

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

In the Matter of)
TORRES MARTINEZ DESERT CAHUILLA) ULS File No. 0009209725
INDIANS)
Request for Waiver of Tribal Lands Definition in)
the 2.5 GHz Tribal Priority Window)

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 2021

Released: July 26, 2021

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On September 2, 2020, the Torres Martinez Desert Cahuilla Indians (Torres Martinez 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 Torres Martinez seeks 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 Torres Martinez'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. 0009209725 Torres Martinez Desert Cahuilla Indians, 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).

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 Hawai'i, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended." Id.

of an urbanized area or urban cluster area with a population equal to or greater than 50,000.⁷⁷ 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, for 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 allowing for the licensing of off-reservation lands in the Tribal Window.¹¹

4. Torres Martinez filed an application within the Tribal Window seeking a license for the Tribe’s reservation land, together with a waiver request for adjacent non-Tribal land.¹² The Torres Martinez reservation is on the northwest edge of the Salton Sea in Thermal, California, and is comprised of multiple small parcels of land interspersed with similar parcels of non-Tribal land in a “checkerboard” pattern.¹³ The Tribe’s proposed license area is a narrowly drawn polygon connecting the outermost boundaries of the reservation land and encompassing the non-Tribal parcels contained therein.¹⁴

5. If issued a license, Torres Martinez intends to use the spectrum to build a wireless Internet network covering the proposed service area which, according to the Tribe, lacks robust Internet connectivity.¹⁵ Torres Martinez argues that given their “unique situation with their highly checkerboard reservation,” a waiver to license the non-Tribal land connecting and surrounding the reservation parcels is necessary.¹⁶ The Tribe specifies that a “wireless Internet network is not possible” in these circumstances because providing coverage to the reservation land would necessarily require placing a signal over the adjacent non-Tribal land.¹⁷ Torres Martinez argues that a waiver would be in the public interest because its proposed system would increase choice and provide competition to existing Internet providers in the area.¹⁸

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. 0009209725 (filed Sep. 2, 2020).

¹³ See Waiver Request at 1.

¹⁴ See Waiver Request at 1.

¹⁵ See Waiver Request at 1.

¹⁶ Waiver Request at 1-2.

¹⁷ Waiver Request at 1-2.

¹⁸ Waiver Request at 2.

6. Torres Martinez's application was accepted for filing on November 10, 2020.¹⁹ 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.²⁰ Here, we find that Torres Martinez's showing meets the second 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-Tribal 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.²¹ 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 under the second prong of the Commission's waiver standard that unique or unusual factual circumstances exist, and that absent the waiver, Torres Martinez would have no reasonable alternative in providing service to its reservation. As described in the Waiver Request, we agree with Torres Martinez that the unique "checkerboard" nature of its reservation land, with multiple small parcels of reservation land interspersed with similar non-Tribal parcels, presents technical challenges in establishing a wireless Internet network. The location and nature of the non-Tribal parcels make it unlikely that any other operator would seek to provide wireless service there, if we were to decide that it must be separately licensed. From an engineering perspective, it would be difficult for Torres Martinez to provide service to its reservation lands and still comply with the interference protection rules applicable to the non-Tribal parcels. 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.²² 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.²³ Therefore, licensing the non-Tribal land separately could result in a situation where no licensee would be able to provide service to either the reservation land or the adjacent non-Tribal land.

9. Given the severe technical difficulties that Torres Martinez or an adjacent licensee would incur in attempting to provide service in these "checkerboard" areas, we also find that strictly applying the Tribal lands definition in this instance would be contrary to the public interest. We note that no petitions to deny or oppositions were received with respect to the Torres Martinez application and proposed waiver. We find that grant of a waiver to permit Torres Martinez to serve the requested adjacent non-Tribal lands will promote the Tribe's ability to provide broadband service to its own reservation, in furtherance of the Commission's objective in establishing the Tribal Priority Window.²⁴ Our determination relies on the fact that Torres Martinez has minimized the amount of non-Tribal land within this contiguous service area, and that the non-Tribal land in question is interspersed with and

¹⁹ *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).

²⁰ 47 CFR § 1.925(b)(3).

²¹ *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

²² *See* 47 CFR § 27.55(a)(4).

²³ *See* 47 CFR § 27.1221.

²⁴ *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

adjacent to the Tribe's reservation lands.

10. We note that our decision here is limited to the suitability of these non-Tribal lands to be licensed in 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 Torres Martinez Desert Cahuilla 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 non-Tribal 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 Torres Martinez Desert Cahuilla Indians for a new 2.5 GHz license (File No. 0009209725) 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