

comment on whether it should award bidding credits to carriers who commit to serve non-tribal areas with a 70 percent or less penetration rate, or tribal and/or non-tribal areas with penetration levels above 70 percent but significantly below the national average. Further, comment was requested regarding whether the Commission should expand the program to give transferable bidding credits to be used in future auctions to existing licensees in already-established wireless services who deploy and provide service to unserved tribal communities. The Commission also asked whether it should make credits available to licensees that enter into partitioning agreements with tribal authorities that allow the tribal government to provide service, either directly or through negotiation with a third-party carrier.

II. Discussion

A. Modification and Clarification of Bidding Credit Procedures

6. *Certification Procedure.* When the Commission adopted the tribal lands bidding credit in the R&O, it established the method by which a bidding credit would be calculated, as well as the application process involved in obtaining a bidding credit. Since the inception of the tribal lands bidding credit, there have been 10 auctions, with 375 winning bidders purchasing 10,479 licenses. However, only 27 winning bidders to date have initially indicated on their long-form applications that they would be seeking the tribal lands bidding credit, and of those applicants, only five submitted the required 90-day certifications. Upon review of this proceeding, the Commission finds that the small number of applications seeking the credit is due, at least in part, to the administrative process established by the Commission. Specifically, the Commission finds that the 90-day deadline for obtaining the certifications from the applicable tribal government(s) makes it extremely difficult to qualify for the credit. The 90-day deadline and certifications were established: (1) To ensure prompt issuance of licenses to winning bidders; (2) to provide a time frame for making contact with tribal governments and obtaining requisite certifications; and (3) to ensure that the wireless carrier intends to provide service to the tribal land. Because ninety days may not be a sufficient amount of time for licensees and tribal authorities to complete the certification process, the Commission extends the tribal lands certification period to 180 days. Accordingly, a winning bidder claiming a tribal lands

bidding credit will now have 180 days to amend its long-form application to identify the tribal lands to be served, and provide the required certification from the tribal government. Further, the winning bidder will have 180 days to file a certification that it will comply with the tribal lands build-out requirements, and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land. If the winning bidder fails to submit the required certifications within the 180-day period, the bidding credit will not be awarded, and the winning bidder will be required to pay the balance on the original gross bid amount in order to obtain the license.

7. Full or partial assignments of licenses involving tribal lands bidding credits. An issue that was inadvertently omitted in the R&O is the impact of license assignments on licenses with tribal lands bidding credit construction/repayment obligations. The Commission therefore clarifies that if the license is assigned to another entity, the construction/repayment obligations associated with the credit are transferred as well. Because all obligations of the license automatically transfer to the assignee, the Commission will not require the assignee to seek re-certification where the original licensee received certifications from the appropriate tribal authorities. It is important to note that an assignee contracting with a licensee to transfer a license for which a tribal lands bidding credit was received bears the risk that the tribal government may not allow the assignee to deploy facilities on its land. The Commission expects that parties interested in obtaining wireless licenses will exercise due diligence in identifying whether or not a tribal lands bidding credit construction obligation is associated with the license, and, therefore, take into account the heightened construction obligation, the dependence of the credit on obtaining the consent of the tribal government, and the potential for a repayment penalty in case the construction requirement is not met within the original three-year time frame. It is up to the assignee to verify that the tribe will consent to allowing the assignee access to its lands.

8. Also, the Commission clarifies that in partial license transfers involving geographic partitioning, the tribal land must be wholly contained within either the assignor's or assignee's proposed license area after the partition. The Commission will not permit, for example, a tribal area for which a credit was awarded to be "split" between

partitioned areas because this would be inconsistent with the original purpose of issuing the credit, *i.e.*, to ensure that at least 75 percent of the tribal land is served. Where a partition occurs, the construction/repayment obligation will attach to the license for the partitioned area that encompasses the tribal land for which the credit was awarded.

However, in partial license transfers involving spectrum disaggregation (but not partitioning), the construction/repayment obligation will be presumed to remain with the original licensee whose stated intention was to serve the tribal land unless the parties to the transaction inform us otherwise. As is the case with partitioning, spectrum covering the tribal land must be disaggregated in its entirety (*i.e.* a disaggregation involving only a portion of a tribal area subject to a bidding credit will not be permitted).

9. *Notification of Construction.* In the R&O, the Commission did not clearly set out the notification of construction procedures applicable to licensees that are granted tribal lands bidding credits. Pursuant to the goals of section 309(j)(4)(B) of the Act, the Commission has set out performance requirements for the various services, with alternative construction obligations for those licensees using tribal land bidding credits. As noted, the Commission imposed more stringent construction requirements for those licensees that choose to utilize the tribal lands bidding credit in order to ensure that only those most committed to building out their facilities will receive bidding credits and that service is deployed as quickly as possible. In order to verify compliance with the tribal lands construction requirement, any licensee employing a bidding credit must file a notification of construction (FCC Form 601, Schedule K) electronically at the conclusion of the three-year construction period along with an attachment stating affirmatively that it is providing coverage to 75 percent of the population of the tribal area for which the credit was awarded. In its notification of construction, the licensee must provide the total population of the tribal area covered by its license as well as the number of persons it is serving in the tribal area. If the licensee fails to make an adequate showing that it has met the 75 percent benchmark, it will be required to repay the bidding credit, plus interest, thirty days after the conclusion of the construction period. 47 CFR 1.2110(f)(3)(vii). Failure to repay this amount will result in automatic termination of the license. 47 CFR 1.946(c).