

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

Tribally-owned and tribally-controlled entities engaged in delivering telecommunications (including broadband) services to the residents of rural Tribal Lands (collectively, the “Tribal Rural Telecom Entities”)¹ hereby submit these Reply Comments in the above-referenced proceeding. As discussed below, the Commission should create a first-priority filing window open only to Tribally-owned or –controlled entities, using the existing definitions already set forth in Sections 54.1004(c) and 73.7000 of the Commission’s Rules, 47 C.F.R. §54.1004(c); §73.7000.

The Commission should encourage those Tribal entities with the most experience and expertise in delivering wireless and broadband service to obtain white-space spectrum for the purpose of delivering broadband to Tribal Lands households. In other words, for-profit Tribal telecom entities must be eligible; eligibility should not be limited to non-profit Tribal entities whose primary mission is something other than telecom. And just as important, the Commission should afford Tribal entities a first chance at Educational Broadcast Service (“EBS”) white spaces on Tribal Lands, before opening up those white spaces to non-Tribal entities.

¹ The Rural Tribal Telecom Entities participating in these Reply Comments are: NTUA Wireless, LLC (“NTUAW”), which provides wireless voice, data and broadband services to the Navajo Nation; and Mescalero Apache Telecom, Inc. (“MATI”), which provides wireline services to the Mescalero Apache Reservation.

I. DESCRIPTION OF RURAL TRIBAL TELECOM ENTITIES

A. NTUA Wireless, LLC (“NTUAW”)

NTUAW is a Delaware limited liability company owned 51% by the Navajo Tribal Utility Authority (“NTUA”), which, in turn, is an instrumentality of the Navajo Nation government.² As such, NTUAW qualifies and is treated as a Tribally-owned entity for purposes of tribal bidding credits under Section 54.1004(c) of the Commission’s Rules. Since its creation in 2011, NTUAW has grown from an abstract idea into a major provider of wireless telecommunications services to residents of the Navajo Nation in Arizona, New Mexico and Utah, providing everything from traditional “cellular”-type mobile voice/texting services, to advanced 4G mobile communications, tele-medicine, and fixed wireless broadband services. NTUAW currently operates over 100 cell sites across the Navajo Nation, serves nearly 20,000 local subscribers. NTUAW has achieved these results despite the overwhelming disadvantage of competing on an uneven playing field against a non-Tribal incumbent that receives millions of

² The Navajo Nation created NTUA in 1959 to provide utility services, including electricity, telecommunications, water, natural gas, and wastewater treatment, to residents of the 27,000 square-mile Navajo Nation. Under tribal law, the members of the NTUA governing board are selected by the Navajo Nation Council (the tribal legislature). NTUA is responsible for all land use/permitting, ensuring that all facilities are sited in accordance with all relevant environmental (including without limitation tribal historic preservation) requirements. All personnel working for NTUAW on the Navajo Nation are NTUA employees, assigned by NTUA to work for NTUAW, and NTUA manages all human resources matters for NTUAW.

NTUAW owns and holds its infrastructure in its own name.

The 49% owner of NTUAW is a subsidiary of Commnet Wireless, LLC (“Commnet”), one of the nation’s foremost rural wireless providers. Commnet controls the telecommunications aspects of NTUAW’s operations, including system design, infrastructure selection, maintenance, customer care, pricing, FCC regulatory affairs, accounts receivable and payable, E911, CPNI, CALEA, and carrier relations (including roaming agreements). While Commnet therefore holds indicia of control under the standards set forth in *Intermountain Microwave*, 12 FCC 2d 559 (1963), Sections 54.1004(c) and 73.7000 expressly extend eligibility to any entity that is either 51% Tribally-owned or is Tribally-controlled and, as a result, NTUA’s ownership alone would render it eligible as a Tribal entity.

dollars of high-cost subsidies. NTUAW has extended wireless service to a number of remote portions of the Nation that had previously been unserved, as part of its mission to bring the benefits of modern telecommunications to the entire Nation.

B. Mescalero Apache Telecom, Inc.

MATI was incorporated in 1999, and is a for-profit corporation wholly-owned by the Mescalero Apache Tribe. MATI was formed by the Tribe for the express purpose of bringing a telecommunications system to the Mescalero Apache Reservation and surrounding areas.

MATI provides service over an area of approximately 720 square miles in rural New Mexico. MATI currently serves approximately 1127 Tribal customers, with more than 85 percent of MATI's customers qualifying for Lifeline support. In addition, MATI provides employment to Tribal residents. MATI has filled in the gap where non-Indian corporations failed to serve. MATI has existing infrastructure and knowledgeable personnel, and desires to expand the services it provides to Tribal residents to include high-speed broadband.

II. The First Filing Window Should Be for Tribally-Owned or –Controlled Entities, Seeking to Serve Counties Containing Rural Tribal Lands

After the Commission has rationalized the incumbent EBS licenses, the first priority filing window the Commission opens should be for white-space counties that contain rural Tribal Lands, and eligibility for that window should be limited to Tribally-owned or –controlled entities, at least a portion of whose Tribal Lands lie within the involved white space.³ That the

³ The vast majority of commenters supported rationalizing incumbent EBS licensees' service areas by expanding them out to serve the remainder of any partially-covered counties (as opposed to census tracts or other geographic units). The Tribal Telecom Entities do not oppose this proposal, and assume, for purposes of these Reply Comments, that the Commission will decide to so rationalize the incumbent licenses.

However, under that rationale, Tribal entities should be licensed for the entire county when they are licensed via a first-priority filing window, not just for their respective Tribal land

first filing window should be limited to those white-space counties containing rural Tribal Lands is a necessity, if the Commission is to make good on its promise to bridge the digital divide between Tribal communities and the rest of the country.

The Commission has specifically found that rural Tribal Lands lag significantly behind not only urban areas, but even behind non-Tribal rural areas, with respect to both 10Mbps/1 Mbps and 25 Mbps/3 Mbps broadband services.⁴ And as the Commission has noted, access to broadband service is generally a prerequisite for so many of the activities of daily life, including job-searching, education, and all the other areas where rural Tribal communities lag behind.⁵

Therefore, the first white spaces filing window should be to allow eligible Tribal entities to file to serve those white-space counties containing rural Tribal Lands.

III. Market Definitions Should Ensure a Legitimate Opportunity for Tribal Entities

A. Define “Rural” Tribal Lands Based upon the Lifeline Definition

The Rural Tribal Telecom Entities are satisfied with a definition of rural Tribal Lands based upon the Lifeline definition, *i.e.*, Tribal Lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 25,000. However, this definition is

within the involved county. The same arguments that favor counties over census tracts, *e.g.*, propagation issues, ensuring economically-viable service areas, favor licensing Tribal entities for entire counties as well.

⁴ See *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion*, 2018 Broadband Deployment Report, 33 FCC Rcd 1660, 1686-87 (2018) (“*Broadband Report*”).

⁵ See *Joint Statement on Broadband*, 25 FCC Rcd 3420, 3421 (2010), where the Commission explained:

Ubiquitous and affordable broadband can unlock vast new opportunities for Americans, in communities large and small, with respect to consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

relevant only for determining if the involved Tribal Lands are rural, not whether the involved white-spaces county is to be included in the first-priority rural Tribal filing window. Even if a particular county includes a non-Tribal city with a population of over 25,000, the county should still be part of the initial filing window.

Doing otherwise would perpetuate the problem already identified by several commenters – that non-Indian licensees will permanently warehouse the portion of their licensed area on Tribal Lands if awarded a license for an area containing both non-Tribal and Tribal Lands.

A perfect example is San Juan County, New Mexico. That county contains a large portion of the Eastern Agency of the Navajo Nation.⁶ But the county also includes, among its non-Tribal areas, the city of Farmington, with a 2010 census population of 45,877. The mere fact that Farmington is a part of this county should be irrelevant in determining whether to include it within the Tribal first priority filing window. The holder of existing 2.5 GHz spectrum in San Juan County (Sprint) has neither deployed service in the Eastern Agency, nor been amenable to leasing its capacity. For Sprint, this county is a low-priority backwater, but for Tribal entities, it would be a highest-priority area. So long as the Tribal Land within a white-spaces county is rural, the county must be a part of the first-priority window.

B. A County Should Be Included Even if Only a Smaller Portion Is Tribal Land

⁶ The Eastern Agency of the Navajo Nation is situated in northwestern New Mexico, and consists of a “checkerboard” area where a “square” of Tribal Land abuts a “square” of non-Tribal land, and *vice versa*, in a checkerboard pattern. Members of the Navajo Nation reside in both the Tribal and non-Tribal squares. Like the resto of the Navajo Nation, the Eastern Agency has been ignored by incumbent BRS licensees, and 2.5 GHz has not been deployed there.

If and to the extent that the Eastern Agency, or any portion thereof, is not otherwise considered to be “Tribal Land” under other FCC definitions, then the Commission should expressly rule herein that for purposes of licensing of the EBS white spaces, the Eastern Agency falls within the definition of Tribal Land.

If there is any requirement that the involved Tribal lands of a particular Tribe must cover a minimum percentage of the involved county to render the county a part of the first filing window, it should be a small percentage, no more than ten percent (10%). Requiring a higher percentage could disqualify smaller Tribes from participating, meaning such Tribes would have no chance to obtain spectrum for broadband.

Even in a scenario where Tribal Land only covers 10% of the area of a county, the spectrum should still be awarded to the Tribal entity. First, the Commission will certainly create a short construction deadline for these white-spaces licenses, meaning the Tribal entity will have to build out quickly. Second, by having a license covering the entire county, not merely the Tribal land, the Tribal licensee will have an economically-viable licensed service area to build out – the licensee can more easily achieve economies of scale and provide a better quality of service at a lower price than could two licensees each constrained to a smaller area (Tribal and non-Tribal). Finally, even in the unlikely event the county is so geographically large that the Tribal entity wants to limit its service area to less than the entire county, the Tribal entity can either lease a part of the non-Tribal area or even partition some of the non-Tribal area to a third party, either of which strategies can help support the Tribal network financially.⁷

IV. For-Profit Tribal Telecom Entities Must Be Eligible

Moreover, those Tribal entities with the most experience and expertise in wireless and broadband must be eligible for this first priority window. Broadband is a common carrier/ subscription service; it is manifestly *not* a mass media service. Therefore, for-profit Tribally-owned or –controlled entities – including existing Tribal telephone and mobile wireless providers

⁷ Unlike the incumbent holders of 2.5 GHz spectrum, a Tribal entity would be active in seeking spectrum lessees or partition-assignees, because for the Tribal entity, with only one or a few licenses, any unused spectrum is a larger percentage of the overall holdings.

– must be eligible to apply. Limiting eligibility to non-profit Tribal entities or Tribal educational institutions would be counterproductive. It is the for-profit Tribal telecom entities that have existing infrastructure (such as tower locations and switching centers), subscriber-oriented customer care departments, billing/invoicing departments, ETC status for obtaining Lifeline support for low-income residents, and all the other things to enable a rapid and successful network launch.

The purpose of this spectrum is to deliver high-speed broadband service to unserved and underserved rural areas. The rural Tribal areas, in particular, are already suffering from a lack of access to broadband-appropriate spectrum and a concomitant absence of broadband availability to residents. This spectrum was historically under-utilized due to the non-profit/educational-use restrictions. That result must be avoided moving forward, at least in Tribal areas. As described above regarding the Eastern Agency, Tribally-owned telecommunications entities have been held back only by a lack of access to spectrum. Rather than imposing restrictions that may continue to curtail deployment of much-needed services, the Commission should permit forprofit Tribal entities to participate in the first priority window and build out the required networks.

CONCLUSION

Rationalization of incumbent licenses should be done at the county level. Once it is accomplished, there should be a first-priority filing window for every white-space county containing *any* rural Tribal Land (defined in accordance with current Lifeline regulations), with eligibility limited to Tribally-owned or –controlled entities of the Tribe(s) whose land lies at least in part within the county. The licenses offered in this window would be the entire county, not merely the Tribal Land portion, for the same reason as the Commission would use counties

instead of census tracts as the licensing unit in non-Tribal areas – the mechanics of engineering a network, administrative convenience, and ensuring each license is an economically-viable area.⁸

So long as an entity is Tribally-owned or –controlled, it should be eligible to apply during this first-priority window for the county(ies) where its Tribe has Tribal Lands. There should be no limitation to “educational” or “non-profit” entities. There are Native telecom experts who are capable of building out these new 2.5 GHz broadband networks; they are the people currently employed by the various Tribally-owned, for-profit telephone and wireless carriers! Moreover, these are the entities with existing infrastructure upon which the new broadband networks can be piggybacked, allowing a jumpstart as well as greater financial wherewithal, to ensure a successful operation over both the short- and long-term.

The rural Tribal areas have waited long enough for this spectrum to be unfrozen and made available for use in Tribal Lands and adjoining areas. The Commission should move expeditiously to conclude this proceeding and implement new rules as suggested herein.

Respectfully submitted,

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⁸ In the rare event there are mutually-exclusive applications from Tribal entities within a single county, the Commission should have a period pre-auction for the parties to negotiate a full-market settlement, such as a partition of the county or a joint venture to operate the network.