

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

In the Matter of )
YOCHA DEHE WINTUN NATION ) ULS File No. 0009158592
Request for Waiver of Tribal Lands Definition in )
the 2.5 GHz Tribal Priority Window )

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 2021

Released: January 19, 2021

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 24, 2020, the Yocha Dehe Wintun Nation (Yocha Dehe or “the Tribe”) submitted a request for waiver of section 27.1204(b)(2) of the Commission’s rules, which defines eligible Tribal lands for purposes of the 2.5 GHz Rural Tribal Priority Window (Tribal Window) 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 Hawai’i, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended.” In this Memorandum Opinion and Order, we grant Yocha Dehe’s waiver request because it meets the Commission’s waiver standard.

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. 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.” Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission’s rules. Third, the eligible Tribal lands must be in a rural area, which is defined as “lands that are not part

1 File No. 0009158592 Yocha Dehe Wintun Nation, Waiver Application Information for Yocha Dehe Wintun Nation (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).

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, 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 allowing for the licensing of off-reservation lands in the Tribal Window.<sup>11</sup>

4. The Yocha Dehe filed two applications within the Tribal Window. The first application sought a license for two parcels of land that constitute the Tribe’s reservation lands in Northern California.<sup>12</sup> That application has been granted.<sup>13</sup> 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 non-reservation trust lands adjacent to one of the reservation parcels.<sup>14</sup>

5. As detailed in its Waiver Request, the Yocha Dehe are developing a new community on the trust lands for Tribal members, including constructing homes, which are planned to be ready in 2021.<sup>15</sup> The Yocha Dehe plan to provide services to these homes, including telephone and internet services. If this application is granted, the Yocha Dehe intend to use the resulting license to deploy fixed wireless solutions to the new homes and community.<sup>16</sup> The Tribe, working with a deployment partner, intends to begin providing service in 2021 and to provide service to the entire area by 2023.<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.

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<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, FCC 20-183 (rel. Dec. 17, 2020) (*Reconsideration Order*) at para. 22.

<sup>10</sup> *Id.*

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

<sup>12</sup> File No. 0009136157 (filed July 6, 2020, amended July 24, 2020).

<sup>13</sup> File No. 0009136157 (granted Oct. 21, 2020).

<sup>14</sup> Waiver Request at 1 (citing letters from the Department of the Interior reflecting approval of Application File No. J-541-2015 to place the lands in question in trust status).

<sup>15</sup> Waiver Request at 1.

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

<sup>17</sup> *Id.*

<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).

### III. DISCUSSION

7. The Commission may grant a request for a waiver 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 Yocha Dehe'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 Yocha Dehe have shown that the trust lands in question are held for the specific benefit of the Tribe, and the Tribe's authority over the lands is adequately demonstrated by the fact that the Tribe is building a community for its Tribal members. We find based upon the showing made by Yocha Dehe, that treating these undisputedly 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 within the Tribe's current, demonstrated authority and 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 lands held for the benefit of the Tribe. In particular, we find that a waiver would be in the public interest because the Yocha Dehe have demonstrated plans to use the spectrum to provide fixed wireless service on rural lands specifically held in trust for the Tribe's benefit.

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

### IV. ORDERING CLAUSES

10. 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 Yocha Dehe Wintun Nation on July 24, 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.

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<sup>19</sup> 47 CFR § 1.925(b)(3).

<sup>20</sup> *Reconsideration Order* at 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").

11. 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 Yocha Dehe Wintun Nation for a new 2.5 GHz license (File No. 0009158592) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

12. 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

Donald K. Stockdale, Jr.  
Chief, Wireless Telecommunications Bureau