

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

In the Matter of )
)
THE LONE PINE PAIUTE SHOSHONE ) ULS File No. 0009209314
RESERVATION )
)
Request for Waiver of Tribal Lands Definition in )
the 2.5 GHz Tribal Priority Window )

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2021

Released: March 11, 2021

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On September 1, 2020, the Lone Pine Paiute Shoshone Reservation (Lone Pine or “the Tribe”) submitted a request for waiver in connection with an application it filed in the 2.5 GHz Rural Tribal Priority Window (Tribal Window).1 Lone Pine seeks a waiver 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 the Lone Pine’s Waiver Request because it meets 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 lands must be in a rural area, which is defined as “lands that are not part

1 The Lone Pine Paiute-Shoshone Tribe, as identified by the Bureau of Indian Affairs on its list of federally recognized Tribes, filed under the name Lone Pine Paiute Shoshone Reservation. See File No. 0009209314, Lone Pine Paiute Shoshone Reservation, Geographic Waiver 2 of 2 – Olancha Cultural Preservation Land (Waiver Request). See Bureau of Indian Affairs, Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554 (Jan. 29, 2021).

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

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

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, in the Tribal Window.<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup>

4. The Lone Pine filed three applications in the Tribal Window.<sup>12</sup> The Lone Pine filed an application for a license for its reservation which was granted on October 21, 2020.<sup>13</sup> The Lone Pine also filed an application requesting a waiver to provide service for 132 acres known as the Alabama Hills Reservation Trust Land which was granted on December 28, 2020.<sup>14</sup> The third application, which is the subject of this *Memorandum Opinion and Order*, requests a waiver of the Tribal lands definition for 38.75 acres of fee land known as the Olancha Cultural Preservation Land.<sup>15</sup>

5. As detailed in its Waiver Request, the Lone Pine purchased the Olancha Cultural Preservation Land from the California Department of Transportation to allow the Lone Pine to protect the site’s cultural value from an adjacent highway widening project.<sup>16</sup> The Lone Pine plan to use the spectrum over this parcel primarily for the security and surveillance of sensitive cultural sites to protect artifacts and cultural resources from looters and vandalism, although it proposes other potential uses as

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

<sup>7</sup> 47 CFR § 27.1204(b)(3).

<sup>8</sup> 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).

<sup>9</sup> See *Transforming the 2.5 GHz Band*, Order on Reconsideration, 35 FCC Rcd 15074, 15080-81, para. 22 (2020) (*Reconsideration Order*).

<sup>10</sup> *Id.* at 15081, para. 22.

<sup>11</sup> *Id.* at 15081, para. 23.

<sup>12</sup> Files No. 0009093470 (filed May 28, 2020; amended Aug. 31, 2020, Sept. 1, 2020); 0009209313 (filed Sept. 1, 2020); 0009209314 (filed Sept. 1, 2020).

<sup>13</sup> File No. 0009093470 (filed May 28, 2020; amended Aug. 31, 2020; Sept. 1, 2020).

<sup>14</sup> File No. 0009209313 (filed Sept. 1, 2020). The Broadband Division of the Wireless Telecommunications Bureau found that no waiver was necessary because the Alabama Hills Reservation Trust Land consists of eligible Tribal lands as defined in section 27.1204(b)(2) of the Commission’s rules. Letter from John J. Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Mr. Richard Button, Chairman and Ms. Mary Wuester, Vice Chair, Lone Pine Paiute Shoshone Reservation (dated Dec. 28, 2020).

<sup>15</sup> File No. 0009209314 (filed Sept. 1, 2020); Waiver Request at 1.

<sup>16</sup> Waiver Request at 1.

well.<sup>17</sup>

6. The instant application was accepted for filing on November 10, 2020.<sup>18</sup> No petitions to deny or oppositions were filed against the application.

### III. DISCUSSION

7. 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.<sup>19</sup> Here, we find that the Lone Pine's showing meets 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 non-reservation trust lands specified in the application.

8. The Commission established a Tribal Priority Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.<sup>20</sup> 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 Lone Pine have shown that the fee lands in question are owned directly by the Tribe. We find that, based upon the showing made by the Lone Pine, treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.<sup>21</sup> We note that the lands in question are areas subject to the Tribe's current, demonstrated authority. In addition, we find that a waiver would be in the public interest because the Lone Pine have plans to use the spectrum on rural lands owned directly by the Tribe.

9. We note that the Lone Pine 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.<sup>22</sup> 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.<sup>23</sup> Absent agreements with neighboring licensees or a waiver of those rules, the Lone Pine must comply with those rules.

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

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<sup>17</sup> Waiver Request at 1.

<sup>18</sup> *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).

<sup>19</sup> 47 CFR § 1.925(b)(3).

<sup>20</sup> *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

<sup>21</sup> 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").

<sup>22</sup> *See* 47 CFR § 27.55(a)(4).

<sup>23</sup> *See* 47 CFR § 27.1221.

**IV. ORDERING CLAUSES**

11. 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 request filed by the Lone Pine Paiute Shoshone Reservation on September 1, 2020 IS GRANTED, and section 27.1204(b)(2) of the Commission's rules IS WAIVED to allow licensing of the lands specified in the application.

12. 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 application filed by the Lone Pine Paiute Shoshone Reservation for a new 2.5 GHz license (File No. 0009209314) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

13. 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