

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

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

**REPLY COMMENTS OF  
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

The National Tribal Telecommunications Association (NTTA) provides these reply comments in response to comments filed regarding the Federal Communications Commission’s (Commission or FCC) Notice of Proposed Rulemaking released in the above-captioned proceeding.<sup>1</sup>

NTTA consists of Tribally-owned communications companies and broadband providers including 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, as well as associate members Nez Perce Tribe and Sacred Wind Communications. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

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<sup>1</sup> *In the Matter of Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, WT Docket No. 18-120 (FCC 18-59, rel. May 10, 2018) (*NPRM*)

NTTA files these reply comments to respond to certain issues raised in the initial comments, and to provide further support for the FCC's proposal to adopt local priority filing windows, especially those related to rural Tribal nations.

## **I. BACKGROUND**

With the *NPRM*, the FCC takes a small step towards fulfilling the promise inherent in the 2011 Notice of Proposed Rulemaking to investigate ways of “improving communications services for Native Nations by promoting greater utilization of spectrum over Tribal lands.”<sup>2</sup> In that proceeding, the Commission recognized that “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.”<sup>3</sup> One way the Commission, at that time, sought to remedy this situation was to find ways to better utilize spectrum in Tribal areas. Two of the proposals made at that time are directly relevant to the issues being discussed in the current *NPRM*:

1. A proposal to expand the current Tribal licensing priority in Wireless Radio Services, creating opportunities for access to Wireless Radio Services licenses not yet assigned.<sup>4</sup>
2. A proposal to use spectrum lying fallow through an innovative build-or-divest process that would allow Tribes to build out in areas where licensees have met their construction requirement but are not serving the Tribal lands within their service areas.<sup>5</sup>

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<sup>2</sup> *In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 11-40 (FCC 11-29, rel. March 3, 2011) (*Tribal Spectrum NPRM*)

<sup>3</sup> *Id.*, at 1

<sup>4</sup> *Id.*, at 10

<sup>5</sup> *Id.*

In recognition of the facts established in the *Tribal Spectrum NPRM* and the fact that little progress has been made in addressing these issues, the Commission now proposes to establish a certain type of Tribal priority in obtaining new licenses in the 2.5 GHz, Educational Broadband Service (EBS), spectrum band. In making this proposal, the Commission hopes to “allow rural Tribal Nations an opportunity to access 2.5 GHz spectrum to address educational and communications needs of their communities and residents on rural Tribal lands, including the deployment of advanced wireless services to areas that have too long been without.”<sup>6</sup> If adopted, the Tribal nation priority filing window could help certain Tribal nations obtain access to spectrum for the purposes of serving their members, but would only be a small step in addressing the overall problems facing rural Tribal areas when it comes to the deployment, operations, and maintenance of quality broadband-capable networks and the affordability of the services provided.

## **II. ADDITIONAL FLEXIBILITY FOR EBS LICENSEES**

The Commission proposes to provide additional flexibility for EBS licensees, including in the areas of (1) the assignment and transfer of control to entities not EBS-eligible, (2) eliminating the educational use requirements for EBS spectrum, and (3) easing the restrictions on lease terms. NTTA in general supports these areas of providing licensees more flexibility, but cautions the Commission in ensuring the spectrum obtained via the local priority filing windows is utilized locally and for its intended purpose. In this regard, NTTA agrees with NTCA’s comments that the

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<sup>6</sup> *NPRM* at 35

combination of additional flexibility and local priority filing windows should not result in “potential windfalls for parties who obtain the spectrum or lease it from educational entities for commercial use.”<sup>7</sup>

In the context of the additional flexibility for EBS licensees being contemplated by the Commission, it will be vital to take steps to ensure any licenses granted pursuant to local priority filing windows are used for the intended purposes, namely the expansion of broadband to rural areas currently without access. To this end, the Commission should ensure that the licenses are used to provide service to the local area covered by the spectrum and, in the case of rural Tribal nations, to the Tribal lands to which the license is tied. In addition, rural Tribal nations should be required to maintain the licenses within those areas, but have the flexibility to assign or lease the licenses to Tribally-owned and operated entities providing service to the Tribal area.

NTTA also agrees with the Chickasaw Nation’s apprehensions about automatically extending the geographic service areas (GSA) to current license holders in certain situations. Chickasaw is hesitant to support this expansion “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...to obtain even more spectrum.”<sup>8</sup> NTTA urges the Commission, in furtherance of the goals stated in the current NPRM as well as the *Tribal Spectrum NPRM*, to define the GSAs utilizing Tribal area boundaries, where appropriate.

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<sup>7</sup> NTCA Comments, filed August 8, 2018, at 4

<sup>8</sup> Comments of The Chickasaw Nation at 5

### III. LOCAL PRIORITY FILING WINDOWS

NTTA supports the concept of local priority filing windows as one step in providing Tribal nations an opportunity to obtain wireless spectrum licenses. Numerous parties support this concept, including The Rural EBS Coalition, a group of small providers and current EBS license holders, which states “the proposed three local priority windows will present the opportunity for local existing licensees, Tribal Nations, and new educational entities and their local operator partners to acquire valuable spectrum rights for the first time since 1995.”<sup>9</sup>

While the Commission is correct in proposing these priority filing windows, NTTA agrees with The National Congress of American Indians<sup>10</sup>, and Native Public Media<sup>11</sup> that the first priority filing window should be assigned to rural Tribal nations. It is the rural Tribal areas that are in most need of all the resources available to ensure Native Americans have access to affordable broadband services. According to the Commission’s most recent Broadband Progress Report, only 40.9% of the population living in rural Tribal areas have access to fixed terrestrial broadband service with speeds of at least 25/3 Mbps and mobile LTE service with speeds of at least 5/1 Mbps.<sup>12</sup> Clearly, rural Tribal nations should be given every opportunity to take advantage of the EBS spectrum white spaces that become available, or are part of any GSA expansion. One good way to do this is to place rural Tribal nations as the first of the priority filing windows.

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<sup>9</sup> Comments of The Rural EBS Coalition, filed August 8, 2018 at 3

<sup>10</sup> Comments of The National Congress of American Indians at 3

<sup>11</sup> Comments of Native Public Media, filed July 26, 2018, at 1

<sup>12</sup> *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Services to All Americans in a Reasonable and Timely Fashion*, GN Docket No 17-199, 2018 Broadband Deployment Report (FCC 18-10, rel. February 2, 2018) at Table 5

It is clear, even apart from the overall lack of broadband availability in rural Tribal areas, that this spectrum could present a sorely-needed boost for service requiring modern broadband technology. As one example, The Confederated Tribes of the Colville Reservation state that the 2.5 Ghz spectrum can be used “to provide services to its Public Safety sectors, elementary and secondary schools and the satellite campuses of several community colleges and universities on its reservation. These services will allow for a farther reach and greater access to more education materials. The Tribes would use this opportunity to widen the public safety ‘safety net’ by providing a means to communicate to the more isolated regions of its 1.4 million-acre reservation. Any unused space could be leased out to bring more cellular services to its vastly underserved areas through 5G and could bring in much needed revenue for severely underfunded schools. Moreover, funds acquired through leasing are not restricted to only operational costs of an educational-based ITFS [EBS] type facility and could be used in whatever fashion the Tribes see fit to serve and enhance our educational and public safety sectors.”<sup>13</sup> In addition, any EBS spectrum secured by rural Tribal nations not used for educational purposes can be utilized for, or as a supplement to, fixed wireless solutions for remaining hard-to-reach areas.

In addition, it is incumbent upon the Commission to recognize its own *Tribal Policy Statement*, especially as it relates to working with rural Tribal nations on a government-to-government basis, and consulting with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and

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<sup>13</sup> The Confederated Tribes of the Colville Reservation comments at 3

resources.<sup>14</sup> This is a prime example of the Commission, and others, needing to adhere to the *Tribal Policy Statement* in order to ensure residents of rural Tribal areas have the opportunity to receive communications services that are comparable to those available in other areas of the country. In this regard, NTTA agrees with Commissioner Rosenworcel's comment made in late 2017:

"But we still have a long way to go to honor our federal trust responsibility to Tribal communities impacted by towers constructed during the Twilight Period. I concur today because I believe that our effort here is well-intended but falls short of what is required. If we proceed with this draft proposal we need to simultaneously update the Commission Statement of Policy on establishing a government-to-government relationship between the agency and federally-recognized Tribes. This document has not been revisited since it was adopted more than a decade and a half ago. It is time to take on this task and do it in conjunction with resolving these longstanding issues of tower construction. In doing so, we can set a clear and updated course for Commission policy while also giving substance to Tribal self-determination."<sup>15</sup>

Commissioner Rosenworcel's assessment is relevant to this, and many other, proceedings, and NTTA urges the full Commission to take up this vital issue as soon as possible.

In contrast, The Wireless Internet Service Providers Association (WISPA) opposes the establishment of local priority windows, stating in part "establishing a three-part filing window process for new EBS licenses would be a step in the wrong direction."<sup>16</sup> Nowhere in WISPA's comments is the local priority filing window for rural Tribal nations specifically addressed, but rather several general objections to the local priority window idea itself. NTTA states that, even

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<sup>14</sup> *In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207, released June 23, 2000 (*Tribal Policy Statement*)

<sup>15</sup> *Comment Sought on Draft Program Comment for the Federal Communications Commission's Review of Collocations on Certain Towers Constructed Without Documentation of Section 106 Review*, Public Notice, WT Docket No. 17-79, released December 14, 2017, Concurring Statement of Commissioner Jessica Rosenworcel

<sup>16</sup> WISPA Comments at 14

with WISPA's lack of specific comment on priority filing windows for rural Tribal nations, the recommendations made above by NTTA and as referenced to other parties, allowing priority access to rural Tribal nations should not concern WISPA in any material manner.

## **CONCLUSION**

NTTA appreciates the Commission's actions relating to the underutilized 2.5 Ghz wireless spectrum band, especially the proposal to establish a local priority filing window for rural Tribal nations. It has been well-established that customers in these areas reside on the farthest side of the deepest digital divide that exists in the United States today. Allowing rural Tribal nations an opportunity to secure the spectrum necessary to provide service to these un- and under-served communities is but one step in a vital process, and more steps are desperately needed. The Commission clearly recognizes this in its policy decisions in the past, including the consideration of a separate Tribal Broadband Factor universal service mechanism, Tribal Mobility Phase I and II, enhanced Tribal Lifeline, and relief granted in regard to the operating expense limitation for small carriers serving Tribal areas. Given this, NTTA urges the Commission to move forward with its plans to revise how the EBS spectrum is allocated and to adopt the local priority filing window for rural Tribal nations as outlined above.

Respectfully Submitted,

Godfrey Enjady  
*President*  
**National Tribal Telecommunications Association**

September 7, 2018