

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

In the Matter of)
THE BEAR RIVER BAND OF THE) ULS File Nos. 0009209915, 0009210044
ROHNERVILLE RANCHERIA)
Requests for Waiver of Tribal Lands Definition in)
the 2.5 GHz Tribal Priority Window)

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 2021

Released: May 4, 2021

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On September 2, 2020, the Bear River Band of the Rohnerville Rancheria (Bear River or “the Tribe”) submitted two separate requests for waiver in connection with applications it filed in the 2.5 GHz Rural Tribal Priority Window (Tribal Window).¹ Bear River 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 Bear River’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 lands must be in a rural area, which is defined as “lands that are not part

¹ File No. 0009209915, The Bear River Band of the Rohnerville Rancheria, Petition for Waiver (Expansion Area Waiver Request); File No. 0009210044, The Bear River Band of the Rohnerville Rancheria, Petition for Waiver (Basayo Village 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).

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

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 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 in 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. Bear River filed two applications within the Tribal Window, both of which are the subject of this *Memorandum Opinion and Order*. The first application seeks a license for several parcels of trust land in Humboldt County, California, along with contiguous areas owned in fee.¹² The second application seeks to license the old Rohnerville Rancheria, which is reservation land, as well as the area referred to as Basayo Village, 3.86 acres of fee land nearby in Fortuna, California.¹³

5. As detailed in its Waiver Requests, these various lands are managed by Bear River and utilized for governmental offices, and Tribal enterprises, among other purposes.¹⁴ The Tribe further specifies that Basayo Village includes a Tribal housing development.¹⁵ Bear River argues that these trust and fee lands lack reliable access to wireless services and that a “waiver will allow the Tribe to provide robust connectivity in this area.”¹⁶ The Tribe describes the ability to provide telecommunications services as “critical for economic stability and public safety.”¹⁷

6. Both applications were accepted for filing on November 10, 2020.¹⁸ No petitions to deny or oppositions were filed against the applications.

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, 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. 0009209915 (filed Sep. 2, 2020); Expansion Area Waiver Request.

¹³ File No. 0009210044 (filed Sep. 2, 2020); Basayo Village Waiver Request.

¹⁴ Expansion Area Waiver Request at 1; Basayo Village Waiver Request at 1.

¹⁵ Basayo Village Waiver Request at 1

¹⁶ Expansion Area Waiver Request at 2; Basayo Village Waiver Request at 2.

¹⁷ Expansion Area Waiver Request at 2; Basayo Village Waiver Request at 2.

¹⁸ *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.¹⁹ Here, we find that Bear River'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 and 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.²⁰ 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 Bear River 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 Bear River having built Tribal housing and other Tribal facilities in these areas. We find, based upon the showings made by Bear River, that treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.²¹ 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 Bear River have plans to use the spectrum to provide connectivity on rural lands either specifically held in trust for the Tribe's benefit or owned directly by the Tribe. As such, we find the Tribe has adequately demonstrated that it has "the requisite authority over the deployment of facilities and service[s]"²² over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

9. We note that the Bear River 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.²³ 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.²⁴ Absent agreements with neighboring licensees or a waiver of those rules, Bear River must comply with those rules.

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

¹⁹ 47 CFR § 1.925(b)(3).

²⁰ *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

²¹ 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").

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

²³ *See* 47 CFR § 27.55(a)(4).

²⁴ *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 requests filed by the Bear River Band of the Rohnerville Rancheria on September 2, 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.

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 applications filed by the Bear River Band of the Rohnerville Rancheria for new 2.5 GHz licenses (File Nos. 0009209915 and 0009210044) 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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