

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

In the Matter of )  
 )  
Transforming the 2.5 GHz Band ) WT Docket No. 18-120  
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**COMMENTS OF THE BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE OF  
CHIPPEWA INDIANS**

The Bad River Band of the Lake Superior Tribe of Chippewa Indians (“Bad River” or “Tribe”) hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) of the Federal Communications Commission (“Commission” or “FCC”) in the above-captioned proceeding.<sup>1</sup> Bad River urges the Commission to proceed quickly to establish a much needed Tribal local priority filing window for new 2.5 GHz licenses in the frequencies assigned to the Educational Broadband Service (“EBS”). As demonstrated herein, Bad River urges the FCC to modify the proposed Tribal local priority to ensure that this mechanism will provide Tribes and their members with the meaningful access to spectrum that has long been lacking in Tribal areas, and take steps to facilitate access to 2.5 GHz spectrum for Tribes whose lands are covered, but not served, by existing licensees. Eliminating the digital divide in Indian country is long overdue and is one of the key requirements needed to be implemented to stimulate much needed economic growth and educational advances among the Native American community living on or adjacent to reservations.

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<sup>1</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Transforming the 2.5 GHz Band*, WT Docket Nos. 03-66 (Terminated), 18-120, Notice of Proposed Rulemaking, FCC 18-59 (2018) (“NPRM”).

## **I. BACKGROUND.**

Bad River is a federally recognized, self-governing Indian tribe holding a reservation located at the far northern tip of Wisconsin, encompassing an area of more than 125,000 acres of concurrent jurisdiction with Ashland and Iron Counties along the south shore of Lake Superior. The reservation is home to approximately 1,107 of the 8,328 enrolled members of the Tribe, and approximately 800 members of Bad River live in the area surrounding the reservation. Specifically, the majority of the members living on the reservation live in one of four population centers and the remainder are scattered at other sites throughout the reservation's vast areas of wilderness, with more than 90% of the land within the reservation preserved in its natural, wild state. Additionally, a significant number of enrolled members of the Tribe live in communities that are beyond the boundaries of, but nearby, the Bad River reservation, including Ashland, Washburn, High Bridge, Mason, Marengo, Saxon, Gurney, Mellen, Park Falls, Red Cliff, Bayfield, and Iron River. Most of these small communities lack high-speed internet service.

To make up for the lack of on-reservation schools, Bad River has established relationships with county departments of education and colleges off the reservation, including the School District of Ashland and Lac Courte Oreilles Ojibwa Community College, an accredited Tribal college, in an attempt to satisfy educational needs. The Tribe also has its own Education Department that administers a Head Start program meeting the Wisconsin Model Early Learning Standards and incorporating efforts to pass along the Ojibwe language and other important aspects of the Tribe's traditions. In addition, Bad River's Education Department contributes cultural and educational materials to the School District of Ashland. Bad River members also attend a number of local schools, colleges, and other educational institutions in the areas surrounding the reservation, including Ashland School District, in which 20 percent of the

3,212 enrolled students are Native American, Washburn School District, and Mellen School District.

Given the sheer size of the reservation and the comparatively low population scattered throughout the reservation, there are no commercial broadband providers that offer service or are economically motivated to serve the reservation and its residents at satisfactory levels. In hopes of obtaining access to broadband on the reservation, in 2016 the Commission granted Northern Michigan University (“NMU”) a license, call sign WQXM461, authorizing the use of all available EBS channels (A1-A4, B1-B4, C1-C4, D1-D4, and G1-G4) for a 35-mile-radius geographic service area covering the Bad River reservation and surrounding areas.<sup>2</sup> Bad River supported this effort because it understood that members of Bad River living on and off of the reservation would be the beneficiaries of this broadband services. As it turned out, NMU presently is not offering service using its EBS spectrum over the Bad River reservation, but instead has authorized Bad River to use 40 MHz of spectrum under the NMU license to provide broadband service to educational institutions on and around the Bad River reservation. Specifically, through its wholly owned non-profit business corporation, Superior Connections Communications, Bad River is offering this service to the educational institutions on and around the Bad River reservation. As indicated above, Superior Connections and CenturyLink DSL are the only providers of broadband services on the Bad River reservation, and Superior Connections is providing high-speed internet service at download speeds exceeding 25 Mbps to approximately 300 Tribal members using the EBS spectrum. CenturyLink’s DSL offering provides download speeds of less than 3 Mbps at a higher cost than Superior Connections’ 25

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<sup>2</sup> See *Application of The Board of Trustees of Northern Michigan University For a New Educational Broadband Service Station*, Memorandum Opinion and Order, 31 FCC Rcd 3371 (WTB BD 2016).

Mbps offering. In addition, the fact that CenturyLink service has not improved on the Bad River reservation despite CenturyLink's acceptance three years ago of over \$55 million in annual Universal Service Fund support to build out high-speed broadband infrastructure in rural Wisconsin suggests that CenturyLink has no intention of building out or enhancing their internet service on the Bad River reservation.<sup>3</sup>

## **II. THE COMMISSION SHOULD OPEN A LOCAL FILING PRIORITY WINDOW FOR TRIBAL ENTITIES TO ENSURE THEY HAVE AN OPPORTUNITY TO ACCESS 2.5 GHZ SPECTRUM.**

In the NPRM, the Commission seeks comment on whether it should open a local priority filing window for new 2.5 GHz licenses to “rural Tribal Nations.”<sup>4</sup> Bad River urges the Commission to move expeditiously to adopt such a local priority filing window subject to the below-described modifications, which will work to ensure meaningful access to valuable spectrum resources for unserved or underserved Tribal entities and the communities they serve.

First, rather than limiting participation in the Tribal local priority filing window to “federally-recognized American Indian Tribes and Alaska Native Villages located in rural areas,”<sup>5</sup> the Commission should instead open the local priority filing window to all Tribal entities. The Commission has previously recognized that “members of federally-recognized American Indian Tribes and Alaska Native Villages (‘Native Nations or Tribes’) and other residents of Tribal lands have lacked meaningful access to wired and wireless communications services.”<sup>6</sup> It also has found that “[g]reater access to wireless services would offer members of

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<sup>3</sup> See *CenturyLink Accepts Nearly \$506 Million in Annual Support from Connect America Fund to Expand and Support Broadband for Over 2.3 Million Consumers in 33 States*, News Release (rel. Aug. 27, 2015), available at <https://www.fcc.gov/document/centurylink-accepts-506-m-connect-america-rural-broadband>.

<sup>4</sup> NPRM at para. 35.

<sup>5</sup> *Id.* at para. 36.

<sup>6</sup> *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623, 2624, para. 1 (2011).

Tribes and others on Tribal lands significant economic opportunities and increased social benefits.”<sup>7</sup> The Commission has further concluded that the “lack of robust communications services presents serious impediments to Native Nations’ efforts to preserve their cultures and build their internal structures for self-governance, economic opportunity, health, education, public safety, and welfare – in short, to secure a brighter future for their people.”<sup>8</sup> In keeping with these observations, the Commission should facilitate Tribal access to 2.5 GHz spectrum to the broadest extent possible. Many Tribes, including Bad River, have created corporations or other legal entities that are wholly owned by the Tribe to provide telecommunications and other communications services.<sup>9</sup> To artificially constrain the ability of Tribal owned entities to obtain access to 2.5 GHz spectrum by imposing a requirement that they meet the definition of a “Tribe” would only serve to exacerbate the lack of meaningful access that the Commission has repeatedly highlighted.

Second, in order to maximize Tribal access to 2.5 GHz spectrum, the Commission should open the Tribal local priority filing window first, before any window for existing licensees, at least in those areas where federally recognized Tribes are located. Doing so would help ensure that Tribal entities are not precluded from obtaining access to 2.5 GHz spectrum by an existing licensee expanding its service area or existing spectrum holdings, which could preempt Tribal access to much-needed spectrum resources. Such an approach is consistent with the FCC’s proposal and intent to address the fact that “Native Americans are acutely underrepresented in

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<sup>7</sup> *Id.*

<sup>8</sup> *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011).

<sup>9</sup> These entities include Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom.

communications media,”<sup>10</sup> as demonstrated by the FCC’s efforts with respect to the Tribal Mobility Fund and Tribal Radio Priority. Given Bad River’s experience, the only way to ensure that Tribal lands and residents are offered broadband service is through Native American owned and operated service providers who, unlike commercial operators, are not motivated purely by profits and economics.

Third, to ensure that the Tribal local priority filing window has the effect of enabling Tribal entities to obtain access to the spectrum resources needed to serve their on- and off-reservation members, service areas for Tribal licensees should extend to the county borders of the reservation (even if beyond the 35 mile licensed service radius or other FCC authorized service area) and permit service beyond the boundaries of Tribal lands.<sup>11</sup> For example, Bad River members reside in the communities of Ashland, Mellen, Saxon, Gurney, Marengo, High Bridge, and Washburn, which are located in Ashland and Bayfield Counties, beyond the boundaries of the Bad River reservation. In addition, Bad River members attend schools in these communities. Granting Tribal licenses for geographic service areas that include counties bordering the licensees’ reservations would permit Tribal licensees to better serve the members of their communities, many of whom do not live on reservations but instead live in nearby surrounding areas.

**III. THE COMMISSION SHOULD CLARIFY OR, IF NECESSARY, MODIFY ITS RULES TO PROVIDE A MECHANISM FOR TRIBES WHOSE LANDS ARE COVERED, BUT NOT SERVED, BY EXISTING LICENSEES TO OBTAIN ACCESS TO 2.5 GHZ SPECTRUM.**

In addition to the above modifications to the proposed Tribal local priority filing window, the FCC should also take steps to ensure access for Tribal entities that may be unable to

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<sup>10</sup> NPRM at para. 36 (quoting Reply Comments of Native Public Media, WT Docket No. 03-66, at 2-3 (filed Oct. 22, 2008)).

<sup>11</sup> *Id.* at para. 37.

participate in a filing window because their lands are covered by one or more existing licensees. To ensure that such entities, including Bad River, have a mechanism to obtain meaningful access to 2.5 GHz spectrum, where an existing licensee holds all available EBS channels and its service area covers Tribal lands, but that licensee is not providing service to the Tribal lands, the Commission should clarify its rules or, if required, modify its rules to authorize existing licensee to partition its license area or disaggregate its licensed spectrum to allow the local Tribal entity to obtain a license to provide service over its lands.<sup>12</sup> This is necessary because only Tribes are motivated to provide service to these sparsely populated and economically disadvantaged areas as other eligible entities are not economically or otherwise motivated to provide broadband access to Tribal lands.

#### **IV. CONCLUSION**

By taking the steps described herein, the Commission can take the steps intended to enable Tribal entities to be independent in serving their residents, rather than placing their trust in an unrelated third party service provider whose primary focus is not the best interest of the Tribe and its members. Tribes have been forced to rely on third-party carriers for years, with almost nothing in terms of communications access to show for it. In this proceeding, the Commission has an opportunity to give Tribes a rarely available option for establishing their own course of action to provide broadband services to their residents and their educational needs.

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<sup>12</sup> Such clarification or modification may be required because, in adopting a uniform regulatory framework for the Wireless Radio Services, the Commission excluded EBS. *See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874 (2017). As a result, Section 1.950 provides that only “Covered Geographic Licenses” are eligible for partitioning and disaggregation, and EBS is not included in the definition of “Covered Geographic Licenses.” *See* 47 C.F.R. §§ 1.907, 1.950(b). It would thus appear that EBS licenses may not be partitioned or disaggregated; however, Section 27.15 provides for partitioning and disaggregation of licenses issued in services governed by Part 27, such as EBS. Clarification or modification is thus needed to resolve this apparent conflict in the Commission’s rules with respect to the partitioning and disaggregation of EBS spectrum.

Bad River urges the Commission to do just that, and stands ready to assist the Commission in its efforts to narrow the digital divide in Tribal communities.

Respectfully submitted,

**BAD RIVER BAND OF THE LAKE  
SUPERIOR TRIBE OF CHIPPEWA  
INDIANS**

/s/ Tom W. Davidson \_\_\_\_\_

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