

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](mailto: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