

10. Penalty for failure to construct and failure to timely repay bidding credit. The Commission also takes this opportunity to correct an omission in the rules implemented in connection with the *R&O*, in which the Commission stated that a licensee's failure to comply with build-out requirements, and subsequent failure to repay the bidding credit, plus interest, thirty days after the conclusion of the construction period, would result in automatic termination of the licensee's license, *i.e.*, termination without any further notification being sent to the licensee, opportunity for a hearing, or other Commission action. This penalty will now be expressly codified in Part 1 of the Commission's rules.

B. Use of Bidding Credits in Non-Tribal Areas or Areas With Telephone Penetration Rates of More Than 70 Percent

11. In the *FNPRM*, the Commission sought comment on whether it should apply the bidding credit to non-tribal areas on the same terms and conditions as for tribal areas, or alternatively, whether it should extend the bidding credit to areas (tribal and non-tribal) with penetration levels greater than 70 percent, but below the national average of 94 percent. As noted, very few commenters submitted responses to the *FNPRM*. Those who filed comments generally support extending bidding credits to entities seeking to provide service to non-tribal areas with telephone penetration rates below the national average.

12. The Commission concludes that it is premature to expand the program to non-tribal areas or to areas with penetration rates of greater than 70 percent at this time. Because this program is still in its early stages and few entities have taken advantage of the bidding credit thus far, the Commission cannot yet determine whether it would be constructive to expand the use of the bidding credit to non-tribal areas generally. Moreover, the Commission is concerned about the paucity of comment regarding this issue. It is necessary to have a more substantial record as to whether the use of bidding credits is appropriate to encourage deployment of services into non-tribal areas, particularly from those most familiar with dealing with rural and high-cost service issues. Similarly, the Commission believes the record is insufficient at this time to support expanding the use of the bidding credit to areas having telephone penetration rates of greater than 70 percent. However, in an effort to develop a more complete and up-to-date record on

possible adjustment of the penetration rate threshold, the Commission seeks comment in its *Second Further Notice of Proposed Rulemaking* on information from the 2000 Census regarding increases in tribal penetration rates that has recently been released by the Census Bureau. See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Second Further Notice of Proposed Rulemaking*, FCC 03-51, adopted March 7, 2003, and released March 14, 2003.

C. Applying Bidding Credits to Existing Licenses

13. The Commission noted in the *R&O* that the current tribal lands bidding credit can be applied only in the auction in which it is obtained. Accordingly, the bidding credit is not available to carriers with existing licenses that were acquired in prior auctions or through transfer or assignment. The Commission therefore asked in the *FNPRM* whether a more flexible form of credit should be made available to existing licensees who have constructed facilities, using currently-licensed spectrum to provide service to qualifying tribal lands. Under this approach, carriers who use their existing spectrum to provide service to such areas could receive bidding credits that could be used in future auctions. Further, the Commission sought comment on whether such a credit should be transferable to third parties for use in future auctions. The Commission also sought comment on its legal authority under section 309(j) of the Communications Act to adopt the flexible bidding credit.

14. Although the Commission continues to believe that the tribal lands bidding credit is a valuable means to encourage greater deployment of telecommunications services into underserved tribal areas, the Commission concludes that in light of its still-limited experience with the bidding credit program, it should not extend the program to already-licensed carriers or make the credit transferable at this juncture. The Commission believes that before taking such a step, additional time is needed to determine the effectiveness of the program as currently structured in meeting its intended goals. The Commission also finds that the limited comment it has received in this proceeding does not provide sufficient support or guidance for such an expansion of the program. Accordingly, the Commission declines to extend the program to already-licensed carriers or make the credit transferable at this time.

D. Transferable Bidding Credits for Licensees That Partition Tribal Areas

15. In the *FNPRM*, the Commission solicited comment on whether bidding credits should be made available to carriers that enter into partitioning agreements with tribal governments to facilitate deployment of service to tribal lands. The Commission proposed that a credit would be awarded to a geographic area licensee that partitioned portions of its license area covering tribal lands to the appropriate tribal government. Again, the Commission received limited comment regarding this issue, and therefore it concludes that the record does not at this time support expanding the bidding credit program as proposed.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

16. The actions taken in the *2nd R&O* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104-13, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval.

B. Final Regulatory Flexibility Act Analysis.

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM*. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the 2nd R&O.

18. In the *2nd R&O*, the Commission clarifies rules previously adopted in the *R&O* and *FNPRM* in WT Docket 99-266 to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. In that *R&O*, the Commission authorized the grant of bidding credits to winning bidders who deploy facilities and provide service to federally-recognized tribal areas that have a telephone service penetration rate below 70 percent. In the present item, the Commission clarifies, on its own motion, administrative matters involved in implementing the bidding credit, such as the process by which carriers obtain certifications