

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Extending Wireless Telecommunications Services) WT Docket No. 99-266
To Tribal Lands) FCC 00-209

COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association (NTCA)¹ respectfully submits these comments in response to the Further Notice of Proposed Rule Making (FNPRM) in the above-captioned matter, released on June 30, 2000. In its FNPRM the Commission seeks comment on further uses of bidding credits to encourage deployment of wireless services to underserved communities other than tribal areas. The Commission's proposals could help many areas with low telephone penetration rates to receive vital service and would reward companies that are willing to commit to investing and providing service in very low density, high cost areas. However, the Commission must be careful to not artificially interject competition in areas that can not sustain it.

¹ NTCA is a national association of more than 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are defined as rural telephone companies in the Telecommunications Act of 1996 (Act). 47 U.S.C. § 153(37). Approximately half of NTCA's members are organized as cooperatives and most provide wireless services.

I BIDDING CREDITS FOR NON-TRIBAL AREAS

As part of the Commission's initiative to ensure the rapid and efficient deployment of telecommunications services, the Commission proposes to extend bidding credits and other initiatives to unserved and underserved areas outside of tribal lands. Specifically, the Commission seeks comment on whether bidding credits should be extended to areas with penetration levels above 70 percent, and if so, whether it should apply equally to non-tribal as well as to tribal areas.

A. Defining Underserved

As an initial matter, NTCA supports the proposal to extend bidding credits to unserved and underserved non-tribal areas. However, the proposal raises the difficult issue of how to define "underserved." By the Commission's own admission, there are very few non-tribal areas where telephone penetration levels are at 70 percent or below. It therefore makes little sense to set the bidding credit threshold at 70 percent. Unfortunately, the most recent data regarding the penetration levels is now 10 years old.² It is impossible for the Commission to know for sure how many communities would qualify for the credit whether it's set at 70 percent or higher.

In order to establish a reasonable cut off for the bidding credit, the Commission should look at the results from the 2000 census and identify the areas that will be eligible for the credits. It is impossible to evaluate the effect of the credit without this

² See FNPRM, footnote 120.

more precise information.

No matter what percentage threshold is adopted, it should apply equally to tribal and non-tribal areas. It does not make sense to create different penetration thresholds for tribal and non-tribal land. To do so would perpetuate the inequities of services available to those living on tribal lands compared to those not. Everyone living in the United States is entitled to reasonable access to service at reasonable prices. Where the person lives is irrelevant.

B. Buildout Requirements

It is imperative that the Commission establish strict and short buildout periods. Coverage requirements should be established and companies should be required to certify that they've met certain construction benchmarks at regular intervals. This will help to ensure that the credits received are actually applied to the communities for which they were intended. The Commission intends that the bidding credit will help to provide high quality service to underserved areas as quickly as possible. Ten year buildout periods or "substantial service" coverage requirements will not accomplish that goal. The tribal performance requirements adopted in the Report and Order condition award of the credit on the licensee constructing and operating its system to cover 75 percent of the population of the qualifying land within three years of the grant of the license. This construction requirement is adequate to ensure that carrier obligations are met and should be adopted for underserved non-tribal areas as well.

II TRANSFERRABLE BIDDING CREDITS FOR EXISTING LICENSEES THAT COMMENCE SERVICE IN TRIBAL AREAS

The FCC is seeking comment on whether to expand the bidding credit program by awarding credits, for use in future auctions, to already-established wireless licensees that deploy facilities to unserved tribal communities. NTCA supports this proposal.

As pointed out by the Commission, it is generally very costly to deploy any type of service to tribal lands.³ The areas tend to be sparsely populated and the terrain is often difficult. Providing a future bidding credit to carriers that deploy facilities to tribal lands would provide a significant incentive for licensees to use their existing spectrum to provide needed service.

In order for the credit to be effective, it must be transferable to third parties. Small carriers often hold the licenses covering the rural areas in which tribal lands are situated. These small carriers are finding that they must form partnerships, joint ventures or bidding consortia to compete with large carriers for the spectrum that is currently or will soon become available. This is especially true given the Commission's apparent preference for large service territories. If the future bidding credit is to be useful, a small carrier must have the option to transfer the bidding credit to whatever bidding entity it may become a part of for a future auction.

³FNPRM, & 69.

III COMPLIANCE MEASURES

The Commission seeks comment on whether it should limit the number of licensees, between or within the same services, eligible to receive bidding credits for serving tribal lands in the same geographic area and whether it is realistic to think that the tribal lands could support more than one provider. While it is unlikely that a tribal area will be able to support several licensees providing similar services, the Commission should not be the party to determine which licensee or service is entitled to the bidding credit. It should merely make the credits available in all auctions until penetration rates have reached the target levels. Whatever proposals the Commission eventually adopts, they must be both technologically and carrier neutral.

The Commission should not pick and choose between available spectrum and decide which will be made available to tribal areas via the bidding credit. Despite a generous bidding credit, any carrier deploying service will incur additional expense. A business case must be made before a carrier will pursue a bidding credit. A carrier will not serve an area if it will be uneconomical to do so. It will be uneconomical for a carrier to provide a service similar to one that is already provided and enjoyed by people living in these very sparsely populated areas. The Commission should let the market determine which services will prevail.

The bidding credit should not continue *ad infinitum*. As soon as subscribership goals are attained, the bidding credits should not be available in future auctions. If service is available, an area should no longer qualify as underserved. It will therefore be necessary for the Commission to continually monitor service availability in

both tribal areas and other underserved areas. The Commission must not rely on census data for this monitoring. Information is needed on a yearly or at least semi-annual basis.

Non-compliance with any of the bidding credit rules should require that a carrier pay the bidding credits back within a reasonable period of time. The Commission should make reasonable accommodations for carriers that find themselves financially unable to re-pay the credit. The ultimate penalty for failure to comply with the bidding credit conditions is forfeiture of the license.

CONCLUSION

The Commission's bidding credit proposals would provide an additional incentive for carriers to provide service to unserved and underserved communities. However, in order to effectively accomplish its stated goal, the Commission must be careful about how it defines "underserved". A definition that does not take into account all relevant factors may produce an undesired result and artificially create competition in areas that

are incapable of supporting it. The Commission must also strictly enforce its rules and carefully monitor the consequences of its actions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT Docket No. 99-266, FCC 00-209 was served on this 1st day of September 2000 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

/s/ Gail C. Malloy

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