



# PUBLIC NOTICE

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DA 22-730

Released: July 8, 2022

## WIRELESS TELECOMMUNICATIONS BUREAU WAIVES 2.5 GHZ RURAL TRIBAL WINDOW SPECIFIC INTERIM AND FINAL PERFORMANCE DEADLINES

By this *Public Notice*, on its own motion, the Wireless Telecommunications Bureau (Bureau) waives the Tribal-specific interim and final performance deadlines in subsection 27.14(u)(4)<sup>1</sup> of the Commission's rules for all 2.5 GHz Rural Tribal Priority Window (Tribal Window) licensees to afford them flexibility as they complete their deployments.<sup>2</sup>

All Tribal Window licensees will instead be subject to the generally applicable performance deadlines for all other 2.5 GHz licenses initially granted after October 25, 2019, as set forth in subsections 27.14(u)(2) and (3) of the Commission's rules.<sup>3</sup> As such, Tribal Window licensees must make an interim showing within **four** years of initial license grant and a final showing within **eight** years of initial license grant, although they need not wait until the relevant deadlines approach to make their filings.<sup>4</sup> Tribal Window licensees are encouraged to submit their interim and final showings once the work has been completed, and can contact staff at [ruraltribalwindow@fcc.gov](mailto:ruraltribalwindow@fcc.gov) with any related questions.

The Tribal Window enabled eligible Tribes and Tribal entities to directly apply for licenses for unassigned 2.5 GHz spectrum over their rural Tribal lands.<sup>5</sup> To date, the Bureau has granted 335 such licenses to Tribes, Alaskan Native Villages, consortia, and Tribally-owned and controlled entities representing more than 350 unique Tribes in 30 states.<sup>6</sup> Although deployments using this spectrum are

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<sup>1</sup> 47 CFR § 27.14(u)(4).

<sup>2</sup> The Commission may waive any rule provision on its own motion. See 47 CFR §§ 1.3, 1.925(a). In light of our action today, we dismiss as moot two petitions seeking extensions of the buildout deadline for Tribal Window licenses. *Petition for Waiver of 47 C.F.R. § 27.14(u) 2.5 GHz Tribal Priority Window License Performance Requirements*, The Chickasaw Nation, the Choctaw Nation, and Citizen Potawatomi Nation (filed Apr. 20, 2022); *Petition for Waiver of 47 C.F.R. § 27.14(u) 2.5 GHz Tribal Priority Window License Performance Requirements*, Cheyenne River Sioux Tribe Telephone Authority, Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Tribe of the Mescalero Reservation, Nez Perce Tribe, San Carlos Apache Telecommunications Utility, Inc., Tohono O'odham Utility Authority, and Warm Springs Telecommunications Company (filed Nov. 8, 2021).

<sup>3</sup> 47 CFR § 27.14(u)(2), (3).

<sup>4</sup> 47 CFR § 27.14(u)(2), (3). All 2.5 GHz licenses initially granted after October 25, 2019, are subject to the same interim and final performance requirements, which may be met by showing, *inter alia*, either of the following: (1) 80% population coverage for mobile or point-to-multipoint service (50% interim); or (2) 40 links per million persons (one link per 25,000) for fixed point-to-point service (20 links per million interim (one link per 50,000)). See 47 CFR § 27.14(u)(2)-(4); *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446, 5483, para. 101 (2019) (*2.5 GHz Report and Order*). The substance of these showing requirements thus remains unchanged for Tribal Window licensees; only the timing of the applicable interim and final deadlines is affected by this *Public Notice*.

<sup>5</sup> *2.5 GHz Report and Order*, 34 FCC Rcd at 5463-69, paras. 47-65.

<sup>6</sup> See <https://www.fcc.gov/25-ghz-rural-tribal-application-details>.

underway,<sup>7</sup> we believe that providing flexibility to Tribal Window licensees in meeting their performance requirements is warranted given developments since adoption of the requisite deadlines and close of the Tribal Window.

The Commission may waive a rule when it finds 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 waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest.<sup>8</sup> While the Commission adopted accelerated performance requirement deadlines for Tribal Window licenses in 2019,<sup>9</sup> it was not foreseeable that the unprecedented confluence of multiple events disproportionately affecting Tribal Nations – specifically, the COVID-19 pandemic and supply chain issues – would make it unreasonable to enforce these accelerated deadlines.<sup>10</sup>

While the COVID-19 pandemic made clear the vital importance of broadband to Tribal communities, it also disproportionately impacted Tribes, resulting in personnel and resource barriers that have exacerbated existing challenges to deploying communications services in those communities.<sup>11</sup> Further, supply chain issues have made it more difficult for some Tribes to obtain wireless and related infrastructure equipment, and increased prices for the equipment that is available.<sup>12</sup> The combination of these factors – which converged at the same time as grant of licenses from the Tribal Window began in October 2020 – could not have been anticipated by the Commission in 2019 and were beyond the control of Tribes.

Given this backdrop, while also noting the long-standing connectivity challenges facing Tribal Nations that the Tribal Window was designed to help address, strict enforcement of the Tribal-specific performance deadlines in this unique context would both frustrate the underlying purpose of the Tribal

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<sup>7</sup> See, e.g., Nokia, *Nokia extends broadband to remote Native American tribes in the US*, <https://www.nokia.com/about-us/newsroom/articles/nokia-extends-broadband-to-remote-native-american-tribes-in-the-us/> (Apr. 2021); Karl Bode, *Spurred by COVID-19, Colville Tribes Expand Free Wireless Service in Washington State* (Feb. 16, 2022), available at <https://muninetworks.org/content/spurred-covid-19-colville-tribes-expand-free-wireless-service-washington-state>; Fabian Martinez, *Membership Receives Annual Update From Tribal Entities*, *The Southern Ute Drum* (Apr. 28, 2022), available at <https://www.sudrum.com/top-stories/2022/04/28/membership-receives-annual-update-from-tribal-entities/>.

<sup>8</sup> 47 CFR § 1.925(b)(3).

<sup>9</sup> In adopting rules for the Tribal Window in 2019, the Commission determined that Tribal Window licensees must make an interim showing within two years of initial license grant and the final showing within five years of initial license grant. *2.5 GHz Report and Order*, 34 FCC Rcd at 5486, para. 108. The Commission reasoned that these accelerated deadlines would encourage deployment in underserved areas, and observed that “[r]ecent recipients of waivers and STAs in this band have been able to deploy and begin service well within a five-year timeframe.” *Id.*

<sup>10</sup> See 47 CFR § 27.14(u)(4).

<sup>11</sup> See, e.g., Indian Health Service, *Coronavirus*, <https://www.ihs.gov/coronavirus/>; Gabriel R. Sanchez, et al., *COVID-19: Internet Access and the Impact on Tribal Communities in New Mexico*, available at <https://www.iad.state.nm.us/wp-content/uploads/2020/06/nabpi-iad-broadband-report-final.pdf>; see generally Savannah Maher, *Summit Seeks to Help Tribes Recover from Pandemic Woes* (May 25, 2022), available at <https://www.marketplace.org/2022/05/25/summit-seeks-to-help-tribes-recover-from-pandemic-woes/>.

<sup>12</sup> See, e.g., *Chez Oxendine, Tlingit and Haida Partner With Native-Owned Company to Develop New Internet Provider*, *Tribal Business News* (May 9, 2022) available at <https://tribalbusinessnews.com/sections/economic-development/13897-tingit-and-haida-partner-with-native-owned-company-to-develop-new-internet-provider> (“We’re in line for some hardware, we have a bunch of gear ordered and we’re hoping that shows up in the next 20 or so weeks. . . . That’s what’s driving our timeline right now.” (internal quotation marks omitted)). See generally Mike Dano, *Price increases, supply chain problems weigh on US equipment vendors*, *Light Reading* (Apr. 14, 2022), available at <https://www.lightreading.com/open-ran/price-increases-supply-chain-problems-weigh-on-us-equipment-vendors/d/d-id/776807>.

Window as adopted by the Commission in 2019,<sup>13</sup> and be inequitable, unduly burdensome, and contrary to the public interest. Under these circumstances, we find it is appropriate and in the public interest to waive the Tribal-specific performance deadlines in subsection 27.14(u)(4) of the Commission's rules and instead apply to Tribal Window licenses the generally applicable performance deadlines for all other 2.5 GHz licenses granted after October 25, 2019, as set forth in subsections 27.14(u)(2) and (3). We note that in addition to alleviating the logistical pressures described above, affording Tribal Window licensees additional time to complete their deployments will also provide more time to explore potential leasing and cooperative arrangements with nearby service providers, including eventual Auction 108 overlay license winners, and may better align with new and ongoing federal funding opportunities in support of Tribal broadband initiatives.<sup>14</sup> We emphasize that our action is based on the totality of the unique circumstances faced by Tribes, as specified above.

For further information, contact John Schauble, Wireless Telecommunications Bureau at (202) 418-0797, or via e-mail at [john.schauble@fcc.gov](mailto:john.schauble@fcc.gov).

Actions by the Acting Chief, Wireless Telecommunications Bureau.

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<sup>13</sup> *2.5 GHz Report and Order*, 34 FCC Rcd at 5463, para. 47.

<sup>14</sup> While some Tribes were able to use CARES Act money to support their deployments, those funds were expressly limited to pay extrabudgetary "necessary expenditures" arising due to the COVID-19 outbreak between March 1 and December 30, 2020. Mainon A. Schwartz, *The CARES Act: Implications for Tribes* (Apr. 9, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11500>; see also Savannah Maher, *Tribal Governments Shore Up Infrastructure With Federal Pandemic Aid* (Mar. 28, 2022), available at <https://www.marketplace.org/2022/03/28/tribal-governments-shore-up-infrastructure-with-federal-pandemic-aid/>. More recent funding opportunities, such as the Fiscal Recovery Funds under the American Rescue Plan Act, NTIA's ongoing Tribal Broadband Connectivity Program, and the latest iteration of USDA's ReConnect Program, are either in process or will have upcoming windows for Tribes to receive additional funding. See U.S. Dep't of Treasury, *Coronavirus State and Local Fiscal Recovery Funds*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>; NTIA, *Tribal Broadband Connectivity Program*, <https://broadbandusa.ntia.doc.gov/resources/grant-programs/tribal-broadband-connectivity-program>; U.S. Dep't of Agriculture, *ReConnect Loan and Grant Program*, <https://www.usda.gov/reconnect>.