

700 MHz Band
Auctions 73 & 76 Seminar

Tribal Lands Bidding Credits

**Extending Wireless
Services to Tribal Lands**

Michael E Connelly
Attorney Advisor, Mobility Division

November 20, 2007

Disclaimer

Nothing herein is intended to supersede any provision of the Commission's rules or public notices. These slides should not be used as a substitute for a prospective applicant's review of the Commission's relevant orders, rules, and public notices. Prospective applicants must familiarize themselves thoroughly and remain current with the Commission's rules relating to the 700 MHz Band service, rules relating to application and auction procedures, and the procedures, terms and conditions contained in the Auctions 73 and 76 public notices.



Tribal Lands Bidding Credits

- Credits given to winning bidders in Commission spectrum auctions who deploy facilities on and provide services to qualifying tribal lands.
- A qualifying tribal land is any federally recognized tribal area that has a wireline telephone penetration rate equal to or less than 85 percent.
- See 47 C.F.R. 1.2110(f)(3)(i)

Method of Calculation

- The Commission awards:
 - \$500,000 for the first 200 square miles (518 square kilometers) of qualifying tribal land; and
 - \$2500 for each additional square mile (2.59 square kilometers).
 - See 47 C.F.R 1.2110(f)(3)(iii)

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 35 percent of the gross bid
- See 47 C.F.R. 1.2110(f)(3)(iv)

Increased Bidding Credit

- In the *First Report and Order* of the tribal lands bidding credit proceeding, the Commission stated it would consider a waiver request for a higher bidding credit where an applicant shows that its infrastructure costs exceed the available credit under the formula .
 - Such a waiver request is subject to the percentage cap; Commission will not grant a waiver in excess of the cap.
 - Applicant must make a detailed showing of their projected infrastructure costs, including certification by an independent auditor that the estimated costs are reasonable.
 - No license grant for any market for which a waiver is sought pending resolution of the waiver request.
 - *See* 47 C.F.R. 1.925; *see also First Report and Order*, FCC 00-209 para. 29.

Applying for Tribal Lands Bidding Credit

- Applicant indicates each market for which they seek tribal lands bidding credits on their long-form application (the Form 601) by its filing deadline.
- Applicants are allowed 180 calendar days to amend their long-forms and attach the required certifications.
- See 47 C.F.R. 1.2110(f)(3)(ii)

Required Certifications

■ **Tribal Government Certification**

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 85 percent.
4. See 47 C.F.R. 1.2110(f)(3)(ii)(A)

Required Certifications (cont.)

■ **Applicant Certification**

1. It will consult with the tribal government about siting facilities and providing service on its land; and
2. It will comply with the special three-year buildout requirement for the tribal land
3. See 47 C.F.R. 1.2110(f)(3)(ii)(B)

Construction Requirement

- In order to verify compliance with the tribal lands buildout requirement, licensees are required to file a notification of construction (Via the Universal Licensing System).
- Must be filed no later than 15 days from 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.
- See 47 C.F.R. 1.2110(f)(3)(vii)

Repayment

- If the buildout requirement is not met by the 3-year deadline or if the notification of construction is not filed, the licensee must repay the bidding credit amount plus interest.
- Repayment is due no later than 30 days after the 3-year buildout deadline date.
- Failure to repay will result in automatic termination of the license.
- See 47 C.F.R. 1.2110(f)(3)(viii)

Transfers and Assignments

- Transfers of Control, or assignment, of licenses is permitted.
- Obligations of the license automatically transfer to the transferee or, if a full assignment, the assignee.
- If partitioning a license with a TLBC, the tribal land must be "wholly contained" within one of the areas and the bidding credit goes with the area covering the tribal lands.

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”)
 - <http://factfinder.census.gov>
- Contact:
 - Michael Connelly, phone: (202) 418-0132, or email: michael.connelly@fcc.gov

Tribal Lands Bidding Credits

THE END

Disclaimer: This presentation is provided as informal staff information and assistance; it is not legal advice, nor is it a binding opinion of the WTB or FCC.