Dated: January 12, 2004.

S.A. Kenney,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 99–266; FCC 04–202]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: In this rule, the Commission modifies limited aspects of the rules previously adopted in this proceeding to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. Specifically, the Commission raises the wireline telephone penetration rate at which tribal lands are eligible for a bidding credit from 70 percent or less, to 85 percent or less. The Commission also increases the amount of the bidding credit available to carriers that pledge to deploy on and serve qualifying tribal lands.

DATES: Effective December 17, 2004.

FOR FURTHER INFORMATION CONTACT: Renee Crittendon or Michael Connelly, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Third Report and Order*, FCC 04–202, adopted August 18, 2004, and released September 2, 2004. The full text of the *Third Report and Order* 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: Best Copy & Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 800–378–3160, facsimile 202–488–5563, or via e-mail at *www.fcc@bcpiweb.com*.

Synopsis of Report and Order

I. Background

1. In June 2000, the Commission issued a *First Report and Order*, 65 FR 47349, August 2, 2000 (*First R&O*) which established the tribal lands bidding credit program and limited availability of the credit to federally recognized tribal areas with telephone penetration rates equal to or less than 70 percent, concluding that the bidding credits would assist tribal communities with the greatest need for access to telecommunications service. The Commission's *Second Report and Order* at 68 FR 23417, May 2, 2003, modified and clarified aspects of the bidding credit procedures, including: extending the deadline for obtaining the certifications from the applicable tribal governments from 90 to 180 days; clarifying the obligations of an assignee that has received the license from a licensee awarded a tribal lands bidding credit; requiring licensees to file an attachment along with their notification of construction; stating that it is providing coverage to 75 percent of the population of the tribal area for which the credit was awarded; and codifying penalties for failure to comply with build-out requirements, and failure to timely repay the bidding credit.

2. In the *Second Further Notice*, 18 FCC Rcd 4775, March 14, 2003, the Commission sought comment on four discrete issues. First, the Commission asked whether it should reconsider or moderate the buildout obligations imposed on carriers in light of the lack of participation in the bidding credit program. Next, the Commission asked for comments on whether and how the bidding credit limit and formula might be modified to provide greater incentive for carriers to deploy facilities on tribal lands. Then, the Commission sought comment on whether it should adjust the bidding credit formula to incorporate data from the 2000 Census figures rather than the 1990 figures in calculating tribal penetration for purposes of determining eligibility for the credit. Finally, the Commission sought comment on allowing carriers who obtain tribal lands bidding credits, to obtain additional credit for extending their coverage to immediately adjacent non-tribal areas that also have low penetration rates.

II. Discussion

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

3. In the *Second Further Notice*, the Commission sought comment on modifying the requirement that, within three years of grant of a license, a carrier must cover 75 percent of the tribal area for which the bidding credit was awarded. The Commission's underlying objective in applying the more stringent construction requirement was to encourage winning bidders that are committed to providing telecommunications services in Indian Country, and that will deploy those services rapidly. The Commission continues to believe that the heightened requirement serves those dual purposes, and believes that relaxing these requirements is not necessary to further the goals of the bidding credit program. The Commission also notes that should a carrier be unable to fulfill its construction requirement at the end of three years, it may seek a waiver from the relevant Commission rule. Therefore, the Commission determined not to modify the construction requirement. Rather, it strongly encourages parties to seek waivers of specific rules or file other requests for regulatory relief in those instances where greater flexibility than the rules allow would facilitate the provision of service to tribal lands. Also, because the Commission recognizes the unique sovereign status of Indian tribes, the trust relationship between the federal government and Indian tribes, and the Commission's ongoing federal obligation to guarantee the right of Indian tribes to self-government, the Commission declined to adopt a suggestion to allow applicants, as opposed to tribal governments, to certify compliance with certain baseline eligibility requirements.

B. Increasing the Bidding Credit Limit

4. In the *Second Further Notice*, the Commission asked commenters whether the current credit amounts were adequate or whether the bidding credit limit, as presently structured, was insufficient for applicants to recover costs for building on tribal lands. Determining that an increase in the bidding credit limit is warranted in order to further mitigate the economic risk associated with provision of service, the Commission adopted the following formula for calculating the credit amount. A winning bidder may receive a $500,000 credit for up to the first 200 square miles (518 square kilometers) of qualifying tribal land within its license area. In instances where qualifying tribal lands within a license area exceed 200 square miles (518 kilometers), a winning bidder may receive an additional $2500 per square mile (2.59 square kilometers), or $500,000 for each additional 200 square

miles (518 square kilometers). All credits will be subject to a maximum limit based on the gross bid amount for the license for which the credit is sought. Where the gross bid amount is $1 million or less, the cap will be 50 percent of the gross bid. Where the gross bid amount is greater than $1 million and equal to or less than $2 million, the cap will be $500,000. Finally, where the gross bid amount exceeds $2 million, the cap will be 35 percent of the gross bid.

C. Adjustment of the Eligibility Criteria Based on 2000 Census Data

5. In the *Second Further Notice*, the Commission noted that the statistics used in the initial notice for the tribal lands bidding credit program cited 1990 Census data, which showed that basic telecommunications service to Indian Country generally was well below the national average. The Commission sought comment on the advisability of using data from the 2000 Census, which indicated that average telephone penetration rates on tribal lands increased markedly during the 1990s, asking how that new information should be incorporated into the bidding credit formula.

6. While the increased rates in penetration, subscribership, and facilities deployment reflect the Commission's resolve in assuring that all Americans, including those living in Indian Country, have the benefits of access to basic telecommunications services, the Commission noted, nevertheless, that well over half of tribes continue to have penetration rates below our national average. The Commission therefore raised the telephone penetration level at which tribal lands are eligible for a credit. At the current 70 percent benchmark, based on the 2000 Census data, only a few dozen (out of nearly 450) federally recognized tribal lands would qualify under our rules for a tribal lands bidding credit. The Commission believes that raising the wireline telephone penetration benchmark from 70 to 85 percent will both increase the number of qualifying tribal lands eligible for this bidding credit program (to roughly 150) and provide a greater incentive for carriers to deploy facilities on tribal lands. The Commission also believes that an 85 percent benchmark for tribal lands bidding credit eligibility represents a balance between its efforts to expand the scope of, and encourage participation in, the existing tribal lands bidding credit program, with the Commission's objective to target those tribal communities with the greatest need for access to telecommunications services.

D. Extending the Tribal Lands Bidding Credit to Adjacent Non-Tribal Areas With Low Penetration Rates

7. The Commission sought comment on a limited expansion of the bidding credit program that would allow carriers who obtain tribal lands bidding credits to obtain additional credit for extending their coverage to immediately adjacent non-tribal areas that have comparably low penetration rates, noting that certain areas abutting tribal lands often share the same characteristics as tribal lands (*e.g.*, significant Native American population, income levels, terrain, etc.), but do not otherwise qualify for the tribal lands bidding credit. In particular, the Commission requested that commenters discuss how to define the geographic areas eligible for an additional credit, the appropriate certification process, and any other measures or conditions that should be adopted to safeguard the integrity of the process. The Commission also requested comment on its legal authority to extend the bidding credit in such a way.

8. While noting that it continues to seek ways to extend telecommunications service to all Americans, including providing incentives to carriers that will serve areas that might otherwise be neglected, the Commission decided not to extend the bidding credit program to adjacent non-tribal areas at this time. The Commission noted that, using Census tract data, the number of immediately adjacent non-tribal areas that would qualify for such a bidding credit (*i.e.*, a tract wholly outside tribal lands with a telephone penetration rate equal to or less than eighty-five percent) is negligible. In particular, an estimated two percent of census tracts wholly outside but immediately adjacent to tribal lands have a telephone penetration rate equal to or less than 85 percent. Accordingly, it does not appear that expanding the bidding credit program to adjacent non-tribal areas with low penetration rates would have any marked impact on increased subscribership or facilities deployment for those areas. The Commission also noted that nothing in its rules prevents a licensee that has been awarded a tribal lands bidding credit from providing service to immediately adjacent, non-tribal areas.

III. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order and Further Notice of Proposed Rulemaking* and the *Second Report and Order and Second Further Notice of Proposed Rulemaking*. The Commission sought written public comment on the proposals in the *First Further Notice* and *Second Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Third Report and Order

In this *Third Report and Order*, the Commission modifies rules previously adopted in the *First Report and Order* in this proceeding to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. In that proceeding, the Commission authorized the grant of bidding credits to winning bidders who deploy facilities and provide service to federally-recognized tribal areas that have a wireline telephone subscription rate equal to or below 70 percent. In the present item, the Commission amends § 1.2110(f)(3)(i) of the Commission's rules to increase the wireline telephone subscription rate for a qualifying tribal land to equal to or less than 85 percent with the intention of increasing participation in the bidding credit program; it also amends §§ 1.2110(f)(3)(iii) and (iv) to increase the bidding credit available to applicants that deploy facilities on and provide wireless services to qualifying tribal lands. The objective of these actions, and of this *Third Report and Order*, is to address the need to provide incentives for carrier to provide wireless telecommunications services on generally underserved tribal lands. This *Third Report and Order* also addresses issues raised in the *Second Further Notice of Proposed Rulemaking*. In the *Second Further Notice*, the Commission requested comment on whether it should expand the use of bidding credits. Specifically, it sought comment as to whether to: (1) Modify the program's construction requirements; (2) increase the bidding credit limit; (3) adjust the eligibility criteria based on data from the 2000 Census; and (4) allow carriers who obtain tribal lands bidding credits, to obtain additional credit for extending their coverage to immediately adjacent non-tribal areas that also have low penetration rates.

The Commission believes that increasing the wireline telephone subscription rate at which tribal lands are eligible for a bidding credit to 85 percent or less, will have the affect of increasing participation in the program by increasing the number of qualifying tribes and providing additional incentives to carriers to enter into agreements with tribal governments to deploy wireless services within Indian Country. The Commission also believes that increasing the amount of bidding credit available will provide additional incentives to prospective wireless providers in Indian Country. Regarding the other issues raised, the Commission believes that the lack of a record supporting the proposed changes in the rules, as well as the availability of *ad hoc* or waiver process remedies, make it inappropriate to adopt those proposals as rules at this time. Specifically, the Commission does not believe that modifying the construction requirements or extending the bidding credit to adjacent, non-tribal lands will further the objectives of this *Third Report and Order.*

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Cellular Licensees. The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commission notes that there are 1807 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends in Telephone Service* data, Industry Analysis Division, Wireline Competition Bureau, Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (May 2002), 858 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio telephony services, which are placed together in that data. The Commission estimates that 291 of these are small under the SBA small business size standard. Accordingly, based on this data, the Commission estimates that not more than 291 cellular service providers will be affected by these revised rules.

220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the definition under the SBA rules applicable to ''Cellular and Other Wireless Telecommunication'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. If this general ratio continues in 2002 in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

220 MHz Radio Service ''Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 683 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

700 MHz Guard Band Licenses. In the *700 MHz Guard Band Order*, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

Lower 700 MHz Band Licenses. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 704 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings [EAGs]) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.

Private and Common Carrier Paging. In the *Paging Second Report and Order*, the Commission adopted a small size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 608 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, the Commission estimates that 589 are small, under the SBA-approved small business size standard. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA small business standards and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses.

Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. In March 2002, 106 MTA and BTA narrowband PCS licenses were granted to 4 licensees. Each of the licensees are small or very small businesses.

Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has established a small business size standard for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.

The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven (11) winning bidders for geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small business. In addition, there are numerous incumbent site-by-site SMR licensees on the 800 and 900 MHz band. The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This analysis applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is established by SBA.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *Third Report and Order* modifies a basic qualification for participation in the tribal lands bidding credit program. The Commission increases the wireline telephone subscription rate for an area to qualify for the tribal lands bidding credit from 70 percent or less to 85 percent or less. The Commission also increases the amount of bidding credit available that may be awarded to auction high bidders for deploying facilities on and providing service to qualifying tribal lands. The Commission does not propose any additional reporting, recordkeeping or compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small Entities.

In the *Third Report and Order*, the Commission first declined to modify the current construction requirements for a licensee that has been awarded a bidding credit for serving qualifying tribal lands, believing that the Commission's underlying objective (rapid deployment to underserved Indian Country) is best served by the current rules; this action will have no significant impact on small entities. Next, the Commission increased the amount of bidding credit to 500,000 dollars for the first 200 square miles of qualifying tribal lands, and 2,500 dollars for each additional square mile above the first 200 square miles; this action will have no significant negative impact on small entities. While the Commission considered leaving the existing bidding credit amount in place, it determined that increasing the bidding credit amount would provide a greater incentive for carriers and may benefit small entities that are capable of providing wireless services to Indian Country. The Commission also set the wireline telephone subscription rate for a qualifying tribal land at 85 percent or less, in order to increase the number of tribes whose lands qualify for the bidding credit; this action will have no significant impact on small entities. While the Commission considered implementing a benchmark above 85 percent or leaving the benchmark at 75 percent, it concluded that an 85 percent benchmark represents a balance between its efforts to expand the scope of, and encourage participation in, the existing tribal lands bidding credit program, with the Commission's objective to target tribal communities with the greatest need for access to telecommunications services. Finally, the Commission declined to extend the tribal lands bidding credit to carriers serving adjacent, non-tribal lands, as it believed such action does not further the objective of this program; this action will not have a significant economic impact on small entities.

B. Paperwork Reduction Act Analysis

9. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

IV. Ordering Clauses

10. Pursuant to the authority of sections 1, 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), and 309(j), this *Third Report and Order* is adopted.

11. Pursuant to the authority of sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 303(c), 303(f), 303(g), 303(r), and 332, the rule changes specified in Appendix A are adopted.

12. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the *Third Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Communications common carriers, telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR subpart Q of part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Amend § 1.2110 by revising paragraphs (f)(3)(i), (f)(3)(iii), and (f)(3)(iv) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(f) * * *

(3) * * *

(i) Qualifying tribal land means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments, that has a wireline telephone subscription rate equal to or less than eighty-five (85) percent based on the most recently available U.S. Census Data.

* * * * *

(iii) *Bidding credit formula.* Subject to the applicable bidding credit limit set forth in § 1.2110(f)(3)(iv), the bidding credit shall equal five hundred thousand (500,000) dollars for the first two hundred (200) square miles (518 square kilometers) of qualifying tribal land, and twenty-five hundred (2500) dollars for each additional square mile (2.590 square kilometers) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) *Bidding credit limit.* If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed thirty-five (35) percent of the high bid.

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