

In the Matter of)
)
Transforming the 2.5 GHz Band) WT Docket No. 18-120

The Chickasaw Nation, by counsel, hereby submits these comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.¹ For the reasons stated herein, the Chickasaw Nation supports the Federal Communications Commission’s (“FCC” or “Commission”) proposal to open up priority filing windows, first to existing licensees, second to rural Tribal Nations and third to new educational entities. However, the Chickasaw Nation urges the Commission to ensure that the proposed Geographic Service Area (“GSA”) expansion does not result in a land grab for nationwide carriers without a local presence in rural areas. Rather, the Commission should strongly consider focusing on the entities with a local presence, such as local operators with existing licenses, the Tribal Nations and educational entities. Finally, the Chickasaw Nation asserts that the proposed holding period for lessees of newly-acquired EBS licenses would stunt the deployment of needed broadband in rural areas.

I. Background

The Chickasaw Nation is a federally recognized sovereign Indian nation headquartered in Ada, Oklahoma.² The Chickasaw Nation extends across 13 counties in south-central Oklahoma

¹ *In re* Transforming the 2.5 GHz Band, *Notice of Proposed Rulemaking*, WT Docket No. 18-120 (rel. May 10, 2018) (“NPRM”).

² Bill Anoatubby is the Governor of the Chickasaw Nation. Enclosed hereto as Exhibit I please find a letter from Governor Anoatubby to Chairman Pai. As a federally recognized American Indian Tribe, the Chickasaw Nation supports limiting participation to federally-recognized American Indian Tribes and Alaska Native Villages located in rural areas. *See* NPRM, ¶ 35.

and includes more than 62,000 citizens, and over 37,000 throughout the state of Oklahoma.³ As many of the Chickasaw Nation communities are in rural areas, providing reliable broadband can be challenging and expensive. The provision of fixed broadband services to the Chickasaw Nation's tribal lands has been extremely slow. The 2018 Broadband Deployment Report shows approximately fifty percent (50%) of the population in Garvin, Johnson and Love counties, and nearly ninety-eight percent (98%) of the population in Jefferson County is without access to fixed 25Mbps/3Mbps broadband service.⁴ The Chickasaw Nation has prioritized making affordable high-speed broadband available so that its citizens can benefit. With this goal in mind, the Chickasaw Nation Telecom has sought out partnerships, such as with 360 Communications, a local internet service provider, and with the Oklahoma Community Anchor Network ("OCAN"), a high-speed network with more than 1,000 miles of fiber across Oklahoma, to enhance services to Chickasaw Nation citizens.⁵ The Chickasaw Nation's efforts also include constructing its own 500-mile high-speed fiber-optic network, Trace Fiber Network, LLC ("Trace Fiber"). Trace Fiber connects with over 40 communities and schools within the Chickasaw Nation's boundary and provides connectivity to over 100 Chickasaw Nation-owned businesses, offices, head starts, hospital/clinics and libraries. Considering the shortage of usable, affordable spectrum available

³ The Chickasaw Nation's tribal jurisdictional area is in Bryan, Carter, Coal, Garvin, Grady, Jefferson, Johnston, Love, McClain, Marshall, Murray, Pontotoc, and Stephens counties in Oklahoma.

⁴ *In re Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, 33 FCC Rcd 1660 (2018), Appendix F1.

⁵ April Goode, *OCAN Partnership with the Chickasaw Nation Improves Health Care Services* (Mar. 6, 2017); <https://onenet.net/ocan-partnership-with-the-chickasaw-nation-improves-health-care-services/>.

to Tribal Nations,⁶ this *NPRM* proceeding is of the utmost importance to a forward-looking tribe like the Chickasaw Nation who is seeking to deploy much-needed broadband services to its community.

II. Discussion

A. The Chickasaw Nation Supports the Second Local Priority Filing Window to Afford Rural Tribal Nations A Rare Opportunity to Acquire Valuable Spectrum.

In the *NPRM*, the Commission proposes establishing three (3) local priority filing windows for qualifying applicants to apply for one or more channels of EBS white space in areas where the applicant has a “local presence.”⁷ After the first proposed filing window for existing licensees, the Commission proposes to open a second filing window for Tribal Nations located in rural areas with a local presence in the area to apply for licenses.⁸ The Chickasaw Nation supports this proposal to give Tribal Nations located in rural areas priority to apply for 2.5 GHz white space that covers their local community in the Second Filing Window.

Tribal Nations have been on the wrong side of the digital divide for too long. Many rural Tribal communities, the Chickasaw Nation’s communities included, do not have access to fast and reliable broadband services, which results in a disparity as the world becomes increasingly technology-driven. Furthermore, there’s a general lack of affordable spectrum available in rural areas. If approved, the proposed three local priority windows will present the opportunity for local Tribal Nations and educational entities to acquire valuable spectrum rights for the first time since

⁶ *Improving Communications Services for Tribal Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, 26 FCC Rcd 2623, 2624-25, para. 3 (2011) (*Wireless Spectrum Tribal Lands NPRM*).

⁷ See *NPRM*, ¶¶ 27, 29. See *infra* p. 6 (defining “local presence”).

⁸ See *id.*, ¶ 35.

1995.⁹ By opening up the spectrum to new licenses by rural Tribal governments, the Commission will support bridging the digital divide, a top priority for the Commission.¹⁰ Thus, the Commission's new rules should focus on providing opportunities to the applicants within rural communities, such as Tribal Nations, that have not been given the same chance as other institutions.

With a direct connection to the local citizens, Tribal Nations are best equipped to serve their own communities and should be given the opportunity to acquire spectrum to do so. As there is currently EBS white space in portions of the Chickasaw Nation, the Chickasaw Nation would greatly benefit from the Commission's proposal. As stated, there is not a lot of affordable spectrum available in rural areas, including in Chickasaw Nation's territories, and the Chickasaw Nation has not had much of an opportunity to acquire such spectrum. Thus, this local priority filing window will provide a rare opportunity for the Chickasaw Nation to gain the necessary resources to adequately serve its communities. Furthermore, it is in the best interest of the citizens in these rural communities with ties to Tribal Nations to be served by those Tribal Nations and therefore, the Chickasaw Nation supports limiting licenses to those local institutions and organizations that can acquire the spectrum for serving its own rural citizens.

⁹ See *id.*, ¶¶ 1, 6.

¹⁰ See *Bridging the Digital Divide for All Americans* (last accessed July 27, 2018); <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans> ("Since my first day as Chairman of the FCC, my number one priority has been closing the digital divide and bringing the benefits of the Internet age to all Americans.").

B. The Commission Should Not Allow the Proposed GSA Expansion to Result in a Land Grab for Nationwide Carriers that Do Not Have Ties to the Local Communities.

In addition to giving existing licensees the first filing window, the Commission proposes the automatic expansion of existing licensee's GSAs.¹¹ While the Chickasaw Nation generally supports the Local Priority Filing Windows, it is hesitant to support the automatic GSA expansion and "license grabs" to certain existing licenses because it runs the risk of allowing certain license holders and lessees, many of whom are national carriers without an invested interest in the local community and have thus far only deployed services in the most urban and profitable areas of their GSAs, to obtain an even spectrum footprint. Further, it allows those licensees first access to portions they find likely to be most profitable. Accordingly, to prevent the GSA expansion from resulting in a land grab for those licensees, the Commission should emphasize Applicants' required ties to local communities in its rules.

In proposing the three Local Priority filing windows, the Commission notes that historically, local applicants have been preferred, as they are believed "to be the best authorities for evaluating their educational needs and the needs of others they propose to serve in their communities."¹² However, it is worth noting that it is national carriers that lease the vast majority of existing EBS licenses. The proposed GSA expansion would have the ultimate effect of favoring those national carriers to the detriment of local operators. On the other hand, giving priority to Tribal Nations and existing EBS licensees that either use the license themselves or lease excess

¹¹ See NPRM, ¶ 11.

¹² See *id.*, ¶ 26 (quoting *ITFS Local Priority Order*, 101 FCC 2d 56, para. 15).

capacity to a local operator supports the Commission’s overarching goal of localism and diversity.¹³

It is not in the best interest of these rural communities to allow the proposed GSA expansion to add to national carrier’s spectrum portfolio, particularly those carriers that already own significant portions of the 2.5 GHz Band. As Commission Chairman Ajit Pai explained, “[w]e need to get this valuable spectrum into the hands of those who will provide service...particularly in rural areas where the spectrum is currently mostly unused.”¹⁴ Therefore, the Chickasaw Nation supports a required demonstration by Applicants and their lessee partners of “local presence.”¹⁵ Building off of the Commission’s definition of “local,”¹⁶ the Chickasaw Nation asserts that “local” should be further narrowed to mean companies that are only present in five states or fewer. “Local presence” should be defined as “institutions and organizations that are headquartered, incorporated or organized within the state where service is proposed and have either deployed or shown a demonstrated interest in deploying services in the area.”¹⁷ A “demonstrated interest” can be shown by existing operations or investment in the area, including but not limited to developing plans, hiring engineers, or deploying infrastructure. The Commission should focus on getting spectrum to those with a “local presence” by giving local providers who know and have an interest in serving the rural communities the best opportunity to obtain such spectrum. The Chickasaw Nation further

¹³ One of the Commission’s five main missions is “[r]evising media regulations so that new technologies flourish alongside diversity and localism.” See *What We Do* (last accessed July 27, 2018); <https://www.fcc.gov/about-fcc/what-we-do>.

¹⁴ *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Statement of Chairman Ajit Pai.

¹⁵ See NPRM, ¶ 29.

¹⁶ In the *NPRM*, the Commission proposes defining “local” as “those ‘institutions and organizations that are physically located in the community, or metropolitan area, where service is proposed.’” NPRM, ¶ 29 (quoting *ITFS Local Priority Order*, 101 FCC 2d 49, 59, para. 22).

¹⁷ The Chickasaw Nation further notes that this local presence requirement will deter speculators that only plan on flipping the spectrum at a later date for a profit from participating in the allocation.

urges the Commission to only allow GSA expansion for licenses used by the EBS licensee itself or leased to a local commercial operator.

Alternatively, the Commission should only allow GSA expansion where the licensee can show that it has built out in the county that would be expanded. This proposal would be in line with the performance requirements considered by the Commission in the *NPRM*.¹⁸

The Chickasaw Nation believes the GSA criteria should not be limited to the percentage of area controlled by the Tribe.¹⁹ Rather, it should look to whether a portion of the Tribe's population will be served by licensing that proposed GSA. Other rural Tribal Nations have proposed in their comments that (1) GSAs should be determined by the Nation-applicant's Tribal boundaries;²⁰ and (2) GSAs should be assigned "on an ad hoc basis, tailored to fit the needs of each applicant."²¹ The common consensus amongst these Tribal Nation's proposals is that the local Nation is best suited to serve its own population, which may not be properly covered by counties or census tracts.

C. The Proposed Holding Period Would Stunt the Deployment of Needed Broadband in Rural Areas.

In the *NPRM*, the Commission considers imposing a holding period on newly acquired EBS licenses, in which a new licensee would be restricted from leasing or assigning its license for a certain period of time.²² The Chickasaw Nation urges the Commission not to impose such a holding period on local licensees who are partnering with local operators as it may impede the Commission's goal of timely and efficient build out in rural areas.

¹⁸ See *NPRM*, ¶ 54.

¹⁹ *Id.*, ¶¶ 11-18.

²⁰ Comments of Chemehuevi Indian Tribe (filed July 6, 2018) (Chemehuevi Tribe Comments).

²¹ Comments of Havasupai Tribe (filed June 19, 2018) (Havasupai Tribe Comments). See also Comments of Native Public Media, Inc. (filed July 26, 2018) (NPM Comments) (requesting the Commission not allow the rationalization of existing licensees' GSAs to encroach on Tribal lands).

²² See *NPRM*, ¶ 47.

Unlike the Chickasaw Nation, who has made great strides in deploying broadband, schools and other Tribal Nations do not necessarily have the know-how or resources to build out a broadband network. Therefore, the Commission should consider rejecting the proposed holding periods and allowing new licensees the flexibility to partner with local commercial operators. Allowing partnerships between new licensees and local commercial operators will ensure that the spectrum is used for its highest and best use.

The Commission further seeks comment on granting additional flexibility by (1) allowing licensees to assign or transfer control of their licenses to non-eligible entities or (2) eliminating the educational use requirements for EBS licensees.²³ The Chickasaw Nation does not support this proposal as it is counter-productive to the educational purpose of EBS spectrum. The EBS Band should remain educational and not be deduced to a purely commercial band, which is what would occur if these proposals are adopted.

III. Conclusion


The Chickasaw Nation supports the local priority filing windows, specifically as it pertains to Tribal Nations. Further, the Chickasaw Nation urges the Commission to allow GSA expansion only in the case of an existing licensee using the spectrum authorization or partnering with a local operator to use excess capacity on the spectrum license. In doing so, the Commission would be supporting its own goal of localism and diversity. If the Commission does not keep the licensing local, it risks allowing national carriers without an interest in serving the rural areas to add valuable spectrum to their portfolio and continue the lack of opportunity for local carriers to obtain such spectrum. Finally, in line with the theme of localism, the Commission should reject the proposed

²³ See *id.*, ¶¶ 19-23.

holding periods so educational entities and Tribal Nations can partner with local commercial operators to ensure the highest and best use of the spectrum.

Respectfully submitted,

THE CHICKASAW NATION

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August 8, 2018



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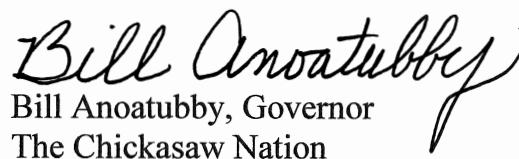
The Honorable Ajit Pai, Chairman
c/o Marlene H. Dortch, Secretary
Federal Communications Commission
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Dear Chairman Pai:

Included with this letter are the Chickasaw Nation's comments in response to the Federal Communications Commission's *Notice of Proposed Rulemaking* regarding the 2.5 GHz band, WT Docket No. 18-120.

Thank you for your consideration of our comments. If you have any questions, please contact Mr. Cliff Agee, under secretary of subsidiary services and support, at (580) 421-9500.

Sincerely,


Bill Anoatubby, Governor
The Chickasaw Nation

Enclosure