

II. Discussion

5. In this *2nd FNPRM*, the Commission solicits comment on whether it is necessary to modify the Commission's existing tribal lands bidding credit program in order to further facilitate the use of the bidding credit. The tribal lands bidding credit program is still in its early stages and few carriers have taken advantage of the bidding credit thus far. The record, however, is unclear regarding the reasons behind the lack of response to the bidding credit. Because the record in this proceeding thus far is not sufficient to make reasoned decisions as to what steps, if any, the Commission should take to further encourage carriers to provide coverage to tribal lands, the Commission seeks additional comment regarding this issue.

A. Modifying the Construction Requirements of the Tribal Lands Bidding Credit

6. The Commission's rules currently impose more stringent construction requirements on carriers who seek the tribal lands bidding credit than those who do not. All carriers taking advantage of the bidding credit are required to serve 75 percent of the population of the qualifying tribal land for which the credit was awarded, and must do so within three years of license grant. The Commission initially set out the more stringent performance requirement because it believed that the accelerated buildout requirement ensures that: (1) Only entities making a serious commitment to serving tribal lands will receive bidding credits; and (2) telecommunications services will be rapidly deployed to unserved tribal areas.

7. It is possible, however, that one reason behind the lack of participation in the tribal lands bidding credit program is that carriers find that difficulties involved in meeting the enhanced construction requirements are not sufficiently mitigated by the existing bidding credit. For example, there may be conditions, such as technical obstacles, economic factors, or other difficulties, that may make it difficult for carriers to satisfy the stricter construction requirement. Circumstances may exist on remote tribal lands such as low population density, rough terrain, and other factors that can negatively affect the ability of carriers to provide the requisite coverage to facilities in those areas. Accordingly, the Commission seeks comment as to whether it should reconsider the buildout obligations imposed on carriers utilizing the tribal

lands bidding credit. Given that the public has now had a period of time to evaluate the bidding credit program, the Commission seeks comment on whether the requirement that carriers cover 75 percent of the population within three years remains feasible, or whether it should moderate the buildout criteria. Specifically, the Commission requests comment on what factors or circumstances exist that warrant an across-the-board relaxation of the bidding credit construction requirements.

8. In the event that the Commission determines that the construction requirements should be eased, it seeks comment on how the requirements should be modified. For example, should the population of the qualifying tribal land covered by a carrier be lessened (*i.e.* reduced to a number below 75 percent)? Alternatively, should the time period in which to provide coverage to 75 percent of the tribal population be extended to a construction period longer than three years? Or is the appropriate remedy a combination of a reduced population coverage requirement and an expanded construction period? Should the Commission adopt a variation of the combination method, such as a tiered approach in which construction would occur in phases, *e.g.*, a certain percentage of the total tribal population must be covered in three years, and a greater percentage would be covered at the five-year mark. The Commission seeks comment regarding these alternatives, as well as any other options. The Commission notes that any across-the-board revision of the construction requirements must balance its desire to implement achievable construction requirements with the underlying purpose of the requirements, that is, to ensure that service is actually deployed on tribal lands.

9. The Commission is also aware that a comprehensive change of the construction requirements may not be the appropriate solution. It may be that satisfying the tribal lands buildout requirement may be more difficult in certain tribal areas in the country than in others. There may be difficulties or conditions specific to certain tribal lands, that may make it difficult for carriers to satisfy the stricter construction requirement, while other carriers deploying the same type of service may have no difficulties in meeting the construction requirements in other tribal areas. Similarly, the ability to comply with the tribal lands bidding credit may depend on the particular wireless service at issue. The Commission's rules governing general

construction and operation obligations of licensees reflect several approaches that match a type of license (*i.e.* site-based versus geographic market) or service (*e.g.* PCS or lower band 700 MHz) with a specific buildout requirement. It may therefore be preferable to deal with these situations on a case-by-case or service-by-service basis rather than an across-the-board method. The Commission therefore seeks comment on whether it should resolve any buildout difficulties using an ad hoc or waiver approach.

B. Increasing the Bidding Credit Limit

10. The Commission established the tribal lands bidding credit in order to encourage participation in auctions by carriers who are in a position to provide service to tribal lands, and to help mitigate the economic risks associated with the deployment of such service. In recognition of the underlying economic difficulties in providing service to high cost areas, the Commission sought to fashion a bidding credit that bore a correlation to the infrastructure investment necessary to deploy facilities on tribal lands.

11. As noted, it is not clear why few applicants have thus far taken advantage of the tribal lands bidding credit. In addition to the required construction requirements, another possibility for the poor response may be that the existing bidding credit may not provide carriers sufficient incentive to deploy facilities on tribal lands. Although no applicant has yet requested a larger credit than the one called for under the Commission's tribal lands bidding credit methodology, it may be that the current bidding credit amounts are not adequate to allow carriers to recoup a significant portion of infrastructure costs. Accordingly, the Commission seeks comment on whether the existing tribal lands bidding credit remains effective in encouraging carriers to provide service in tribal areas. The Commission also requests comment on whether and how the bidding credit amount and methodology should be modified to provide a greater incentive for carriers to deploy facilities on tribal lands.

C. Adjustment of the Bidding Credit Based on 2000 Census Data

12. The Commission initiated this proceeding in recognition of the unusually low telephone service penetration rates on tribal lands as identified by the 1990 Census. *See Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Notice of Proposed Rulemaking*, 64 FR 49128 (Sept. 10, 1999) (*NPRM*). In the *NPRM*,