



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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July 31, 2018

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th St. SW, Room TW-A325,
Washington, DC 20554.

RE: WT Docket No. 18-120
Comments of Nez Perce Tribe to Transforming the 2.5 GHz Band

Dear Secretary Dortch

The Nez Perce Tribe (Tribe) is heavily involved in broadband development within the Nez Perce Reservation and surrounding area. The Tribe has extensive experience in this area and believes there is a strong need for continued development and build-out of infrastructure and broadband frequencies on the Nez Perce Reservation. The Tribe has taken seriously the connectivity of the region of Idaho where our Reservation exists. In Northcentral Idaho, the traditional wireline carriers and wireless carriers could not justify, based on their corporate return on investment, building in our region or on the Nez Perce Reservation.

Under the American Recovery and Reinvestment Act and the Broadband Technology Opportunities Program, Round II, the Tribe was successful in receiving funds to build a microwave tower ring around our Reservation. In addition, using Rural Utility Service, Community Connect funding, the Tribe was able to construct facilities and provide services. We also leveraged private partnerships with both a local internet provider and a local cellular company to co-locate infrastructure to fill gaps of coverage in this area. We have self-funded fiber deployment in areas and are willing to expand fiber even against barriers such as access to the State Right of Way. Our broadband services were built as a utility serving first our governmental needs and then expanding service to our region's cities, county governments, public educational facilities, small businesses, and citizens. The Tribe also accepts co-locations on any of our facilities and will lease fiber to any entity willing to provide service to our region.

Although we are building, we are still lagging below the federal broadband standards identified by the Federal Communications Commission. Access to spectrum is a major barrier. All 2.5 GHz spectrum over the Nez Perce Reservation is owned by Clearwire, an entity purchased by Sprint that is not building or utilizing the spectrum. Gaining access to any of the spectrum is either cost prohibitive because license owners want

more than we can afford to pay or they are unwilling to lease spectrum to us. 2.5 GHz will give us an opportunity to build and bridge our service gaps, bringing our services up to the Federal Communications Commission standard. It is a step in the direction of inclusion for the Nez Perce Tribe. For these reasons, the Tribe respectfully submits these Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM") for Transforming the 2.5 GHz Band.

A. Rationalizing Existing 2.5 GHz Holdings

Regular Geographic License Areas

In rural locations, specifically reservations, census blocks are very large and sometimes sparsely populated. For expansion consideration, census block overlap of 50% of a Geographic Service Area (GSA) could be beneficial to better serve that area. The Tribe also supports basing the percentage on the geography of that census tract and not the population of the census tract.

Conversion of the Educational Broadband Service (EBS) GSA into a single license does make sense especially for future description and reporting requirements. Also, setting the co-channel GSA overlap at the percentage to include the census tract in the GSA would best address the situation of a two or more co-channel GSA overlap.

Census blocks are set by states based on incorporated status defined by the state. Tribal communities are not typically identified as incorporated by the state and recognized because the services a city would provide are provided by the Tribe to its tribal communities. This leaves tribal communities out of the state's census definition which then means the census doesn't recognize these communities.

More granular data of latitude and longitude, identification of actual homes and areas, would benefit tribes and tribal areas by providing the tribe an ability to include those communities that are typically left out of the census. Even when a tribal community is adjacent to a state recognized city for the census, the tribal community will actually be outside the city limits. Allowing the recording of latitude and longitude would capture these communities in their entirety.

The cost benefit to using granular data is the accuracy this data brings to the cost estimates for actually providing the services needed. By using the most detailed information, a true service to resident can be determined and an actual or more realistic need is easier to calculate. The white space needed to cover the actual area would be more accurate and would also demonstrate need.

Again, determining the GSA minimum percentage should be based on geography and not population. When determining overlap thresholds, the geography would be more accurate for tribal communities because often they are not included in city populations.

Resolution of situations where more than one EBS licensee is in the same county, having granular data based on latitude and longitude would be the best way to ensure efficient use of the spectrum because the granular data would provide a truer picture of the coverage area. Each EBS Licensee would simply document the service area of their license by the most granular data available. Using the most granular data justifies the build out period by providing the most accurate quantitative and qualitative data.

Additional Flexibility for EBS licenses

It would be best to allow a licensee to determine how to achieve build out through partnerships, transfer of their license to a third-party market or to build-out themselves. With clearly identified requirements, the determination by the licensee on how to meet those requirements is the best fit. However, it should be noted that the transfer of the license to a third-party market without any clear requirements of build-out could result in abuse of the flexibility of the license or failure to meet the objectives of making the license assignable or transferable.

The Tribe supports eliminating restrictions on leasing licenses granted via waiver. Any requirements for regular EBS licensees should be used for those who were granted a waiver for EBS license.

Elimination of the lease restrictions should be considered in conjunction with build-out requirements. Standard language could be established that if service is expanding or continues to cover the areas of the license that a lease could be extended for an additional three (3) terms of fifteen (15) years automatically. If, for instance, there is no build-out to any percentage of the coverage area within the first term of fifteen (15) years, then the lease will expire at the end of the term without extension. This provides incentive to continue to build-out the coverage area and expand services based on the reward of automatic renewal of the lease.

Finally, the spectrum aggregation screen should be considered a requirement for build-out within a specified time period. Currently there is no requirement to use or to build-out the service. This has allowed entities to hold spectrum and restrict ability for others to access that spectrum simply because they can. Justification should be necessary to withhold use of EBS to any other entity besides the licensee.

B. Opportunities to Acquire New 2.5 GHz Licenses

New Local Priority Filing Windows

The opportunity for applying for vacant channels of EBS should be first based on which entities have an actual desire to build-out the license area. Just because a current EBS licensee is interested does not actually mean they will build out or lease their EBS license to a third party to build-out. Tribal nations have witnessed examples of current licensees holding a license hostage and not allowing a third-party or a partnership to build out in the license area. Current licensees should only be given priority if they can demonstrate that the EBS they already have is actually being used to expand service. If the existing licensee cannot demonstrate how they have built-out and continue to build-out, then the first priority should be to Tribal Nations and then other educational entities.

For example, the EBS over the Nez Perce Reservation is currently owned by Clearwire, which was purchased by Sprint. This EBS has not been developed at all on the Nez Perce Reservation. Sprint has also not looked to partner with entities, like the Tribe, who are willing to build out. There must be clear build-out requirements over spectrum similar to radio station construction requirements or the Connect America Fund to be awarded a license. The licensee should not be allowed to simply hoard spectrum, but instead should be required to use the spectrum within a designated time period or forfeit it.

The local priority windows should not be combined into one but maintained as three separate windows. Establishing a granular data requirement of latitude and longitude for a Local Presence could be met by a tribe who is the provider of their community and often times of the larger region. In the Local Presence

requirement a tribe could identify its community and identify the "campus" as being the community center where this is the central location for all activities of that community.

Afterschool programs, learning labs, library and tutoring are often conducted directly out of the tribal community center which would be the educational campus. Even with a local university, tribes are not given access to EBS because as the licensee the university has no incentive to build or partner nor do they have a build-out requirement. Tribes have established community centers in each of their locations that serve as the adult education GED center, the financial literacy center, or the distance learning center. The Local Presence designation should be easily justifiable by the entity seeking the designation. This puts the burden of proof on the entity seeking the designation, and if the build out requirements are instituted, could easily be quantified based on the data submitted as proof of the local presence.

Existing Licensees

The Commission is assuming that the existing EBS licensees are providing service in a significant portion of a county and that they have a local presence in that county. In many cases this is not the situation. Although they are the EBS licensee and they have a local presence, they are not building-out or leasing EBS to entities who want to build-out. For the Tribe, Clearwire owned the EBS in the Tribe's area. Clearwire was purchased by Sprint which is not a local presence. They are not building-out and they are not leasing or partnering with entities who are interested in building out EBS. Therefore, as part of the priority, existing EBS licensees must demonstrate how they have used the EBS they already have, how they have expanded service based on the needs of the community they have a presence in and should be required to provide granular data which is likely already available with existing technologies used in build-out. If they are not able to demonstrate that they have the desire or ability to build-out within specific timeframes they should not be allowed priority.

If there is a window for existing licensees, the licensee should be able to expand to any and all counties they have a presence in such as a distance learning center. As an example, a community college, is located in one state but they have distance learning centers in and outside of the state. Their presence at main campuses is easily identified and their contracts for distance learning courses is easily identified. If they were a licensee, they should be able to seek those counties where they have a presence and are interested in expanding their service so long as they can meet the build-out requirements.

No county should be excluded, census blocks and counties can be very large in rural areas. If in one part of a county there is community where a licensee has facilities they are providing service, but have no desire to build anywhere else in that county but channels are available, other licensees should be able to request consideration for expansion of their local presence.

Tribal areas should be excluded for the existing licensee window if the existing licensee is not providing service to the Tribal areas. If a Tribal area is included in the licensee window then a letter of support from the Tribe should be included to demonstrate that the licensee is truly working with the tribe to expand services over those Tribal lands.

Rural Tribal Nations

Each Tribal Nation and Alaska Native Villages will have to be handled separately as sovereign nations. The Nez Perce Tribe's reservation lands are clearly identified as is our Ceded Territory which we have reserved Treaty rights to and are operating tribal services or functions throughout. The 2.5 GHz is a great starting point but other frequencies would help us bridge gaps currently experienced because spectrum is owned by

entities. Those entities have not been willing or able to build in our rural area based upon their corporate model. The Tribe however is actively building and expanding services to the region, far beyond our tribal communities and tribal lands. We are however stifled in our endeavors because owners of the spectrum are not willing to lease or sell for continued growth. We have not been able to openly compete for spectrum in an auction setting because each auction is assuming base criteria. Some of the first barriers are that tribes are not able to obtain a traditional or conventional loan because tribal lands cannot be collateralized. Access to spectrum drastically restricts a tribe's ability to develop educational services from preschool, K-12, adult education, distance learning and post-secondary.

The most granular data should be used as latitude and longitude provides the most accurate data. Many of our rural counties and census tracts are so large that if one single household is receiving service the remainder is considered served. Leaving significant areas completely unserved. Using latitude and longitude also provides a means for including tribal communities which would typically be left out of a census block because the city designation is provided by the State. Because our tribal communities are not incorporated or have their own city organization the State does not recognize them which means they are not noted in the census block.

The cost benefit again for the most granular data means the build out is realistic. Based on the latitude and longitude, establishing the feasibility and length of time for build out will be based on real data. This will help justify the coverage area and the presence of tribal members living in the tribal community as we will be able to count their residence as part of the cost model.

We do agree that access to any available channels and that allowing access to contiguous spectrum would more efficiently accommodate varying business models and spectrum needs for wireless broadband. The Nez Perce Tribe would be fully capable of taking those channels and contiguous spectrum to develop our Tribal communities.

We do agree that government to government consultation and coordination with federally recognized Tribes on these issues is needed. We do look forward to the opportunity to hold 2.5 GHz licenses to benefit our community and are willing to provide granular data to support our request.

New Educational Entities

There is already an established demand with the Federal Communications Commission for new educational entities to gain access to licenses. Where access to educational facilities is already difficult for the rural residents putting further burdensome restrictions isn't beneficial. Provided an entity can establish proof that they have a local presence and that they are providing educational services and that given opportunity to become a licensee will invest and expand in their community, a priority could be considered. There should be clearly defined requirements such as providing service to their service area within a specific time period.

The most granular data should be used as latitude and longitude provides the most accurate data. Many of our rural counties and census tracts are so large that if one single household is receiving service the remainder is considered served. Leaving significant areas completely unserved. The educational entity could then identify which county based educational based facilities will benefit and how many homes will be included in the service area for student access.

The cost benefit again for the most granular data means the build-out is realistic. If a build-out requirement is adopted, based on the latitude and longitude, establishing the feasibility and length of time will be based

on real data. This will help justify the coverage area and the presence of tribal members living in the tribal community as we will be able to count their residence as part of the cost model.

We do agree that access to any available channels and that allowing access to contiguous spectrum would more efficiently accommodate varying business models and spectrum needs for wireless broadband.

Local Priority Filing Process

Notice of an open filing window should be 90 days. The open window based on the build-out requirement over a specified period of time and based on latitude and longitude should be sixty days. Splitting EBS licenses into multiple filing windows should be implemented and should be based on access to broadband data already available to the Commission with the least access to broad areas going first.

Resolving Mutually Exclusive Applications

The lack of access to conventional loans makes it difficult for tribes to compete with any other entity in a competitive bidding process. The high cost associated with rural areas is a barrier but it is further compounded for tribes who have limited financial resources to even participate in the bidding process. A tribal set aside would ensure build out on tribal lands, but if a set aside isn't considered, a priority for tribes or tribal lands should be implemented. A reverse auction, similar to Mobility Fund II, with a Tribal priority is preferred if a set aside isn't considered.

Filers should have opportunity to resolve any mutual exclusivity before any application for a 2.5 GHz license is accepted. There should be clear requirements for this resolution however by establishing the criteria within the notice. By means of avoiding mutually exclusive applications over tribal lands, establishing that Tribal Nations shall have first priority over tribal lands within the notice of an open filing window should be stated. Also, any negotiations over Tribal lands must include direct, in person, negotiations with the Tribal Nation. In addition, outside the Tribal lands, stipulations of any other resolution to mutually exclusive application must include an attempt at development of partnerships where applicable to meet the demand of service.

Holding Periods

There should be an expectation that the licensee will use the licenses. If the licensee is not capable to build-out but plans on using a third party or commercial entity to provide connectivity, the licensee should have disclosed that in the filing window. This should have been clearly documented in the application for the spectrum. The holding period should follow the contract periods outlined by the licensee in their application during the open filing window. If the licensee is not able to perform the services they originally proposed and are now unable to meet their obligations, any sale would only be to another eligible licensee that is eligible for the priority preference.

At no time should the priority preference licensee be allowed to flip or sale the license to any ineligible entity. If, however, the licensee has met or exceeded the obligations for build-out under the priority and can then demonstrate how expanding the service beyond the priority preference could generate a profit, to reinvest into the infrastructure, the licensee could be allowed to make a profit. First and foremost is the service to the educational facilities for which the priority was originally intended.

Licensing White Spaces

If after any new licenses have been assigned there is an auction of any remaining spectrum, a reverse auction, similar to Mobility Fund II, with a Tribal priority is preferred if a Tribal set aside is not an option. The lack of access to conventional loans makes it difficult for tribes to compete with any other entity in a competitive bidding process. The high cost associated with rural areas is a barrier but it's further compounded for Tribes who have limited financial resources to even participate in the bidding process. A Tribal set aside would ensure build out on Tribal lands, but if a set aside isn't considered, a priority for Tribes or Tribal lands should be implemented.

The Tribe also suggests the geographic size be based on the granular data where the actual build out of the license will occur and that the criteria for the remaining spectrum be for actual expansion of services and there must be clearly identified build out plans for the licensee. If a licensee fails to build out as expected within the timeframes provided, the licensee loses use and rights to the spectrum.

Requirements for New 2.5 GHz Licenses

The current issues with existing licensees are that there is no build out requirement. They did receive the priority and are licensees, but without a requirement to build, lease or partner, the unmet need has grown in rural areas. There must be a requirement, moving forward, for build out and expansion of service. Without such a requirement, no provision outlined in the NPRM will actually ensure broadband expansion.

Performance Requirements

More robust performance requirements are supported. The coverage target should be 100% of the service area, as practical, taking into account unavoidable service limited obstructions. Benchmarks should be self-determined by the applicant for the license. The use of current technologies or how to maintain current technology advancements could be part of the notice. If a licensee fails to meet the obligations as expected within the timeframes provided, that licensee loses use and rights to the spectrum.

Renewal Standards

Establishment of a Tribal set aside or priority in the regulatory framework is supported. Updating the renewal standards to reflect a tribal set aside or priority will aide in the development of reservation services. It will encourage rapid deployment of next generation and provide tribes an avenue to enter the auction or filing window on an equal basis. There could potentially be cost benefits, but only if the approach is inclusive to the needs of the rural, high cost, regions where large telco's cannot justify infrastructure facilities.

Additional Approaches

As spectrum becomes more difficult and costly to obtain, allocation of spectrum for tribes, smaller markets, and rural areas makes sense to maintain equity based on deployment rather than financial backing. Use it or lose it requirements for all spectrum should be included in any restructuring. This forces build-out based on spectrum owned. This approach means no one entity can monopolize spectrum.

New geographic areas are necessary and long overdue. Census blocks should not be used as they are subjective to State regulations and can vary State to State. Granular data is becoming more valuable. If counties are to be used, there must be a process for splitting a county based on geography such as

mountains or rivers. This allows for tribes or small markets an opportunity to obtain spectrum to serve their remote or low population density. Incumbent operations have historically gobbled up spectrum with no intent to build-out and no consequences when they fail to use federal subsidies to reach the areas of the country in the most need.

However the spectrum is licensed, the licensee assumes the responsibility to build as designed in the allocation of spectrum. It's not just a license that should be held in perpetuity without responsibility to meet the needs of those living within that licensed spectrum. If an incumbent is failing to build but owns a license there is an overall failure to the people living in those regions which is widening the gap in broadband rather than overcoming the issue. It isn't realistic to think that large business is the solution to every model and in the licensing of spectrum the same is true. Tribes, smaller markets and local entities have personal investment in the areas they are trying to build because they are the residents of those areas. They are trying to make a living, educating their children and build a future. Incumbents may not even have corporate offices within the state they own spectrum in, but because it was available they purchased it. When the build out doesn't fit their national or international return on investment they fail to build. This failure could be turned around by a Tribe or a smaller local provider.

If moving directly to auction is the approach deemed most desirable, trust obligations must be taken into consideration. To meet this unique obligation with Tribes, a tribal set aside should be part of the regulation or statute. If a set aside isn't possible, setting a priority that recognizes the unique obligation to Tribes could work if in a reverse auction format.

Adopting local priority filing window helps bridge the broadband gap by providing Tribes and smaller markets an opportunity to become licensed spectrum holders. The builders who want to see rural development have an opportunity to build at far less investment then national or international carriers. Priority filing windows also allow regulations such as build or divest, so there is actually an earnest interest in serving the licensed area.

Ensuring that spectrum licenses are actually being utilized lets the tax payer see that subsidies, like Connect America Fund or Mobility Fund, are bridging the broadband gap. It demonstrates that the regulations being put forth are not sided only with large carriers who thus far have failed to close the broadband gap while monopolizing spectrum and obtaining continued federal funding.

Thank you for consideration of the Tribe's comments. If you have any questions, please contact Danae Wilson, Director of the Nez Perce Tribe Department of Information Technology at danaew@nezperce.org or 208-621-3566.

Sincerely,



Shannon F. Wheeler
Chairman