

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

In the Matter of)
SANTA YNEZ BAND OF) ULS File Nos. 0009169131, 0009169143,
CHUMASH MISSION INDIANS) 0009169146
Requests for Waiver of Tribal Lands Definition in)
the 2.5 GHz Tribal Priority Window)

MEMORANDUM OPINION AND ORDER

Adopted: March 1, 2021

Released: March 1, 2021

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 31, 2020, the Santa Ynez Band of Chumash Mission Indians (Santa Ynez or “the Tribe”) submitted three separate requests for waiver in connection with applications it filed in the 2.5 GHz Rural Tribal Priority Window (Tribal Window).1 Santa Ynez requests waivers of section 27.1204(b)(2) of the Commission’s rules,2 which defines eligible Tribal lands for purposes of the Tribal Window. In this Memorandum Opinion and Order, we grant Santa Ynez’s Waiver Requests because they meet the Commission’s waiver standard.3

II. BACKGROUND

2. In July 2019, the Commission approved an order modernizing the portion of the 2.5 GHz band formerly known as the Educational Broadband Service.4 Among other things, the order created a Rural Tribal Priority Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum. To obtain a license in the Rural Tribal Priority Window, an applicant must meet four requirements. First, the applicant must be an eligible entity, which the rule defines as a “federally recognized American Indian Tribe or Alaska Native Village; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes.”5 Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission’s rules.6 Third, the eligible Tribal land must be in a rural area, which is defined as “lands that are not part

1 File Nos. 0009169131, 0009169143, 0009169146 Santa Ynez Band of Chumash Mission Indians, Eligibility and Local Presence Exhibit and Request for Waiver (Waiver Requests). While the Tribe filed three separate applications, one for each of three separate areas, the Tribe filed the same document with all three applications.

2 See 47 CFR § 27.1204(b)(2).

3 See 47 CFR § 1.925(b)(3).

4 Transforming the 2.5 GHz Band, Report & Order, 34 FCC Rcd 5447 (2019) (2.5 GHz Report & Order).

5 See 47 CFR § 27.1204(b)(1).

6 See 47 CFR § 27.1204(b)(2). The rule defines eligible Tribal lands in relevant part 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) of this chapter, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the State

(continued....)

of an urbanized area or urban cluster area with a population equal to or greater than 50,000.”⁷ Finally, the applicant must have a local presence on the eligible Tribal land for which it is applying.⁸

3. Recently, the Commission denied a petition for reconsideration seeking adoption of the broader definition of Tribal lands contained in part 73 of our rules, which includes off-reservation trust lands, for purposes of the Tribal Window.⁹ Specifically, “[t]he Commission required the direct participation of Tribal governments, or entities owned and controlled by such Tribes, in the 2.5 GHz context to ensure that licensees would have the requisite authority over the deployment of facilities and service on their rural Tribal lands.”¹⁰ The Commission recognized, however, that there might be “exceptions to the general rule” where case-by-case waivers would be appropriate to allow for the licensing of off-reservation lands in the Tribal Window.¹¹

4. The Santa Ynez filed four applications within the Tribal Window. The first application sought a license for the Tribe’s reservation lands in California and has already been granted.¹² The other three applications, which are the subject of this *Memorandum Opinion and Order*, request waivers of the Tribal lands definition in order to obtain licenses for non-reservation trust¹³ and Tribally-owned fee lands nearby or adjacent to the reservation.¹⁴

5. As detailed in its Waiver Requests, a parcel the Santa Ynez calls 6.9 Acres was taken into trust for the benefit of the Tribe in 2014.¹⁵ The Tribe asserts that Tribal members will live in the 6.9 Acres area once it is fully developed, and that this parcel is also home to the Chumash Heritage Hall and the soon to be completed Chumash Museum.¹⁶ The Santa Ynez state that another area called Camp 4 was placed in trust for the benefit of the Tribe in 2019 and has 143 residences, additional Tribal housing in development, as well as farmland and other Tribal resources within its boundaries.¹⁷ Finally, the Santa

of Hawai’i, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended.” *Id.*

⁷ 47 CFR § 27.1204(b)(3).

⁸ 47 CFR § 27.1204(b)(4). On January 6, 2020, the Wireless Telecommunications Bureau (Bureau) released a Public Notice setting forth the process for submitting applications in the 2.5 GHz Rural Tribal Priority Window, including details regarding how applicants could demonstrate compliance with the eligibility requirements or file requests for waiver. *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, 35 FCC Rcd 308 (2020).

⁹ See *Transforming the 2.5 GHz Band*, Order on Reconsideration, FCC 20-183 (rel. Dec. 17, 2020) (*Reconsideration Order*) at para. 22.

¹⁰ *Id.*

¹¹ *Id.* at para. 23.

¹² File No. 0009169139 (granted Jan. 4, 2021).

¹³ Waiver Requests at 2, 4-7 (citing a decision of the Interior Board of Indian Appeals and the National Defense Authorization Act for Fiscal Year 2020 for placing the 6.9 Acres and Camp 4 parcels into trust status).

¹⁴ Waiver Requests at 3, 7-8.

¹⁵ Waiver Requests at 4.

¹⁶ Waiver Requests at 5-6.

¹⁷ Waiver Requests at 6. The Santa Ynez assert that section 2868 of the National Defense Authorization Act for Fiscal Year 2020 added the Camp 4 area to its reservation, in addition to placing the land in trust for the benefit of the Tribe. *Id.* Given the waiver relief afforded all three land areas in the instant *Memorandum Opinion and Order*, we need not further consider the specific land status of the Camp 4 parcel.

Ynez Parcels are Tribally owned fee lands¹⁸ located between the 6.9 Acres and Camp 4.¹⁹ The Tribe specifies that more than ten percent of its members live in the Santa Ynez Parcels, and that the area also has a fire department, schools, and several Tribally-owned businesses.²⁰

6. If these applications are granted, the Santa Ynez intend to use the licenses to provide wireless services to all three of these areas where Tribal members live, work, and otherwise occupy the land. The Santa Ynez indicate that wireless service is currently intermittent and not always available in those areas.²¹

7. The applications were accepted for filing on November 10, 2020.²² No petitions to deny or oppositions were filed against any of the applications.

III. DISCUSSION

8. A request for a waiver may be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²³ Here, we find that Santa Ynez's showings meet the first prong of the Commission's waiver standard. Accordingly, we grant a waiver of section 27.1204(b)(2) of the Commission's rules to allow licensing of the three non-reservation trust and fee lands specified in the applications.²⁴

9. The Commission established a Tribal Priority Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.²⁵ In this instance, we find that strictly applying the Tribal lands definition would be inconsistent with the Tribal Window's purpose of providing wireless communications services in rural Tribal areas. First, we find that the Santa Ynez have shown that the trust and fee lands in question are either held for the specific benefit of the Tribe or are directly owned by the Tribe. Further, the Tribe's authority over the lands is adequately demonstrated by the fact that the Santa Ynez have built Tribal housing and other Tribal facilities in these areas. We find, based upon the showings made by Santa Ynez, that treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.²⁶ We note that the lands in

¹⁸ Waiver Requests at 3.

¹⁹ Waiver Requests at 8.

²⁰ Waiver Requests at 7-8.

²¹ Waiver Requests at 5-6, 8.

²² *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 35 FCC Rcd 12850 (WTB 2020).

²³ 47 CFR § 1.925(b)(3).

²⁴ The Tribe asserts that a waiver is not required for the 6.9 Acres parcel. Waiver Requests at 4. We disagree. As discussed in the *Order on Reconsideration*, off-reservation trust lands do not fall within the Tribal lands definition adopted for the Tribal Priority Window. *Reconsideration Order* at paras. 22-23. The Commission recognized, however, that there could be circumstances where a waiver would be appropriate to allow licensing of off-reservation trust lands. *Reconsideration Order* at paras. 23. We find those circumstances are met in the instant case.

²⁵ *Reconsideration Order* at para. 4.

²⁶ The Commission has noted that the problem of lack of communications is particularly acute on rural Tribal lands. See *2.5 GHz Report and Order*, 34 FCC Rcd at 5466, para. 56; see also *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Progress Report, 35 FCC Rcd 8986, 9013, para. 47 (2020) ("Rural Tribal lands continue to lag behind urban Tribal lands, with only 52.9% of all Tribal lands in rural areas having deployment of both [fixed and mobile broadband] services, as compared to 93.1% of Tribal lands in urban areas").

question are areas within the Tribe's current, demonstrated authority and they are contiguous to part of the reservation lands for which we already have issued a license. Granting a waiver under these particular facts and circumstances would facilitate service on the Tribe's reservation by creating a larger contiguous service area covering both the reservation and adjoining trust and fee lands. In addition, we find that a waiver would be in the public interest because the Santa Ynez have plans to use the spectrum to provide wireless service on rural lands either specifically held in trust for the Tribe's benefit or owned directly by the Tribe.²⁷

10. We note that the Santa Ynez must ensure that any system it deploys complies with our technical rules. In particular, our rules for the 2.5 GHz band limit the field strength that can be radiated at the border of a licensee's service area.²⁸ Also, a licensee's entitlement to interference protection is dependent on its compliance with the height benchmark, which is dependent on the height of the antenna and the distance to another licensee's geographic service area.²⁹ Absent agreements with neighboring licensees or a waiver of those rules, the Santa Ynez must comply with those rules.

11. We note that our decision here is limited to the suitability of these specific trust and fee lands to be found as eligible Tribal lands under the Tribal Window. We make no determination as to the status of these trust and fee lands with respect to other Commission rules or programs, nor for any other purpose.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 303(c), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 309(a), and Section 1.925(b)(3) of the Commission's Rules, 47 CFR § 1.925(b)(3), that the waiver requests filed by the Santa Ynez Band of Chumash Mission Indians on July 31, 2020 ARE GRANTED, and Section 27.1204(b)(2) of the Commission's rules IS WAIVED to allow licensing of the land specified in the applications.

13. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 27.1204 of the Commission's rules, 47 CFR § 27.1204, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by the Santa Ynez Band of Chumash Mission Indians for three new 2.5 GHz licenses (File Nos. 0009169131, 0009169143 and 0009169146) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Acting Chief, Wireless Telecommunications Bureau

²⁷ We note that one of the applications filed by the Santa Ynez, for the Santa Ynez Parcels (File No. 0009169131), overlaps with the Santa Ynez application that has already been granted (File No. 0009169139). The Commission cannot grant two applications for the same channels and the same area, even if the applicant is the same. Before the Broadband Division is able to process the applications associated with the Waiver Requests, Santa Ynez will have to reduce the shapefile for the Santa Ynez parcels (File No. 0009169131) to exclude the overlap area.

²⁸ See 47 CFR § 27.55(a)(4).

²⁹ See 47 CFR § 27.1221.