

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

In the Matter of )
CAMPO BAND OF MISSION INDIANS ) ULS File No. 0009210614
Request for Waiver of Tribal Lands Definition in )
the 2.5 GHz Tribal Priority Window )

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 2021

Released: April 20, 2021

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On September 2, 2020, the Campo Band of Mission Indians (Campo 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 Campo 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 Campo'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 File No. 0009210614, Campo Band of Mission Indians, Eligibility and Local Presence Exhibit and Petition for Waiver (Waiver Request). Campo's Local Presence and Eligibility Exhibit and Petition for Waiver were combined into one document and filed together. The page numbers cited in this Memorandum Opinion and Order correspond to the page numbers specific to the Waiver Request, and not to the page numbers on the combined document.

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

(continued....)

of an urbanized area or urban cluster area with a population equal to or greater than 50,000.<sup>77</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 for purposes of 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 Campo filed two applications within the Tribal Window. The first application sought a license for the Tribe’s reservation land in California and has been granted.<sup>12</sup> The Campo also filed a second application, which is the subject of this *Memorandum Opinion and Order*, requesting a waiver of the Tribal lands definition for Tribally-owned fee land encompassed within the interior of its reservation.<sup>13</sup>

5. As detailed in its Waiver Request, the Campo state that it owns the fee parcels, which are situated near the Tribe’s casino and are adjacent to its reservation.<sup>14</sup> If this application is granted, the Campo asserts that it would allow for the uninterrupted use and expansion of wireless connectivity throughout the entire area.<sup>15</sup> The Campo indicate that wireless bandwidth is currently limited and that providing Internet connectivity is a urgent concern for the Tribe.<sup>16</sup>

6. The instant application was accepted for filing on November 10, 2020.<sup>17</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

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§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> File No. 0009163195 (granted Dec. 22, 2020).

<sup>13</sup> Waiver Request at 4-7.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 10-11.

<sup>16</sup> *Id.* at 2.

<sup>17</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).

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>18</sup> Here, we find that Campo'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 land 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>19</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 Campo have shown that the fee lands in question are directly owned by the Tribe. We find that, based upon the showing made by the Campo, treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.<sup>20</sup> We note that the lands in question are areas subject to the Tribe's current, demonstrated authority and are contiguous to 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.<sup>21</sup> In addition, we find that a waiver would be in the public interest because the Campo plan to use the spectrum to provide wireless service on rural lands owned and used by the Tribe.<sup>22</sup> As such, we find the Tribe has adequately demonstrated that it has "the requisite authority over the deployment of facilities and service[s]"<sup>23</sup> over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

9. The Campo 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>24</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>25</sup> Absent agreements with neighboring licensees or a waiver of those rules, the Campo must comply with those rules.

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<sup>18</sup> 47 CFR § 1.925(b)(3).

<sup>19</sup> *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

<sup>20</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>21</sup> Waiver Request at 2.

<sup>22</sup> We note that the instant application (File No. 0009210614), significantly overlaps with the reservation-only application that has already been granted (File No. 0009163195). 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 Campo have to reduce the shapefile for its fee parcels (File No. 0009210614) to exclude the overlap area.

<sup>23</sup> *Reconsideration Order*, 35 FCC Rcd at 15081, para. 22.

<sup>24</sup> *See* 47 CFR § 27.55(a)(4).

<sup>25</sup> *See* 47 CFR § 27.1221.

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.

#### 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 Campo Band of Mission Indians on September 2, 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 Campo Band of Mission Indians for a new 2.5 GHz license (File No. 0009210614) 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