary.*  
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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 99-266; FCC 03-51]

#### Practice and Procedure

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission clarifies rules relating to tribal lands bidding credits that were established to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. In the *Second Report and Order*, the Commission extends the time period during which winning bidders can negotiate with the relevant tribes to obtain the certification needed to obtain the credit. The Commission also clarifies various administrative matters involved in implementing the credit.

**DATES:** Effective July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Second Report and Order (2nd R&O)*, FCC 03-51, adopted March 7, 2003, and released March 14, 2003. The full text of the *2nd R&O* is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY-A257, Washington, DC 20554. The complete text may be purchased from the

Commission's duplicating contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

### Synopsis of Second Report and Order

#### I. Background

1. In June 2000, the Commission adopted bidding credits for use by winning bidders who pledge to deploy facilities and provide service to federally recognized tribal areas that have a telephone service penetration rate at or below 70 percent. In setting out the bidding credit, the Commission noted that communities on tribal lands have had less access to telecommunications services than any other segment of the U.S. population. See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order*, 65 FR 47349 (August 2, 2000) (*R&O*), and *Further Notice of Proposed Rulemaking*, 65 FR 47366 (August 2, 2000) (*FNPRM*).

2. The *R&O* provided that, in order to obtain a bidding credit in a particular market, a winning bidder must indicate on its long-form application (FCC Form 601) that it intends to serve tribal lands in that market. Following the long-form application filing deadline, the applicant has 90 calendar days to amend its application to identify the tribal lands to be served, and provide certification from the tribal government(s) that: (1) It will allow the bidder to site facilities and provide service on its tribal land(s), in accordance with the Commission's rules; (2) 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; and (3) its tribal land is a qualifying tribal land as defined in the Commission's rules, *i.e.*, an area that has a telephone penetration rate at or below 70 percent. In addition, at the conclusion of the 90-day period, the applicant must amend its long-form application to file a certification that it will comply with the bidding credit build-out requirement, and that it will consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land. Upon receipt by the Commission of the certifications, the bidding credit is awarded and the applicant makes payment of the final net adjusted bid amount. If the required certifications are not provided at the conclusion of the 90-day period, the bidding credit is not awarded and the

applicant is required to pay the balance on the original gross bid amount in order to be awarded the licenses.

3. In order to ensure that applicants awarded bidding credits actually deploy facilities and provide service to tribal lands, the Commission imposed performance requirements as a condition of obtaining the bidding credit. The Commission required that a licensee construct and operate its system to cover 75 percent of the population of the qualifying tribal land within three years of the grant of the license. While this 75 percent benchmark is higher than the construction benchmarks applicable to auctioned wireless licenses generally, the Commission determined that it would ensure that only carriers that are committed to serving tribal lands will receive bidding credits, and that wireless telecommunications services will be deployed rapidly to underserved tribal areas. In the *R&O*, the Commission required that, at the conclusion of the three-year period, licensees file a notification of construction indicating that they have met the 75 percent construction requirement on the tribal lands for which the credit was awarded. If the licensee fails to comply with any condition, it is required to repay the bidding credit plus interest thirty days after the conclusion of the construction period. In the event the licensee fails to repay the amount, the license automatically cancels.

4. In limiting the scope of the bidding credit to federally recognized tribal areas with telephone penetration rates equal to or less than 70 percent, the Commission concluded that the credits would target the tribal communities with the greatest need for access to telecommunications service. Although the Commission acknowledged that there are some non-tribal areas with penetration rates lower than the national average, it was determined that almost all non-tribal areas have penetration rates greater than 70 percent and that non-tribal areas have penetration rates significantly greater than most tribal areas. Accordingly, the Commission found it appropriate to limit the program to tribal lands with a 70 percent or less penetration rate. The Commission did not, however, foreclose the possibility of extending the credit both to non-tribal areas and to areas with higher penetration rates.

5. In the *FNPRM*, the Commission solicited comment on ways the bidding credit could be extended to encourage further deployment of wireless telecommunications services. The Commission specifically sought