

populated areas with high telephone penetration rates and those that have characteristics warranting support. The Commission seeks comment on any other measures or conditions that should be adopted that will safeguard the integrity of the Commission's bidding credit program.

19. Further, the Commission tentatively concludes that, in the event it extends the bidding credit's applicability to adjoining non-tribal lands, it should use the existing formula to calculate the additional credit. In order to determine the total credit for a market, the applicable "square kilometers" of the relevant non-tribal area would be added to the qualifying tribal area within the license market. The Commission seeks comment on this approach, and on any alternative ways to calculate the credit.

20. In the *R&O*, the Commission concluded that it has the authority to establish the tribal lands bidding credit because the Act, *inter alia*, directs the Commission to: (1) Facilitate the rapid and efficient deployment of wire and radio communications "to all the people of the United States;" (2) foster "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas;" and, (3) promote the "efficient and intensive use of the electromagnetic spectrum." See *R&O*, citing 47 U.S.C. 151, 47 U.S.C. 309(j)(3)(A), and 47 U.S.C. 309(j)(3)(D). The Commission further concluded that section 706(A) of the Act authorizes bidding credits designed to remove or reduce economic barriers to infrastructure investment. The Commission tentatively concludes that these provisions also allow the Commission to extend the bidding credit to cover adjacent non-tribal areas. The Commission requests comment on this analysis.

### III. Procedural Matters

#### A. *Ex Parte* Rules—Permit-But-Disclose Proceeding

21. This proceeding is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206.

#### B. Initial Paperwork Reduction Act Analysis

22. The 2nd FNPRM has been analyzed with respect to the Paperwork Reduction Act and found to impose no new or modified reporting and

recordkeeping requirements or burdens on the public.

#### C. Initial Regulatory Flexibility Analysis

23. The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the 2nd FNPRM, as required by the Regulatory Flexibility Act. The Commission requests written public comment on the analysis. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the 2nd FNPRM, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the 2nd FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a).

#### Need for, and Objectives of, the 2nd FNPRM

24. 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, should be taken to further encourage carriers to provide coverage to tribal lands, the Commission seeks additional comment regarding this issue.

25. *Modifying the construction requirements of the tribal lands bidding credit.* 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. One possible reason behind the lack of participation in the 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. 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.

26. In the event that it is determined that the construction requirements should be eased, the Commission 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 other words, 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.

27. 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