

Automated Maritime Telecommunications
System

Auction No. 57 Seminar

**Tribal Lands Bidding
Credits**

**Extending Wireless Services to
Tribal Lands**

Michael Connelly
Attorney Advisor
Mobility Division, Wireless Telecommunications Bureau

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What Are Tribal Lands Bidding Credits ("TLBC")?

- Credits given to winning bidders in Commission spectrum auctions who deploy facilities on and provide services to qualifying tribal lands.
- Promulgated by FCC rule § 1.2110(f)

Legal Authority

- Section 309(j) of the Communications Act (the “Act”) directs the Commission to design bidding systems that promote the rapid and efficient deployment of wire and radio communications “to all people of the United States.”
- Census data showed low telephone penetration rates for most tribal lands

Qualifying Tribal Land

- A qualifying tribal land is:
 - Any federally recognized tribal area that has a wireline telephone subscription rate equal to or less than 70 percent.
 - 2000 census data now being used
 - Visit the auctions website at <http://wireless.fcc.gov/auctions/tribal/> for a listing of federally-recognized tribal lands.

Calculation and Credit Amount

- Credit amount is tied to the level of infrastructure investment in qualifying tribal lands.
- Tying the credit to the infrastructure investment provides a correlation between the financial commitment made by the carrier to the deployment of facilities and the financial benefit derived in the auction.

Method of Calculation

- The Commission awards:
 - \$300,000 for the first 200 square miles (518 square kilometers) of qualifying tribal land; and
 - \$1500 for each additional square mile (2.59 square kilometers).

Bidding Credit Limit

- Maximum limit placed on credits.
- For gross bid amounts of \$1 million or less, the cap will be 50 percent of the gross bid.
- For gross bid amounts of greater than \$1 million, but less than or equal to \$2 million, the cap will be \$500,000.
- For gross bid amounts exceeding \$2 million, the cap will be 25 percent of the gross bid.

Increased Bidding Credits

- Waiver requests for a higher bidding credit will be considered by the Commission, pursuant to rule § 1.925
- Applicant must demonstrate that its infrastructure costs exceed the available credit under the formula.
- Such requests will be subject to the applicable bidding credit cap.

Applying for Tribal Lands Bidding Credits

- Applicants must indicate each market for which they seek tribal lands bidding credits on their long-form (FCC Form 601) by the 601 filing deadline.
- Applicants are allowed 180 calendar days to amend their long-forms and attach the required certifications.
 - The former 90-day certification period was extended to 180 days in a Second Report and Order; the new rule took effect on July 1, 2003.

Applying for Tribal Lands Bidding Credits (continued)

- Applicants seeking tribal lands bidding credits are encouraged to submit two applications:
 - one application should contain markets for which the applicant is seeking tribal lands bidding credits; and
 - the second application should contain markets for which the applicant is not seeking tribal lands bidding credits.

Required Certifications

- Required certifications consist of:
 - Tribal Government Certification
 - Applicant Certification

Tribal Government Certification

- The Tribal Government must state that:
 1. It will allow the applicant to site facilities and provide service on its tribal land(s), in accordance with FCC 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 by the FCC rules, *i.e.* areas that have a telephone penetration rate at or below 70 percent.

Applicant Certification

The applicant must certify that:

- It will consult with the tribal government about siting facilities and providing service on its land; and
- It will comply with the three-year buildout requirement.

Post-Auction Performance Requirements

- Section 309(j)(4)(B) of the Act directs the Commission to “include performance requirements, such as deadlines and penalties for performance failures, to ensure the delivery of service...”

Construction Requirement

- In order to verify compliance with the tribal lands buildout requirement, licensees are required to file a notification of construction (FCC Form 601, Schedule K)
- Must be filed at the conclusion of the three-year buildout period.
- Must state that they have constructed and are operating a system that covers 75 percent of the population of the qualifying tribal land.

Repayment

- If the certification is not filed or if the buildout requirement is not met, the licensee must repay the bidding credit amount plus interest.
- Repayment is due 30 days after the conclusion of the three-year buildout requirement.
- Failure to repay will result in automatic termination of the license.

Transfers and Assignments

- Transfers of Control or assignments of licenses that received tribal lands bidding credits is permitted
- Obligations of license automatically transfer to assignee
- If partitioning a license, transfer of TLBC allowed only if tribal land is "wholly contained" within either the original or partitioned area.

Proceedings and Public Notices

- WT Docket No. 99-266: Extending Wireless Telecommunications Services to Tribal Lands
 - Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-51 (rel. March 14, 2003); and
 - First Report and Order and Further Notice of Proposed Rule Making, FCC 00-209 (rel. June 30, 2000).
- Public Notices:
 - "Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits," DA 01-613 (rel. March 8, 2001);
 - "Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands," DA 00-2836 (rel Dec 14, 2000); and
 - "Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands ... ," DA 00-2219 (rel. Sept. 28, 2000).

Further Information

■ See:

- 47 C.F.R. § 1.2110(f)(3).
- Winning Bidder/Closing Public Notice
- Auction Website www.fcc.gov/wtb/auction
(select the link for "Info on Tribal Land Bidding Credit")

■ Contact:

- Michael Connelly, phone: (202) 418-0132, or
email: michael.connelly@fcc.gov

Tribal Lands Bidding Credits

THE END

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