

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

In the Matter of)
MIDDLETOWN RANCHERIA OF POMO)
INDIANS OF CALIFORNIA) ULS File No. 0009209838
Request for Waiver of Tribal Lands Definition in)
the 2.5 GHz Tribal Priority Window)

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2021

Released: March 30, 2021

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On August 30, 2020, the Middletown Rancheria of Pomo Indians of California (Middletown Rancheria 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 Middletown Rancheria requests a waiver of section 27.1204(b)(2) of the Commission’s rules, which defines eligible Tribal lands for purposes of the Tribal Window.2 In this Memorandum Opinion and Order, we grant Middletown Rancheria’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 of an urbanized area or urban cluster area with a population equal to or greater than 50,000.”7 Finally, the

1 File No. 0009209838 Middletown Rancheria of Pomo Indians of California, Petition for Waiver (Waiver Request).

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). This limitation to federally recognized Tribes is consistent with Commission precedent in other contexts. See 2.5 GHz Report & Order, 34 FCC Rcd at 5464, para. 49.

6 See 47 CFR § 27.1204(b)(2).

7 47 CFR § 27.1204(b)(3).

applicant must have a local presence on the eligible Tribal lands 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. Middleton Rancheria filed two applications within the Window. The first application sought a license for the Tribe’s reservation lands in Northern California, also called a rancheria.¹² That application has been granted.¹³ The second application, which is the subject of this *Memorandum Opinion and Order*, requests a waiver of the Tribal lands definition in order to obtain a license for several parcels of fee lands owned by the Tribe that are adjacent to and near the reservation.¹⁴

5. As detailed in the Waiver Request, the Tribe owns and controls these fee lands and uses them for its own governmental purposes.¹⁵ This includes both residential and agricultural uses, such as active vineyards, a winery, and fenced grazing land.¹⁶ Middletown Rancheria states that it manages six single family residences, plans to build additional homes, and will relocate its government headquarters to these areas.¹⁷ If this application is granted, Middletown Rancheria intends to use the resulting license to build its own cell tower to provide broadband access, both within the current rancheria and on these fee lands.¹⁸ The expanded broadband access proposed by the Tribe will support, among other things, additional educational opportunities, telemedicine services, and the Tribe’s own governmental operations.¹⁹

6. The instant application was accepted for filing on November 10, 2020.²⁰ No petitions to deny or oppositions were filed against the application.

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, 35 FCC Rcd 15074, 15080-81, para. 22 (2020) (*Reconsideration Order*).

¹⁰ *Id.* at 15081, para. 22.

¹¹ *Id.* at 15081, para. 23.

¹² File No. 0009166788 (filed July 29, 2020).

¹³ File No. 0009166788 (granted Jan. 4, 2021).

¹⁴ Waiver Request at 2.

¹⁵ Waiver Request at 2.

¹⁶ Waiver Request at 1-2.

¹⁷ Waiver Request at 2-3.

¹⁸ Waiver Request at 1.

¹⁹ Waiver Request at 2-3.

²⁰ *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).

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.²¹ Here, we find that Middletown Rancheria'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 fee 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.²² 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 Middletown Rancheria's authority over the fee lands is adequately demonstrated by the fact that the Tribe owns the lands and is using them for its own governmental operations. We find that, based upon the showing made by Middletown Rancheria, treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Window's purpose.²³ We note that the lands in question are areas subject to the Tribe's current, demonstrated authority and that some parcels 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 the adjoining fee lands owned and used by the Tribe. In addition, we find that a waiver would be in the public interest because the Middletown Rancheria has plans to use the spectrum to provide wireless service on rural lands currently owned and used by the Tribe.²⁴ As such, we find the Tribe has adequately demonstrated that it has "the requisite authority over the deployment of facilities and service[s]"²⁵ over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

9. Middletown Rancheria 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.²⁶ 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.²⁷ Absent agreements with neighboring

²¹ 47 CFR § 1.925(b)(3).

²² *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

²³ 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").

²⁴ We note that the instant application (File No. 0009209838), overlaps with the reservation-only application that has already been granted (File No. 0009166788). 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 application associated with the Waiver Request, the Middletown Rancheria will have to reduce the shapefile for its non-reservation parcels (File No. 0009209838) to exclude the overlap area.

²⁵ *Reconsideration Order*, 35 FCC Rcd at 15081, para. 22.

²⁶ *See* 47 CFR § 27.55(a)(4).

²⁷ *See* 47 CFR § 27.1221.

licensees or a waiver of those rules, the Middletown Rancheria must comply with those rules.

10. We note that our decision here is limited to the suitability of these specific 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.

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 Middletown Rancheria of Pomo Indians of California on August 30, 2020 IS GRANTED, and section 27.1204(b)(2) of the Commission's rules IS WAIVED to allow licensing of the land 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 Middletown Rancheria of Pomo Indians of California for a new 2.5 GHz license (File No. 0009209838) 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
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