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November 22, 2019

**ExParte Letter
VIA ECFS**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Transforming the 2.5 GHz Band*, WT Docket No. 18-120

Dear Ms. Dortch:

The Office of Hawaiian Affairs ("OHA") appreciates the Federal Communications Commission ("FCC") establishing a Tribal Priority Filing Window ("Window") in the July 11, 2019 FCC Report and Order ("Report & Order") entitled "Transforming the 2.5 GHz Band Proceeding." OHA believes that FCC's stated goal in creating the Window, "to enable Tribal nations an opportunity to obtain 2.5 GHz licenses to provide [internet] service on rural Tribal lands," [1] is an important and necessary step in closing the digital divide that still affects indigenous peoples and rural communities across the United States.

However, the eligibility rules as currently written leave Native Hawaiians out of this important opportunity to obtain a spectrum license. The Report & Order requires an eligible party to be (1) a federally-recognized American Indian Tribe; (2) an Alaska Native village; or (3) an entity owned and controlled by a federally-recognized Tribe or Alaska Native village.¹ Native Hawaiians do not fall under those categories; we are neither an American Indian Tribe nor an Alaska Native village as defined in the Report & Order.² While Hawaiian Home Lands qualify as rural Tribal lands in the Report & Order and thus the available spectrum band may

¹ *Id.* ¶¶ 49–50.

² *Id.* at 5464 n.142; 47 C.F.R. § 73.7000 (2018).

be claimed over them,³ no Native Hawaiian entity would be eligible to claim such a license under the rules promulgated through the Report & Order.

Thus, the purpose of the Window is not served by the application of this eligibility rule, which disenfranchises Native Hawaiians and frustrates FCC's stated goal to "provide Tribal Nations with an opportunity to . . . address the communications needs of their communities."⁴

We learned about the Window after FCC released the Report & Order. At that time, we immediately began to assess the important opportunity a spectrum license could offer Native Hawaiians. While we continue to assess which entity or consortium would be most appropriate and capable of holding such a license, we encourage FCC to revise the eligibility rule in collaboration with Native Hawaiians before the window opens to ensure that our beneficiaries are not mistakenly left out of opportunities like this one or denied self-determination. Reaching out to Native Hawaiians to find a solution to this eligibility oversight affirms FCC's long-standing policy of including Native Hawaiians in consultation efforts,⁵ and supports the Commission's public interest goal to close the digital divide in our country.

Thank you for your attention to this correspondence. Please do not hesitate to contact us if we can be of assistance in this matter.

'O wau iho nō me ka 'oia'i'o,



Sylvia M. Hussey, Ed.D.
Ka Pouhana Kūikawā, Interim Chief Executive Officer
Office of Hawaiian Affairs

³ *Id.* ¶ 51; 47 C.F.R. § 54.400(e) (2018).

⁴ *Id.* ¶ 47.

⁵ *See, e.g.*, Connect America Fund, 26 F.C.C. Rcd. 17,663, 17,868–69 ¶ 637, 17,869 n.1053 (2011).