



# PUBLIC NOTICE

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## WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES PROCEDURES FOR 2.5 GHZ RURAL TRIBAL PRIORITY WINDOW

### WT Docket No. 18-120

1. By this *Public Notice*, the Wireless Telecommunications Bureau (the “Bureau”) sets forth the process for submitting applications in the 2.5 GHz Rural Tribal Priority Window, an opportunity for eligible applicants to apply for unassigned frequencies on eligible rural tribal lands. As previously announced by the Bureau, the 182-day window will open on February 3, 2020, and will close on August 3, 2020.<sup>1</sup> The Commission is making available a number of web-based tools to assist applicants in preparing for and participating in the priority window. The Bureau, along with the Consumer and Governmental Affairs Bureau’s Office of Native Affairs and Policy (ONAP), has been conducting outreach with Tribal entities around the country since August 2019, and is ready to provide assistance to potential applicants.

#### A. Background and Relevant Authority

2. On July 10, 2019, the Commission adopted a Report and Order that transformed the regulations governing 117.5 megahertz of 2.5 GHz spectrum formerly designated as the Educational Broadband Service (EBS).<sup>2</sup> In the Report and Order, the Commission, recognizing 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” and that this “spectrum offers sufficient bandwidth to give rural Tribal entities an opportunity to provide broadband wireless service,”<sup>3</sup> established a priority filing window for Tribal Nations to provide them with a one-time opportunity to obtain unassigned eligible 2.5 GHz spectrum over rural Tribal lands to address the communications needs of their communities.<sup>4</sup> This priority window gives eligible Tribal entities an

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<sup>1</sup> *Federal Communications Commission Announces 2.5 GHz Rural Tribal Window and Technical Workshop*, Public Notice, DA 19-1226 (rel. Dec. 2, 2019) (*Window Public Notice*).

<sup>2</sup> *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*Report and Order*).

<sup>3</sup> In the *Report and Order*, the Commission adopted rules to modernize the outdated regulatory framework for the 2.5 GHz band to make this swath of vital mid-band spectrum available for advanced wireless services, including 5G. The 2.5 GHz band—the single largest band of contiguous spectrum below 3 GHz—offers favorable coverage and capacity characteristics for next-generation mobile services. The *Report and Order* eliminated restrictions on the types of entities that can hold EBS licenses and eliminated the educational use requirements, while preserving incumbent licensees’ private contractual arrangements and provisions in existing leases. Further, the *Report and Order* removed limitations on leases entered into on a going-forward basis under the Commission’s secondary markets rules, in order to create incentives to build out in rural areas. *Report and Order*, 34 FCC Rcd at 5450-62, paras. 14-44.

<sup>4</sup> *Id.* at 5463-69, paras. 47-65.

opportunity to apply for this spectrum before any remaining unassigned spectrum will be made available for commercial use via competitive bidding.<sup>5</sup>

3. The Commission directed the Bureau “to announce procedures for the Rural Tribal Priority Window through one or more Public Notices and other appropriate outreach to potentially eligible Tribal applicants.”<sup>6</sup> The Bureau announced the dates for the window by Public Notice on December 2, 2019.<sup>7</sup> This Tribal Window Procedures Public Notice sets forth the process for federally recognized Tribes and eligible Tribally owned entities to apply for unassigned eligible 2.5 GHz spectrum. As discussed in greater detail below, to participate in the Rural Tribal Priority Window, an applicant must be a federally recognized Tribe or Alaska Native Village or an eligible Tribally owned and controlled entity, applying for a license on rural Tribal lands where the applicant can demonstrate a local presence. In addition, applications will only be accepted for channel groups for which there is currently unassigned spectrum in the eligible portion of the 2.5 GHz band (former EBS spectrum) over the relevant rural Tribal land.

4. Prospective applicants should familiarize themselves with the Commission’s service rules governing operation in the 2.5 GHz band, as well as any service rules unique to licenses acquired through application in the Rural Tribal Priority Window.<sup>8</sup> For example, licenses acquired in the Rural Tribal Priority Window must meet certain performance requirements, including an interim build-out requirement after two years and final build-out requirement after five years.<sup>9</sup> The consequence of missing the interim deadline will be an acceleration of the final deadline by one year,<sup>10</sup> and licensees that miss the final build-out deadline will be subject to having their licenses cancelled.<sup>11</sup>

5. We strongly encourage potential applicants to conduct due diligence to determine whether they will be able to provide service in the areas for which they intend to apply for licenses. A non-exhaustive list of factors that prospective applicants should consider includes: 1) how much unassigned eligible 2.5 GHz spectrum is available; 2) equipment siting, site acquisition, and/or leasing; 3) technical requirements, including infrastructure and other network equipment; 4) neighboring operations that must be protected from interference; 5) system financing or partnership arrangements; 6) system administration and management; and 7) network and backhaul needs.

#### **B. Resources to Prepare for Participation in the Window**

6. *Individualized Guidance.* The Bureau is available to assist prospective applicants interested in applying for eligible 2.5 GHz spectrum licenses during the Rural Tribal Priority Window. We strongly encourage potential Tribal applicants to make inquiries via e-mail to [RuralTribalWindow@fcc.gov](mailto:RuralTribalWindow@fcc.gov), so the Bureau can provide additional information, updates, reminder notifications, and web-based information and tools to assist them in navigating the due diligence and application process. Alternatively, potential applicants may call Cecilia Sulhoff, the Bureau’s outreach

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<sup>5</sup> *Id.* at 5472, para. 75.

<sup>6</sup> *Id.* at 5467-68, para. 61.

<sup>7</sup> *Window Public Notice.*

<sup>8</sup> See 47 CFR §§ 27.50-27.77 and 27.1200-27.1222. Licensees are also expected to be familiar with the Commission’s rules with respect to their licensees generally.

<sup>9</sup> See 47 CFR § 27.1214(u)(4).

<sup>10</sup> See 47 CFR § 27.1214(u)(5). It is worth noting that EBS licenses granted during the Rural Tribal Priority Window will not be permitted to assign or transfer their licenses until after they have met the necessary performance requirements. *Report and Order*, 34 FCC Rcd at 5468-69, para. 64. These licensees will be permitted to lease all or part of their spectrum. *Id.*

<sup>11</sup> See 47 CFR §§ 27.1209(b) and (c).

specialist, at (202) 418-0587. We ask that Tribal entities provide the following information in their inquiry: name and contact information for the person making the inquiry; name of potential applicant, nature of Tribal affiliation, Tribal land(s) for which the applicant is interested in applying, whether they are a federally recognized Tribe or majority owned and controlled entity, and complete contact information for the applicant, including, at a minimum, the senior official of the applicant.

7. *Web Page.* The Bureau, together with the ONAP, is providing a series of tools that potential applicants can use to assist them in the application process. The Bureau and ONAP have established a web page dedicated to the Rural Tribal Priority Window, located at [www.fcc.gov/RuralTribalWindow](http://www.fcc.gov/RuralTribalWindow).

8. *Mapping Tool.* The licenses issued via the Rural Tribal Priority Window will only include unassigned spectrum that is available in eligible rural tribal areas. Accordingly, Tribes and eligible Tribally owned entities interested in applying for the Rural Tribal Priority Window should carefully research existing EBS licenses to determine whether there is available unassigned spectrum in the areas in which they are interested in providing service. The Rural Tribal Window web page provides access to a mapping tool that can help with this task. The mapping tool provides a high-level view of spectrum availability and allows users to link to the Universal Licensing System (ULS) to confirm the exact amount of eligible spectrum available. The mapping tool can be accessed directly at [www.fcc.gov/25-ghz-rural-tribal-maps](http://www.fcc.gov/25-ghz-rural-tribal-maps); ULS can be accessed directly at [www.fcc.gov/uls](http://www.fcc.gov/uls).

### C. Procedures for Participating in the Window

9. *Opening and Closing of the Window.* The window for filing applications will open at **9:00 a.m. Eastern Standard Time on February 3, 2020** and close at **6:00 p.m. Eastern Daylight Time on August 3, 2020. Applications filed prior to the window opening and after the window closes will be dismissed.** Applicants may amend their applications up until the window closes. While applicants will be permitted to file minor amendments after the window closes, major amendments to the applications will not be permitted. Section 1.929 of the Commission's rules defines major and minor amendments.<sup>12</sup> Specifically, applicants will not be permitted to amend an application to add, remove, or change applicant name, to add additional Tribal areas (as described below) or to add spectrum blocks (as described below) after the window closes on August 3, 2020. Applicants will, however, be permitted to amend an application to delete a Tribal area or a spectrum block, but once deleted, such area or block cannot be resubmitted or added.

10. *Universal Licensing System.* Applications must be filed electronically through ULS. Paper applications will not be accepted. There is no filing fee associated with these applications. Applicants are required to file an FCC Form 601 (license application) and an FCC Form 602 (ownership information) and are responsible for ensuring that all information in those forms is complete and accurate prior to submission.<sup>13</sup> Appendix A to this Public Notice contains specific, step-by-step instructions for filing a Rural Tribal Priority Window application.

11. *Selecting Channels.* As determined in the *Report and Order*, the available 2.5 GHz spectrum will be licensed in three separate channels. As depicted in Figure 1, New Channel 1, 2502-2551.5 MHz, will include legacy channels A1-A3, B1-B3, C1-C3 (49.5 megahertz); New Channel 2, 2551.5-2602 MHz, will include legacy channels D1-D3, the J channels, and channels A4, B4, C4, D4 and G4 (50.5 megahertz); and New Channel 3 will include legacy channels G1-G3 (2673.5-2690 MHz) and the relevant K channels (2615-2616 MHz) (16.5 megahertz of contiguous spectrum and 1 megahertz of

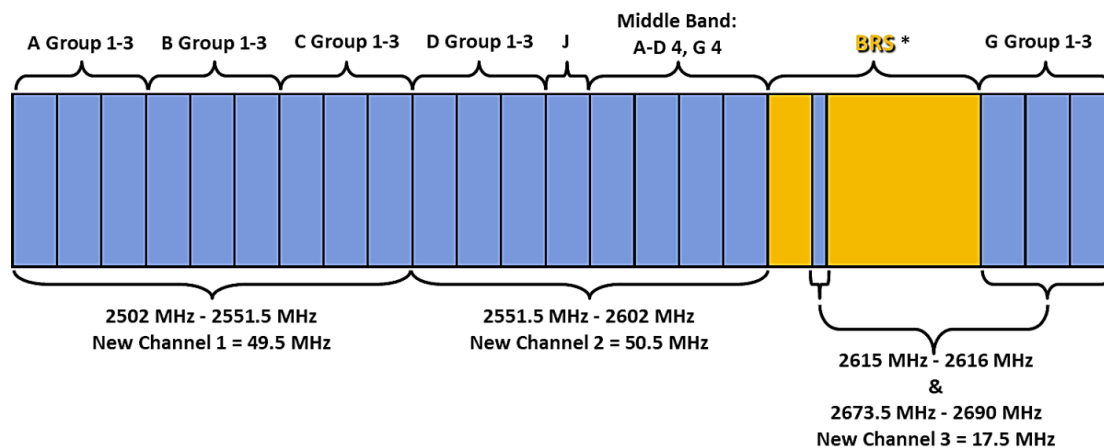
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<sup>12</sup> See 47 CFR §§ 1.929.

<sup>13</sup> Applicants are reminded that some information is included in both FCC Form 601 and FCC Form 602. As a result, applicants may need to make corresponding changes to their FCC Form 601 as a result of changes to their FCC Form 602, and vice versa.

the K channels associated with the G channel group).<sup>14</sup> Eligible applicants are permitted to apply for one, two or all three of the channels as long as there is some unassigned spectrum on the Tribal land within each channel block for which they apply.<sup>15</sup> Applicants should note that if their application includes channels for which there is no available unassigned spectrum, the application will not be dismissed. Instead, the application will undergo further review and be processed based only on the available unassigned spectrum; such further review may delay the application.

FIGURE 1



12. The licenses issued via the Rural Tribal Priority Window are “overlay licenses,” which means that they do not provide rights to use spectrum previously licensed to existing licensees, even if the existing licensee has not deployed service using the spectrum in question.<sup>16</sup> While a Rural Tribal Priority Window applicant may apply for qualifying Tribal land even if there are incumbent EBS licenses, an applicant will not be authorized to use previously assigned spectrum held by another EBS licensee, unless and until the previously assigned license expires without renewal or is otherwise cancelled or terminated.<sup>17</sup> Tribal licensees are, however, permitted to negotiate leases or other arrangements with existing licensees to provide service in those areas.

13. *Separate Applications for Separate Tribal Areas.* Applicants shall file separate applications for separate Tribal areas, except: (1) a single application may be filed for one contiguous area, even if the area contains multiple eligible Tribal lands (so long as all of the area is eligible rural Tribal land and the applicant(s) demonstrate local presence in each eligible Tribal land), or (2) a single application may be filed for multiple areas that are not contiguous with each other if all the areas are eligible and are contained within a single reservation or other Tribal land. There is no limit on the number of applications that an eligible Tribe or Tribally owned entity may file, so long as the applicant meets all requirements for the license area(s) sought in each application. The Bureau will issue separate

<sup>14</sup> *Report and Order*, 34 FCC Rcd at 5481, para. 96.

<sup>15</sup> In other words, if there is some unassigned spectrum on the Tribal land for Channel 1 and for Channel 2 but not for Channel 3, an eligible applicant may apply for a license on that Tribal land for Channel 1, for Channel 2, or for both channels. In this example, an eligible applicant may not apply for a license on that Tribal land for Channel 3.

<sup>16</sup> *Report and Order*, 34 FCC Rcd at 5469, para. 65. If an EBS incumbent authorization cancels or expires, and the license covers Tribal Land, and the area is contiguous to the GSA of a co-channel authorization issued in the Rural Tribal Priority Window, the area consisting of Tribal Land reverts to the co-channel license issued in the Rural Tribal Priority Window. 47 CFR § 27.1209(b).

<sup>17</sup> See 47 CFR § 27.1209(b).

licenses for each separate application filed. Licensees must separately demonstrate compliance with construction requirements and renewal standard for each license received.<sup>18</sup>

14. *Eligibility Exhibits.* Rural Tribal Priority Window applicants must meet four eligibility requirements: (1) the applicant is a federally recognized Tribe or Alaska Native Village, a consortium of federally recognized Tribes or Alaska Native Villages, or an entity majority owned and controlled by a federally recognized Tribe or Alaska Native Village or a consortium of federally recognized Tribes or Alaska Native Villages; (2) the area for which the applicant seeks a license is an eligible Tribal land; (3) the Tribal land is rural; and (4) the Applicant maintains a local presence for each Tribal land. Every applicant must demonstrate that it meets all four of the eligibility requirements; an applicant filing multiple applications must separately demonstrate that it meets all of the eligibility requirements for each application filed. As explained in greater detail in the paragraphs that follow, to demonstrate that it meets the eligibility requirements, an applicant must upload exhibit(s) to its Priority Window application in ULS using the attachment link as described in Attachment A. Each required eligibility showing must be included in an exhibit attached to the application. If an applicant wishes to seek a waiver of any of the eligibility requirements, it may file a waiver request, also using the attachment link.

15. *Waiver Requests.* All waiver requests MUST be filed within the Rural Tribal Priority Window, preferably as part of the application, as the application process has been simplified to allow applicants to indicate that they are filing a waiver request to simply upload the request as part of the application. Waiver requests will be considered on a case-by-case basis using the Commission's waiver standard contained in Section 1.925 of the rules.<sup>19</sup> Applicants may NOT, under any circumstances, seek a waiver to obtain spectrum that already has been licensed. Any necessary waiver requests should be filed before the window closes.

16. *Eligible Entities.* Each applicant must demonstrate that it is a federally recognized Tribe or Alaska Native Village, that it is a consortium of federally recognized Tribes, or that it is an entity majority owned and controlled by a federally recognized Tribe or Alaska Native Village or consortium of federally recognized Tribes or Villages.<sup>20</sup> State recognized Tribes are not eligible to file in this window. Whether or not a Tribe is federally recognized is a question of fact that must be supported by information available through the Bureau of Indian Affairs (BIA).<sup>21</sup> If an applicant is seeking eligibility as an entity majority owned and controlled by a federally recognized Tribe, it must provide sufficient documentation to demonstrate such ownership and control. Alaska Native regional corporations are not eligible to file applications in the Rural Tribal Priority Window because they are not entities "owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes."<sup>22</sup>

17. Each member of a consortium must individually and separately be eligible and meet all of the requirements to apply. Thus, each member of a consortium must be a federally recognized Tribe, be applying to provide service on rural Tribal land, as defined below, and be able to demonstrate a local presence. If one member of a consortium is ineligible, the entire consortium is ineligible, and the application will be dismissed.

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<sup>18</sup> See 47 CFR §§ 1.949(d), 30.104.

<sup>19</sup> 47 CFR § 1.925.

<sup>20</sup> 47 CFR § 27.1204(b)(1).

<sup>21</sup> The 2019 list of Federally Recognized Tribes can be found here: <https://www.federalregister.gov/documents/2019/02/01/2019-00897/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>. State recognized Tribes that are not federally recognized are not eligible to file in the Rural Tribal Priority Window.

<sup>22</sup> 47 CFR § 27.1204(b)(1).

18. *Tribal Lands.* Each Applicant must demonstrate that it is applying to provide service on eligible Tribal land, which is defined as any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see §54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended; and any lands designated as Tribal lands pursuant to the designation process contained in Section 54.412 of our rules prior to July 10, 2019.<sup>23</sup> Non-reservation lands are not eligible.

19. Parties must file applications for eligible Tribal lands via the Commission's database, the Universal Licensing System (ULS) by submitting a shapefile describing the area for which they seek a license. Acceptable shapefiles include all GIS Map File types, including XML, KML, KMZ, and Shape(zip). See Appendix A for detailed instructions on how to file applications. To assist applicants in providing these shapefiles, the Bureau has created shapefiles of all eligible rural Tribal lands, and those shapefiles can be downloaded from the website and/or the mapping tool and uploaded as part of the application. The shapefiles can be found at <https://us-fcc.app.box.com/s/fofbkwy5lxo6q8kq94i5bg8raob5gpui>. Applicants for eligible Tribal lands in Alaska may wish to customize the area being applied for and provide their own shapefile, explaining their local presence in the submitted area. If an applicant is applying for an area for which there is not an uploadable shapefile, in addition to uploading a shapefile in one of the file types discussed above, the area covered by the shapefile must be described in the applicant's eligibility exhibit. Applicants are reminded that any shapefile that is not limited to eligible, rural Tribal lands must be accompanied by a waiver request.

20. *Rural.* Applicants also are required to demonstrate that all of the Tribal land for which they are applying is rural, defined for purposes of the Rural Tribal Priority Window as not being part of an urbanized area or urban cluster with a population equal to or greater than 50,000.<sup>24</sup> Use of an unmodified Commission-provided shape file to define the applicant's proposed service area will be *prima facie* evidence that the service area is rural, unless the shape file shows the existence of an urbanized area or urban cluster within the Tribal land. In the latter case, the applicant should provide in its eligibility exhibit an affirmative statement that it is not applying for a license in any area that is not rural. Information on urbanized areas and urbanized clusters is available at <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>.<sup>25</sup>

21. *Local Presence.* Applicants also are required to demonstrate that they have a local presence throughout the Tribal land for which they are applying.<sup>26</sup> The Tribe or eligible Tribally owned entity must specifically describe the nature of the local presence and demonstrate that the applicant is physically located on the Tribal land.<sup>27</sup> Applicants will not be granted a license for Tribal lands where

<sup>23</sup> 47 CFR § 27.1204(b)(2). The lands for which the Commission issued waivers of 47 CFR § 54.400(e) in *Federal-State Joint Board on Universal Service; Smith Bagley, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 7701 (2005) and *Sacred Wind Communications, Inc. and Qwest Corporation*, Order, 21 FCC Rcd 9227 (WCB 2006) do not fall within this definition of Tribal lands because they were not specifically designated pursuant to 47 CFR § 54.412.

<sup>24</sup> 47 CFR § 27.1204(b)(3).

<sup>25</sup> *Report and Order*, 34 FCC Rcd at 5466-67, paras. 56-58.

<sup>26</sup> 47 CFR § 27.1204(b)(4).

<sup>27</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*, Notice of Proposed Rulemaking, 33 FCC Rcd 4687, 4696-97, para. 29 (2018) (NPRM).

they cannot demonstrate a local presence. We will generally apply the local presence requirement on an individual Tribal land basis. In other words, if an applicant is applying for multiple Tribal lands, it must demonstrate local presence in each separate Tribal land.

22. In Alaska, there are two types of Tribal land that meet the rule's definition of Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (ANCSA). First, there are 229 federally-recognized Alaska Native Villages eligible to receive services from the Bureau of Indian Affairs.<sup>28</sup> Second, the ANCSA mandated the creation of regional and village Native corporations to disburse money and approximately 44 million acres, or nearly 12% of the total land in Alaska, to Native ownership in settlement of long-standing land claims arising from the United States' initial acquisition of the Alaska territory.<sup>29</sup> These twelve Native regional corporations geographically cover the entire state and represent areas of common heritage and interest, but the entirety of these regions are not owned outright by the Native regional corporations.<sup>30</sup> An applicant seeking to apply for a license in one of the twelve Native regional corporation areas must demonstrate local presence throughout the portion of the regional corporation area for which it seeks a license. Local presence in one location will not be sufficient to support a finding of local presence throughout a Native regional corporation area.

23. Eligible Tribes will have local presence on their reservation lands if they physically occupy those lands and Tribal members reside there. A Federally recognized Tribe is presumed to have a local presence on its own Tribal land. An eligible Tribally owned and controlled corporation must demonstrate local presence on the Tribal land for which it applies. Local presence could be demonstrated, for example, by showing that the corporation is owned and controlled by the Tribe for whose rural land it is applying and that the corporation provides services or goods on that Tribal land. A Tribe will not have local presence on another Tribe's reservation lands (unless it also has an interest in the land in question). At the application stage, applicants need not file any technical specifications of the services they intend to provide.<sup>31</sup>

24. *Ownership Form.* Pursuant to Section 1.919(b)(1) of the Commission's rules, each applicant must have a current FCC Form 602 Ownership Form on file in ULS when it files its application. The requirements for the Ownership Form are contained in Section 1.2112 of the Commission's rules. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, it must submit one. If the applicant is a corporation, limited partnership, or other such entity, it should follow the

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<sup>28</sup> The 2019 list of Federally Recognized Tribes can be found here: <https://www.federalregister.gov/documents/2019/02/01/2019-00897/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>; see also CORPORATIONS – ANCSA INFORMATION, <https://www.commerce.alaska.gov/web/cbpl/Corporations/ANCSAInformation.aspx> (last visited November 21, 2019) (noting that the “U.S. government officially recognizes currently 566 Indian Tribes (variously called tribes, nations, bands, pueblos, communities and native villages) as sovereign nations in the United States. There are 229 of these ethnically, culturally and linguistically diverse nations located in the state of Alaska...”).

<sup>29</sup> ALASKA NATIVE CORPORATIONS BACKGROUND, <https://www.akrdc.org/alaska-native-corporations> (last visited November 20, 2019). The Metlakatla Indian Community voted to opt out of ANCSA and reside on the Annette Islands Reserve, which is the only reservation in Alaska and covers 132,000 acres of land and water. METLAKATLA, ALASKA, [https://en.wikipedia.org/wiki/Metlakatla,\\_Alaska](https://en.wikipedia.org/wiki/Metlakatla,_Alaska) (last visited November 20, 2019).

<sup>30</sup> CORPORATIONS – ANCSA INFORMATION, <https://www.commerce.alaska.gov/web/cbpl/Corporations/ANCSAInformation.aspx> (last visited November 21, 2019). Previously, a 13<sup>th</sup> corporation was based in Seattle, WA and oversaw cash-only disbursements to Native Alaskans who lived outside the state, but it has since disbanded. *Id.*

<sup>31</sup> If an applicant submits any technical specifications or other information not required in the application, the Bureau will not review such information, and the Bureau's acceptance of an application that includes such information is not an acceptance of those technical specifications.

instructions for Form 602 available at <https://transition.fcc.gov/Forms/Form602/602.pdf>. If the applicant is a Tribe, it should complete the Main Form portion of Form 602. In lieu of filling out Schedule A of Form 602, a Tribal applicant should provide an exhibit listing the name, address, and title(s) of each member of the governing council or other entity that oversees the Tribe's affairs.

25. *Public Notice.* After close of the Rural Tribal Priority Window, all applications acceptable for filing (including the associated shapefile(s) for each application) will be placed on public notice, and the applications will be available for public review and comment.<sup>32</sup> As applications are filed, the applications (including the associated shapefiles) will be publicly viewable, which will allow the public to see which areas and channels for which an application has been submitted. The fact that an application is publicly viewable does not mean that the application has been accepted for filing or that the associated shapefile has been reviewed or approved.

26. *Mutual Exclusivity.* Mutually exclusive applications are applications that request common geographic areas and spectrum, even if there is only partial overlap. To the extent that the Commission receives mutually exclusive applications, it is required by section 309(j) of the Communications Act of 1934, as amended, to use competitive bidding to resolve the mutual exclusivity.<sup>33</sup> Applicants are therefore encouraged to avoid filing mutually exclusive applications if they wish to avoid being subject to competitive bidding. To the extent such applications are filed, the Commission, after the close of the Rural Tribal Priority Window, will put out a Public Notice listing the mutually exclusive applications and providing the applicants with a limited time settlement window of 90 days within which to resolve the mutual exclusivity prior to the applications going to a closed, single round, sealed bid auction. Applicants are reminded that applications that have any geographic or spectral overlap will be considered mutually exclusive, even if the overlap is minimal. Once applications are designated for competitive bidding, the Commission's anti-collusion rules will prohibit applicants from having potential settlement discussions or otherwise discussing the applications.<sup>34</sup> Specific procedures with respect to a settlement window and closed auctions will be released as necessary at a later date.

#### D. Other Procedural Issues

27. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>35</sup> the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in connection with the *NPRM*<sup>36</sup> and a Final Regulatory Flexibility Analysis (FRFA) in connection with the *Report and Order*.<sup>37</sup> No commenter directly responded to the IRFA. The IRFA and FRFA set forth the need for and objectives of the Commission's rules for the rules; the legal basis for those rules, a description and estimate of the number of small entities to which the rules apply; a description of projected reporting, recordkeeping, and other compliance requirements for small entities; steps taken to minimize the significant economic impact on small entities and significant alternatives considered; and a statement that there are no federal rules that may duplicate, overlap, or conflict with the rules. We conclude that the

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<sup>32</sup> Because the shapefile contains the primary substantive information for which public notice is provided, i.e., details about the scope of the requested license area sufficient to determine whether the license application is mutually exclusive with another application, we do not anticipate a likely scenario in which confidential treatment of a shapefile would be warranted.

<sup>33</sup> *Report and Order*, 34 FCC Rcd at 5468 and 5470, paras. 62 and 68.

<sup>34</sup> 47 CFR § 1.2105(c).

<sup>35</sup> See 5 U.S.C. § 603. The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>36</sup> *NPRM*, Appendix B.

<sup>37</sup> *Report and Order*, 34 FCC Rcd at 5503 *et seq.*, Appendix B.



implementation of our proposals herein has had no further impact beyond that identified in the IRFA and FRFA.

28. *Paperwork Reduction Act.* The Office of Management and Budget has approved the information collection(s) relating to the Rural Tribal Priority Window subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number. The control number for this collection is 3060-1094.

29. *Further Information.* Questions regarding this public notice may be directed to [RuralTribalWindow@fcc.gov](mailto:RuralTribalWindow@fcc.gov). Once the filing window opens, applicants needing filing assistance during the filing window may contact the ULS Licensing Support Hotline at (877) 480-3201 (TTY: (717) 338-2824, ASL Videophone: (844) 432-2275). The ULS Licensing Support Hotline is available Monday through Friday, from 8:00 A.M. to 6:00 P.M. Eastern Time (except for Federal holidays). Press contact: Cecilia Sulhoff at (202) 418-0587 or [Cecilia.Sulhoff@fcc.gov](mailto:Cecilia.Sulhoff@fcc.gov).

30. Action taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331, and *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5466 (2019).

By the Chief, Wireless Telecommunications Bureau.