

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and)	
101 of the Commission's Rules to)	
Facilitate the Provision of Fixed and)	WT Docket No. 18-120
Mobile Broadband Access, Education)	
and Other Advanced Services in the)	
2150-2162 and 2500-2690 MHz)	
Bands)	
)	
Transforming the 2.5 GHz Band)	

To: The Commission

**COMMENTS OF THE
NATIONAL CONGRESS OF AMERICAN INDIANS**

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I. Introduction and Summary

The National Congress of American Indians (NCAI) is the oldest, largest, and most representative organization advocating on behalf of American Indian and Alaska Native tribal governments and communities. NCAI submits the following comments in response to the Federal Communications Commission's (FCC or Commission) April 19, 2018 Notice of Proposed Rulemaking (NPRM) entitled, "Transforming the 2.5 GHz Band" WT Docket No. 18-120.

The FCC issued the NPRM to propose a more efficient and effective use of the 2.5 GHz band of spectrum by offering greater flexibility to current licensees and providing new opportunities for certain entities including tribal nations to obtain spectrum to access next generation broadband for educational and commercial uses.¹ NCAI's membership, recognizing that tribal nations lack broadband access and are underrepresented in communications media, supports increasing access to spectrum for tribal nations through the following resolutions: [SD-15-037](#), "Urging the Federal Communications Commission to Improve Access to Spectrum Licenses for Tribal Nations"; [SAC-12-034](#), "Promoting Tribal Nation Access and Use of Spectrum for Communications Services"; [LNK-12-007](#), "Spectrum Allocation and the Low Power FM Radio (LPFM) 'Tribal Priority'"; and [MKE-11-007](#), "In Support of a Tribal Priority for the Utilization of Spectrum on Tribal Lands."

NCAI's comments focus on ensuring the FCC's proposal will benefit tribal nations and uphold the federal treaty and trust responsibilities.

¹ FCC, *Transforming the 2.5 GHz Band Notice of Proposed Rulemaking (NPRM)*, WT Docket No. 18-120, ¶ 1.

II. FCC Should Prioritize Tribal Nation Access to the 2.5 GHz Band

Providing priority to tribal nations would promote the highest and best use of this spectrum. Tribal nations, as sovereign governments, are responsible for serving their citizens and community members and thus have a strong interest in using this spectrum to provide critical services.

The FCC correctly states, “members of federally-recognized American Indian Tribes and Alaska Native Villages and other residents of Tribal lands have lacked meaningful access to wired and wireless communications services.”² According to a 2016 Government Accountability Office report, 63 percent of households on tribal lands across the country lack access to high-speed services,³ and 60 percent of Bureau of Indian Education schools lack access to adequate digital broadband.⁴ High speed broadband services and other communications technologies are no longer luxury items. It is a basic necessity for quality education and economic success. Not only would access to this spectrum help tribal nations bring internet connectivity to tribal schools and households, but it would also help facilitate public safety activities, such as emergency response to wildfires and other states of emergency.

Moreover, the federal government acknowledges the importance of expanding communications media resources to tribal nations. This reflects a government-wide policy to address the needs of unserved and underserved tribal communities. Providing priority to tribal nation applicants will advance federal policy and produce a brighter future for Indian Country.

² *Id.* ¶ 34.

³ U.S. Government Accountability Office, *Tribal Internet Access: Increased Federal Coordination and Performance Measurement Needed*, GAO-16-504T, 1.

⁴ *2019 Budget Request, The Federal Trust Responsibility to Native Education*, National Indian Education Association (Apr. 30, 2018), <http://www.niea.org/wp-content/uploads/2016/03/NIEA-FY-2019-Budget-4-30-18.pdf>.

III. FCC Should Provide the First Priority Window to Tribal Nations

NCAI supports the use of a priority filing window for tribal nations and believes that the FCC's 1985 statements remain true for tribal governments.⁵ In 1985, the FCC found that local applicants were the best authorities for evaluating the needs of the people they serve and to act most responsibly in designing and developing the 2.5 GHz band.⁶ NCAI agrees that tribal nations are best suited to meet the needs of their citizens. NCAI urges the Commission to provide tribal nations a first priority filing window. Doing so would be consistent with the FCC's goals for more efficient and effective use of the 2.5 GHz band and would address the well documented lack of access to communications services in Indian Country.

IV. The FCC Should Use the Existing Definitions at 47 CFR § 73.7000 and Should Not Restrict Tribal Eligibility to 'Rural Tribal Lands'

The NPRM proposes restricting eligibility for a local priority filing window to "federally recognized American Indian Tribes and Alaska Native Villages located in rural areas."⁷ NCAI is concerned that limiting access to an undefined "rural area" for purposes of the 2.5 GHz band will reduce flexibility for tribal nations to use this spectrum; create definitional uncertainty for tribal nations; and create separate classes of tribal governments, which is inconsistent with the intent of Congress.⁸ Accordingly, NCAI recommends that the FCC use the existing definitions at 47 CFR § 73.7000. These existing definitions already address the entity and location based considerations raised in the NPRM.⁹

⁵ *Transforming the 2.5 GHz Band NPRM*, WT Docket No. 18-120, ¶ 26.

⁶ *Id.* ¶ 26.

⁷ *Id.* ¶ 35.

⁸ *Federally Recognized Indian Tribe List Act of 1994*, 108 Stat. 4791

⁹ *Supra* ¶ 35.

V. Mutually Exclusive Claims that Arise During Any Opportunities for New 2.5 GHz Licenses Should Give Deference to Tribal Applicants over Non-Tribal Applicants

NCAI recommends that the FCC give deference to tribal applicants during any mutually exclusive claims to the 2.5 GHz band with a non-tribal applicant. The Commission can achieve this recommendation by providing an uncontested opportunity for a tribal applicant to obtain license(s) in an eligible service area(s), when a mutually exclusive claim arises between a tribal applicant and a non-tribal applicant. This approach is consistent with the federal treaty and trust obligations to tribal nations.

VI. Conclusion

For the foregoing reasons, NCAI recommends that the FCC prioritize tribal access to the 2.5 GHz band, provide a first priority window to tribal nations, use the existing definitions at 47 CFR § 73.7000 to determine eligible tribal applicants and tribal lands, and give deference to tribal applicants in any mutually exclusive claims between a tribal applicant and a non-tribal applicant.

Respectfully submitted,

A handwritten signature in black ink, reading "Jacqueline Pata". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Jacqueline Pata
NCAI Executive Director