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Dated: March 31, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

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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: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment regarding ways to adjust its current tribal lands bidding credit program in order to encourage further deployment by carriers of wireless services on tribal lands. The Commission also seeks comment on possible adjustments to the program based on use of data from the 2000 Census that was not available when the program was initiated. Further, the Commission requests comment on a limited expansion of the credit program that would allow carriers who obtain bidding credits to serve qualifying tribal lands to obtain additional credit for extending their coverage to immediately adjacent non-tribal areas that also have low penetration rates.

DATES: Submit comments on or before June 2, 2003. Submit reply comments on or before June 16, 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 Further Notice of Proposed Rulemaking (2nd FNPRM)*, FCC 03-51, adopted March 7, 2003, and released March 14, 2003. The full text of the *2nd FNPRM* 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.

Synopsis of Second Further Notice of Proposed Rulemaking

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 changing the scope of the bidding credit program.