

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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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS PAUL HAMILTON (DDG 60) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Commander S.A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, Telephone number: (202) 685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PAUL HAMILTON (DDG 60) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. This amendment further provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), has amended that certification to reflect that certain masthead lights on USS PAUL HAMILTON (DDG 60), previously

certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: the arc of visibility of the forward masthead light is no longer obstructed, as required by Rule 21(a).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

■ 2. Table Four, Paragraph 16 of § 706.2 is amended by deleting the entry for USS PAUL HAMILTON.

■ 4. Table Five of § 706.2 is amended by revising the entry for USS PAUL HAMILTON to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward mast-head light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than 1/2 ship's length aft of forward mast-head light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS PAUL HAMILTON	DDG 60	X	X	21.2	

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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