



PUBLIC NOTICE

Federal Communications Commission
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DA 23-660

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WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF NATIVE AFFAIRS AND POLICY SEEK COMMENT ON TRIBAL NATION AND NATIVE HAWAIIAN ACCESS TO SPECTRUM AND RELATED DATA

GN Docket No. 23-265

Comment Date: November 30, 2023

Through this Public Notice, the Wireless Telecommunications Bureau and Office of Native Affairs and Policy seek comment on ways in which the Commission can improve its understanding of how and the extent to which Tribal Nations and the Native Hawaiian Community are able to access wireless spectrum today.¹ This information will be used as the Commission develops and implements new and existing policy initiatives designed to increase broadband connectivity in Tribal communities.

The Commission in 2019 created the 2.5 GHz Rural Tribal Priority Window (Tribal Window) for eligible Tribal Nations and Native Hawaiian Community to gain licensed access to prime mid-band spectrum to deploy broadband and other next-generation wireless services to address the digital divide on rural Tribal lands. To date, 336 licenses covering the rural Tribal lands of more than 350 Tribal Nations based in 30 states have been granted through applications received during the Tribal Window,² and deployments using this spectrum are underway.³ In contrast to information compiled prior to the Tribal Window, the number of Tribes and Tribal entities now holding spectrum licenses has significantly increased as a result of this opportunity alone.⁴

¹ See 47 C.F.R. §73.7000 (“*Tribe*. Any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians.”). See also Standard Operating Procedures Definitions, US Department of the Interior, Office of Native Hawaiian Relations, available at <https://www.doi.gov/hawaiian/standard-operating-procedures-definitions> (“*Native Hawaiian Community (NHC)* means the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship.”).

² This number includes five licenses granted to the Department of Hawaiian Homelands, a state agency in Hawaii, on behalf of the Native Hawaiian Community covering eligible Hawaiian Homelands. See call signs WRJS854, WRJS855, WRJS856, WRKV805, and WRKV806.

³ See, e.g., Emma Gautier, *Rural Southeast Alaskan Tribes Leverage Spectrum for a Pilot Connecting Hard-to-Reach Communities* (Aug. 24, 2022), available at <https://muninetworks.org/content/rural-southeast-alaskan-tribes-leverage-spectrum-pilot-connecting-hard-reach-communities>; 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/>; 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>.

⁴ See U.S. Government Accountability Office, *Tribal Broadband: FCC Should Undertake Efforts to Better Promote Tribal Access to Spectrum*, GAO 19-75 at 1 (2018) (GAO 19-75).

While this represents progress, we nonetheless recognize the long-standing connectivity challenges facing Tribal Nations and the Native Hawaiian Community and remain committed to addressing this digital divide. In order to assess current and future policy efforts relating to spectrum designed to achieve this goal, we seek additional information about how Tribal Nations and the Native Hawaiian Community are accessing spectrum, whether it be through direct licensing or other means.

With respect to traditionally licensed spectrum, while we have compiled information about the licenses granted thus far through the Tribal Window at a dedicated webpage,⁵ we recognize that Tribal Nations and the Native Hawaiian Community hold spectrum licenses in other wireless bands. Our wireless licensing application forms do not currently collect demographic or other identifying information from Tribal or Native Hawaiian applicants, and as a result, our Universal Licensing System (ULS) cannot identify license records based on this type of applicant or demographic criteria.⁶

We therefore seek comment on the potential addition of legal entity categories or demographic questions to our wireless licensing forms to more readily identify Tribal or Native Hawaiian applicants seeking to obtain, or currently holding, spectrum licenses. We seek comment on whether collection of this information should be mandatory or optional. We also seek comment on what the resulting impacts on applicants or our licensing records would be depending on which approach we choose. For example, if we added one or more Tribal or Native Hawaiian categories to the Legal Entity Type questions on our licensing forms as mandatory questions, would that potentially complicate our application processes and/or frustrate applicants?⁷ To the extent we utilized an optional approach, such as by adding one or more Tribal and Native Hawaiian-focused demographics questions to our forms, would that lead to a more or less robust response and data set?⁸ Under either approach, we seek comment on the appropriate categories, questions, and terminology that will recognize both the sovereign status of Tribal Nations, as well as the broad diversity of Tribal Nations and the Native Hawaiian Community. For example, should we only collect identifying information from Tribal Nations or government entities, or should we also solicit responses from non-governmental Tribal entities, such as businesses, or individual Tribal citizens? If we solicit responses from non-governmental Tribal entities, what criteria should we use to identify those entities (e.g., some minimum amount of Tribal control)? How should we best collect applicant and licensing information from the Native Hawaiian Community, which does not currently have a government-to-government relationship with the United States?⁹

We also seek comment on the extent to which Tribal Nations and the Native Hawaiian Community have been able to successfully access licensed spectrum through secondary market transactions in the recent past, including leasing arrangements and the partitioning or disaggregation of licenses held by carriers or other non-Tribal entities. Our new Enhanced Competition Incentive Program, which we anticipate launching later this year, is designed to provide incentives that should spur greater

⁵ See 2.5 GHz Rural Tribal Application Details, available at <https://www.fcc.gov/25-ghz-rural-tribal-application-details>.

⁶ See GAO 19-75 at 29.

⁷ See e.g., FCC Form 601, FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau at Question 14, Applicant/Licensee Legal Entity Type, available at <https://www.fcc.gov/sites/default/files/fcc-form-601-main.pdf>. See also Appendix A.

⁸ See e.g., FCC Form 601, FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau at Question 27, Demographics (Optional), available at <https://www.fcc.gov/sites/default/files/fcc-form-601-main.pdf>. See also Appendix A.

⁹ We note that during the Tribal Window, the Department of Hawaiian Homelands, a state agency in Hawaii, was granted a waiver to apply for 2.5 GHz licenses covering eligible Hawaiian Homelands on behalf of the Native Hawaiian Community. See *In the Matter of Department of Hawaiian Homelands, Request for Waiver to File as an Eligible Entity in the 2.5 GHz Rural Tribal Priority Window*, 35 FCC Rcd 2820 (WTB 2020).

activity in this secondary market to the benefit of both Tribes and existing licensees.¹⁰ We plan to monitor the effectiveness of this program for Tribal Nations on a going forward basis,¹¹ and seek comment here on the status quo in order to develop a baseline for future comparison.

We also note that there are a number of opportunities by which spectrum can be accessed without applying for a license, such as the General Authorized Access Tier of the Citizen's Broadband Radio Service, and unlicensed use in White Spaces (470-614 MHz and 657-663 MHz band) and the 5 GHz band.¹² We seek comment on how we can evaluate the extent to which Tribal Nations and the Native Hawaiian Community are accessing spectrum through these opportunities as part of their network planning to enhance connectivity in their communities. For example, should the Commission ask our Native Nations Communications Task Force to assist in compiling use case studies or lessons learned from existing and potential deployments? Are there ways in which the Commission can expand awareness among Native communities about these services, or otherwise promote greater use thereof?

In addition to soliciting written comments through this Public Notice, the Office of Native Affairs and Policy, with support from the Wireless Telecommunications Bureau, will conduct a contemporaneous outreach program seeking feedback from Tribal Nations and the Native Hawaiian Community. We expect to make information available about related events and dates in the near future.

Filing Requirements. Interested parties may file comments on or before the date indicated on the first page of this document.¹³ All filings must refer to GN Docket No. 23-265. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S.-Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁵

¹⁰ *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 22-53 (Jul. 18, 2022).

¹¹ *Id.* at para. 100.

¹² See e.g., 3.5 GHz Band Overview, available at <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/35-ghz-band/35-ghz-band-overview>; White Space, available at <https://www.fcc.gov/general/white-space>.

¹³ See 47 CFR §§ 1.2, 1.405, and 1.419.

¹⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121-01 (1998).

¹⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice).

Ex Parte Rules. This document is being released as part of a proceeding considered to be “exempt” for purposes of the Commission’s *ex parte* rules.¹⁶ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.¹⁷

For further information regarding this proceeding, please contact Susan Mort, Wireless Telecommunications Bureau at Susan.Mort@fcc.gov or Bambi Kraus, Office of Native Affairs and Policy at Bambi.Kraus@fcc.gov.

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¹⁶ See 47 CFR § 1.1204(b).

¹⁷ 47 CFR §§ 1.1200 *et seq.*

APPENDIX A

CURRENT FCC FORM 601 QUESTIONS

Question 14:

14) Applicant/Licensee Legal Entity Type: (Select One) <input type="checkbox"/> Individual <input type="checkbox"/> Unincorporated Association <input type="checkbox"/> Trust <input type="checkbox"/> Government Entity <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Consortium <input type="checkbox"/> Other: _____
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Question 27:

27) Demographics (Optional)

Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African-American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
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