

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

In the Matter of)	
)	
THE KLAMATH TRIBES)	ULS File No. 0009168542
)	
NEZ PERCE TRIBE)	ULS File No. 0009184902
)	
ROUND VALLEY INDIAN TRIBES)	ULS File No. 0008964895
)	
SHOALWATER BAY TRIBE OF THE)	
SHOALWATER BAY INDIAN RESERVATION)	ULS File No. 0009220222
)	
Requests for Waiver of Tribal Lands Definition in)	
the 2.5 GHz Tribal Priority Window)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2024

Released: March 12, 2024

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Klamath Tribes (Klamath),¹ Nez Perce Tribe (Nez Perce),² Round Valley Indian Tribes (Round Valley),³ and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation (Shoalwater Bay)⁴ each filed an application in the 2.5 GHz Rural Tribal Priority Window (Tribal Window). In connection with these applications, each Tribe submitted a request for waiver⁵ of section 27.1204(b)(2) of the Commission's rules, which defines eligible Tribal lands for purposes of the Tribal Window. In this *Memorandum Opinion and Order*, we grant the Waiver Requests.⁶

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.⁷ Among other things, the order created a

¹ See File No. 0009168542 (filed July 31, 2020, amended Aug. 19, 2020) (Klamath Application).

² See File No. 0009184902 (filed Aug. 13, 2020) (Nez Perce Application).

³ See File No. 0008964895 (filed Feb. 3, 2020, amended July 31, 2020, and Aug. 31, 2020) (Round Valley Application).

⁴ See File No. 0009220222 (filed Sept. 2, 2020, amended Oct. 9, 2020, Oct. 22, 2020, and Oct. 26, 2020) (Shoalwater Bay Application).

⁵ Klamath Application, Petition for Waiver (Klamath Waiver Request); Nez Perce Application, Waiver Request and Eligibility and Local Presence Exhibit (Nez Perce Waiver Request); Round Valley Application, Petition for Waiver (Round Valley Waiver Request); Shoalwater Bay Application, Petition for Waiver (Shoalwater Bay Waiver Request) (collectively, Waiver Requests).

⁶ See 47 CFR § 1.925(b)(3).

⁷ *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report & Order*).

Rural Tribal Priority Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum.⁸ 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.”⁹ Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission’s rules.¹⁰ Third, the eligible Tribal lands must be in a rural area, which is defined as “lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000.”¹¹ Finally, the applicant must have a local presence on the eligible Tribal lands for which it is applying.¹²

3. In 2020, 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.¹³ 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.”¹⁴ 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.¹⁵

4. Except for Nez Perce, each Tribe addressed by this *Memorandum Opinion and Order* filed one application during the Tribal Window that requested a license for each Tribe’s eligible reservation land, for which no waiver is required, and certain adjacent areas, including different combinations of off-reservation trust, Tribally-owned fee, and non-Tribal lands, which all require a waiver.¹⁶ The Nez Perce filed two applications in the Tribal Window, the first of which sought a license for the Tribe’s reservation.¹⁷ That application has been granted.¹⁸ The second application, which is addressed in this *Memorandum Opinion and Order*, requests a waiver of the Tribal lands definition in

⁸ *Id.* at 5463–69, paras. 47–65.

⁹ 47 CFR § 27.1204(b)(1).

¹⁰ *Id.* § 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 Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.*, as amended.” *Id.*

¹¹ *Id.* § 27.1204(b)(3).

¹² *Id.* § 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 Tribal 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 (WTB 2020).

¹³ See *Transforming the 2.5 GHz Band*, Order on Reconsideration, 35 FCC Rcd 15074, 15080–81, para. 22 (2020) (*Reconsideration Order*).

¹⁴ *Id.* at 15081, para. 22.

¹⁵ *Id.* at 15081, para. 23.

¹⁶ Klamath Application, Round Valley Application, Shoalwater Bay Application.

¹⁷ See File No. 0009001261 (filed Mar. 5, 2020, amended July 29, 2020, and July 30, 2020).

¹⁸ See File No. 0009001261 (granted Oct. 21, 2020) (WRJS953).

order to obtain a license for additional rural lands surrounding the Tribe's reservation.¹⁹ Each applicant notes that the areas they have applied for are rural and have poor broadband access.²⁰

5. The Wireless Telecommunications Bureau accepted each application for filing.²¹ No petitions to deny or oppositions were filed against the applications or Waiver Requests in response to the Bureau's Public Notices.

III. DISCUSSION

6. 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.²² Here, we find that each applicant's showing meets the first prong of the waiver standard to the extent that each seeks a waiver for off-reservation trust or Tribally-owned fee lands. With respect to the non-Tribal lands contained within their requested shapefiles, we grant waivers under the second prong of the Commission's waiver standard. Accordingly, we waive section 27.1204(b)(2) of the Commission's rules to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal land specified for each applicant.

7. The Commission established the Tribal Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.²³ In these instances, we find that, with respect to the off-reservation trust and Tribally-owned fee parcels identified by the applicants, 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 each applicant has shown that the off-reservation trust and fee lands in question are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, each applicant has adequately demonstrated its authority over the off-reservation trust and Tribally-owned fee land. We find, based upon the showing made by each of the applicants, that treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.²⁴ We note that the off-reservation trust and Tribally-owned fee lands in question are areas subject to the respective Tribe's current, demonstrated authority. In addition, we find that a waiver would be in the public interest because each of the applicants plans to use the 2.5 GHz spectrum to provide service on rural trust and fee lands that are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, we find that each of the applicants has

¹⁹ See Nez Perce Waiver Request at 1. The most recent U.S. Census mapping data available does not identify these additional rural areas as Tribal lands. See <https://www.census.gov/cgi-bin/geo/shapefiles/index.php?year=2023&layergroup=American+Indian+Area+Geography>.

²⁰ See Klamath Waiver Request at 3; Nez Perce Waiver Request at 5; Round Valley Waiver Request at 7; Shoalwater Bay Waiver Request at 6.

²¹ *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 36 FCC Rcd 285, 288, 289, Attachs. A, B (WTB 2021) (Shoalwater Bay); *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 35 FCC Rcd 12850, 12853, 12854, Attachs. A, B (WTB 2020) (other applications).

²² 47 CFR § 1.925(b)(3).

²³ *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

²⁴ The Commission has noted that the problem of lack of communications is particularly acute on rural Tribal lands. See *2.5 GHz Report & 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 Deployment 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.").

adequately demonstrated that it has “the requisite authority over the deployment of facilities and service[s]”²⁵ over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

8. With respect to the remaining non-Tribal lands specified in the applications, we find that under the unusual factual circumstances present at this time due to the ongoing transformation of the 2.5 GHz band, strict application of the Tribal lands definition would be contrary to the public interest. The 2.5 GHz band already contains a large number of incumbent licenses, most of which have 35-mile circular geographic service areas (GSAs) or irregular areas caused by overlapping GSAs. Many Tribal lands are similarly small, irregularly-shaped parcels, which can present deployment challenges in light of the 2.5 GHz band’s existing incumbency, licensing structure, and technical rules. The non-Tribal lands at issue in the instant applications are, to varying degrees, adjacent to or connect different reservation, off-reservation trust, or Tribally-owned fee lands, which may facilitate use and deployment of 2.5 GHz spectrum across these Tribal areas to the extent they are licensed as part of a unified service area. We note in particular that each of the Waiver Requests is unopposed. On balance, given the specific circumstances present here, in particular the unique nature of the 2.5 GHz band and the current status of its transformation process, we believe that granting waivers to these applicants would help “address the communications needs” on their rural Tribal land and other adjacent rural areas that have historically lacked effective broadband access.²⁶ In reaching that conclusion, we note that no petitions to deny or oppositions were received with respect to the applications and Waiver Requests. We therefore grant the Waiver Requests.

9. We note that our decision here is limited to the suitability of these specific off-reservation trust, Tribally-owned fee, and non-Tribal lands to be licensed 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. In particular, our decision to grant the Waiver Requests is based on the unique circumstances of the individual applicants and the specific situation present in the 2.5 GHz band at this point in time, and the presence of any one particular fact should not be viewed as supporting a waiver or other form of relief in a different context at a different point in time.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 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 Klamath Tribes, Nez Perce Tribe, Round Valley Indian Tribes, and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation ARE GRANTED, and section 27.1204(b)(2) of the Commission’s rules IS WAIVED to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal lands specified in each application.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i), and 309(a) 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 Klamath Tribes (ULS File No. 0009168542), Nez Perce Tribe (ULS File No. 0009184902), Round Valley Indian Tribes (ULS File No. 0008964895), and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation (ULS File No. 0009220222) for new 2.5 GHz licenses in accordance with this *Memorandum Opinion and Order* and the Commission’s rules and policies.

²⁵ *Reconsideration Order*, 35 FCC Rcd at 15081, para. 22.

²⁶ *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

12. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. This *Memorandum Opinion and Order* is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau