



# PUBLIC NOTICE

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## WIRELESS TELECOMMUNICATIONS BUREAU ENCOURAGES 2.5 GHZ RURAL TRIBAL PRIORITY WINDOW APPLICANTS TO RESOLVE MUTUAL EXCLUSIVITY

The Commission created the 2.5 GHz Rural Tribal Priority Window for eligible Tribal entities to gain access to prime mid-band spectrum to deploy broadband and other next-generation wireless services to address the digital divide on rural Tribal lands.<sup>1</sup> Successful Tribal applicants will receive licenses for exclusive use of up to 117.5 megahertz of unassigned 2.5 GHz spectrum which can help serve the communications needs of their rural Tribal communities. To date, the Wireless Telecommunications Bureau (Bureau) has granted 270 licenses to Tribes or Tribally-controlled entities.

Most of the Rural Tribal Priority Window applications that remain pending before the Bureau are mutually exclusive with other applications also filed in the window. Mutual exclusivity occurs when more than one application requests some amount of common geographic area and spectrum, no matter how minimal the overlap. Due to statutory requirements, mutually exclusive applications cannot be processed under the Commission's normal application review process unless the overlap is eliminated.<sup>2</sup> Tribal entities with pending applications from the Rural Tribal Priority Window are thus strongly encouraged to assess whether their applications are mutually exclusive with any others and, if so, take voluntary steps to remedy any overlaps.

Today the Wireless Telecommunications Bureau was able to announce that an additional 20 applications have been accepted for filing. Each of these applications cover Alaskan Native communities where potential mutual exclusivity issues were addressed through voluntary steps, clearing the way for their applications to proceed under the Commission's normal application review process.<sup>3</sup>

Rural Tribal Priority Window applicants that are able to successfully eliminate mutually exclusive overlaps may expedite the processing of their applications, facilitating access to sources of outside funding for the construction of their networks.<sup>4</sup> To eliminate mutual exclusivity, applicants may amend their applications in the Commission's Universal Licensing System (ULS) to reduce their shapefiles to remove overlaps. Applicants may not amend their pending applications to expand

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<sup>1</sup> See *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446, 5463, para. 47 (2019) (*2.5 GHz Report and Order*); *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, 35 FCC Rcd 308 (WTB 2020) (*Procedures Public Notice*); *Transforming the 2.5 GHz Band*, Memorandum Opinion and Order, 35 FCC Rcd 8112 (WTB 2020).

<sup>2</sup> The Commission is required by section 309(j) of the Communications Act of 1934, as amended, to use competitive bidding to resolve mutual exclusivity. 47 U.S.C. § 307(j); see *Report and Order*, 34 FCC Rcd at 5468, 5470, paras. 62 and 68.

<sup>3</sup> See *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted For Filing*, DA 21-1185 (rel. Sep 22, 2021).

<sup>4</sup> See, e.g., *Notice of Funding Opportunity*, National Telecommunications and Information Administration, NTIA-TBC-TBCPO-2021-2006948 available at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=333974> (June 3, 2021)

shapefiles. In addition to reducing their shapefiles, applicants will also need to provide an exhibit explaining why they are amending their application.

Applicants can determine where unresolved mutual exclusivity exists by accessing the Commission's online mapping tool at: <https://www.fcc.gov/rural-tribal-window-updates> (click on the blue tab for "Maps" and then the blue "View Maps" button). Applicants should check the "Pending - Applications" and "Eligible Rural Tribal Lands" boxes and click on the map to bring up a pop-up with information on each application or eligible area (use the arrows to navigate information for multiple applications or areas). Commission staff can assist applicants with determining whether an application is mutually exclusive, but staff may not take part in negotiations between the mutually exclusive applicants. Any questions or requests for additional information can be submitted via email at [RuralTribalWindow@fcc.gov](mailto:RuralTribalWindow@fcc.gov).

Where applicants are unable to voluntarily resolve mutual exclusivity, the Commission is statutorily required to award licenses through competitive bidding.<sup>5</sup> Proceeding to award licenses through competitive bidding would add further delay and increased costs to Rural Tribal Priority Window applicants' access to 2.5 GHz spectrum. Thus, applicants that can resolve mutual exclusivity now, as outlined above, may significantly accelerate their access to unassigned 2.5 GHz spectrum that can be used to provide broadband and other advanced wireless services to rural Tribal communities.

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<sup>5</sup> Specifically, the Bureau will establish a limited time settlement window within which applicants must resolve the mutual exclusivity; if no settlement results, licenses will be awarded through a closed, single round, sealed bid auction. *Procedures Public Notice*, 35 FCC Red at 315, para. 26. Once applications are designated for competitive bidding, the Commission's anti-collusion rules will prohibit applicants from having further discussions about the applications. *Id.* See 47 CFR § 1.2105(c).