

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

In the Matter of)
CHICKAHOMINY CONSORTIUM) ULS File No. 0009167733
KIOWA TRIBE) ULS File No. 0009209295
MONACAN INDIAN NATION) ULS File No. 0009209343
NANSEMOND INDIAN TRIBE) ULS File No. 0009209358
NARRAGANSETT INDIAN TRIBE) ULS File No. 0009167606
OSNI PONCA, LLC) ULS File No. 0009185897
VIRGINIA TRIBAL CONSORTIUM) ULS File No. 0009209344
Requests for Waiver of the 2.5 GHz Rural Tribal)
Priority Window Rules)

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2024

Released: March 14, 2024

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Chickahominy Consortium (Chickahominy),¹ Monacan Indian Nation (Monacan),² Nansemond Indian Tribe (Nansemond),³ Virginia Tribal Consortium (VTC)⁴ (collectively, the Virginia Tribes), the Narragansett Indian Tribe (Narragansett),⁵ the Kiowa Tribe,⁶ and Osni Ponca, LLC (Osni Ponca),⁷ submitted the above-captioned applications to participate in the Commission’s 2.5 GHz Rural Tribal Priority Window (Tribal Window). In connection with the applications, each Tribe submitted a

¹ See File No. 0009167733 (filed July 30, 2020, amended Aug. 3, 2020) (Chickahominy Application).

² See File No. 0009209343 (filed Sept. 1, 2020, amended Sept. 30, 2020) (Monacan Application).

³ See File No. 0009209358 (filed Sept. 1, 2020, amended Sept. 30, 2020) (Nansemond Application).

⁴ See File No. 0009209344 (filed Sept. 1, 2020, amended Sept. 30, 2020) (VTC Application).

⁵ See File No. 0009167606 (filed July 30, 2020) (Narragansett Application).

⁶ See File No. 0009209295 (filed Sept. 1, 2020, amended June 21, 2021, Aug. 24, 2021, Oct. 18, 2021, and Oct. 26, 2021) (Kiowa Application).

⁷ See File No. 0009185897 (filed Aug. 14, 2020, amended Sept. 2, 2020) (Osni Ponca Application).

request for waiver⁸ of section 27.1204(b)(2) of the Commission’s rules, which defines eligible Tribal lands for purposes of the Tribal Window.⁹ In this *Memorandum Opinion and Order*, we grant the Waiver Requests in part, as specified below.¹⁰

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.¹¹ Among other things, the order created a Tribal Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum.¹² To obtain a license in the Tribal 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.”¹³ Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission’s rules.¹⁴ 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.”¹⁵ Finally, the applicant must have a local presence on the eligible Tribal lands for which it is applying.¹⁶

⁸ Chickahominy Application, Request for Waiver of Eligibility Rules for Lands Not Held in Trust by the Chickahominy Consortium (Chickahominy Waiver Request); Monacan Application, Petition for Waiver (Monacan Waiver Request); Nansemond Application, Petition for Waiver (Nansemond Waiver Request); VTC Application, Petition for Waiver (VTC Waiver Request); Narragansett Application, Request for Waiver of Eligibility Rules Exhibit (Narragansett Waiver Request); Kiowa Application, Lawton Urban Area Waiver Request (Kiowa Waiver Request); Osni Ponca Application, Petition for Waiver (Osni Ponca Waiver Request).

⁹ 47 CFR § 27.1204(b)(2). Kiowa and Osni Ponca also request a waiver of 47 CFR § 27.1204(b)(3), which excludes lands that are part of an urban area or urban cluster with a population of greater than 50,000 from being eligible in the Tribal Window. Kiowa Waiver Request, Osni Ponca Waiver Request at 1. *See* para. 4, *infra*.

¹⁰ *Id.* § 1.925(b)(3).

¹¹ *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report & Order*).

¹² *Id.* at 5463–69, paras. 47–65.

¹³ 47 CFR § 27.1204(b)(1).

¹⁴ *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.*

¹⁵ *Id.* § 27.1204(b)(3).

¹⁶ *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) (*Bureau Procedures PN*).

3. In the *2.5 GHz Report & Order*, the Commission also determined that the Tribal Window would include only unassigned 2.5 GHz spectrum.¹⁷ In the *Bureau Procedures PN*, we specified that licenses will not be granted for Tribal lands where an applicant cannot demonstrate local presence.¹⁸

4. Among the criteria adopted by the Commission as part of the Tribal Window was the requirement that any area being requested be “in a rural area, which is defined to be lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000....”¹⁹ The Commission later denied a petition for reconsideration seeking to include urban areas in the definition of eligible Tribal lands in the Tribal Window,²⁰ reflecting that its underlying purpose was “to address the communications needs of their communities and of residents on rural Tribal lands, including the deployment of advanced wireless services to unserved or underserved areas.”²¹

5. In 2020, the Commission also 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.²² 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.”²³ 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.²⁴

6. All seven Virginia Tribes submitted Tribal Window applications either directly or through a consortium filing, along with requests for waiver of the Tribal lands definition.²⁵ Osni Ponca

¹⁷ *2.5 GHz Report & Order*, 34 FCC Rcd at 5469, para. 65 (declining to permit applications for already-licensed spectrum). Further, in the *Bureau Procedures PN*, we reiterated that Tribal Window “applications will only be accepted for channel groups for which there is currently unassigned spectrum in the eligible portion of the 2.5 GHz band . . . over the relevant rural Tribal land.” *Bureau Procedures PN*, 35 FCC Rcd at 309, 312 paras. 3, 15. Potential applicants were encouraged to “conduct due diligence to determine whether they will be able to provide service in the areas for which they intend to apply for licenses,” including an evaluation of “how much unassigned eligible 2.5 GHz spectrum is available.” *Id.* at 309, para. 5.

¹⁸ *Bureau Procedures PN*, 35 FCC Rcd at 313–14, para. 23.

¹⁹ 47 CFR § 27.1204(b)(3). *See also Bureau Procedures Public Notice*, 35 FCC Rcd at 313, para. 20.

²⁰ *See Transforming the 2.5 GHz Band*, Order on Reconsideration, 35 FCC Rcd 15074, 15079–80, paras. 18–21 (2020) (*Reconsideration Order*).

²¹ *Id.* at 15080, para. 19 (citing *2.5 GHz Report & Order*, 34 FCC Rcd at 5463, para. 47).

²² *See Reconsideration Order*, 35 FCC Rcd at 15080–81, para. 22.

²³ *Id.* at 15081, para. 22.

²⁴ *Id.* at 15081, para. 23.

²⁵ *See* Chickahominy Waiver Request; Monacan Waiver Request; Nansemond Waiver Request; VTC Waiver Request. The Monacan Indian Nation and the Nansemond Indian Tribe each filed separate applications. Monacan Application; Nansemond Application. The Chickahominy and Chickahominy – Eastern Division Tribes applied jointly as the Chickahominy Consortium. Chickahominy Application. The Rappahannock Tribe, Inc. (Rappahannock), the Upper Mattaponi Tribe, and the Pamunkey Indian Tribe applied jointly as the Virginia Tribal Consortium. VTC Application. Each of the Virginia Tribes is federally recognized, and thus filing as a consortium meets the applicant eligibility requirements established for the Tribal Window. *See* 47 CFR § 27.1204(b)(1); Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 88 Fed. Reg. 2112 (2023) (*2023 List of Federally Recognized Tribes*).

filed one application within the Tribal Window,²⁶ which it amended to include a waiver of the Tribal lands and rural lands definitions.²⁷ The Narragansett²⁸ and Kiowa²⁹ both filed two applications in the Tribal Window. In their Waiver Requests, all of the Tribes note the various ties they have to the areas they have applied for³⁰ and that these areas have poor broadband access.³¹

7. The Osni Ponca application was accepted for filing on November 10, 2020.³² The Chickahominy, Monacan, Nansemond, VTC, and Narragansett applications were accepted for filing on April 8, 2021.³³ The Kiowa application was accepted for filing on November 18, 2021.³⁴ No petitions to deny or oppositions were filed against any of those applications or Waiver Requests in response to the Bureau's Public Notices.³⁵ T-Mobile USA, Inc. (T-Mobile) filed a letter in response to the Virginia

²⁶ Osni Ponca Application. Osni Ponca, LLC, is a for-profit economic development company wholly owned by the Ponca Tribe of Nebraska, which is a federally-recognized Tribe, *id.*, Amended Eligibility Exhibit—FCC Form 601 at 5, and therefore meets the applicant eligibility requirements established for the Tribal Window. *See* 47 CFR § 27.1204(b)(1); *2023 List of Federally Recognized Tribes*.

²⁷ *See* Osni Ponca Waiver Request at 1.

²⁸ The first application sought a license for the Tribe's reservation land in Rhode Island and has been granted. File No. 0009157291 (granted May 12, 2021) (WRMP514). The Narragansett also filed a second application, which is the subject of this *Memorandum Opinion and Order*, requesting a waiver of the Tribal lands definition for Tribally-owned fee land and non-Tribal land adjacent to its reservation. Narragansett Application; Narragansett Waiver Request at 1, 2.

²⁹ The first application, which requested eligible rural Tribal land in the Kiowa-Comanche-Apache-Fort Sill Apache/Caddo-Wichita-Delaware joint-use Oklahoma Tribal Statistical Area (OTSA) has been granted. File No. 0009209285 (granted Dec. 21, 2021) (WROW819). The second application, which is the subject of this *Memorandum Opinion and Order*, includes a request for the Lawton Urban Area that falls within the separate Kiowa-Comanche-Apache-Fort Sill Apache OTSA, for which the Kiowa also seek a license and is otherwise eligible land for purposes of the Tribal Window not requiring a waiver. Kiowa Waiver Request.

³⁰ Chickahominy Waiver Request at 1, 2; Kiowa Waiver Request at 1; Monacan Waiver Request at 1, 8–9; Nansemond Waiver Request at 1, 7; Narragansett Waiver Request at 2; Osni Ponca Waiver Request at 2, 5; VTC Waiver Request at 8–9.

³¹ Chickahominy Waiver Request at 1, 3; Kiowa Waiver Request at 1; Monacan Waiver Request at 5; Nansemond Waiver Request at 5; Narragansett Waiver Request at 1, 2–3; Osni Ponca Waiver Request at 4–5; VTC Waiver Request at 6.

³² *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).

³³ *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 36 FCC Rcd 7124, 7127, 7128, 7130, 7131, 7132, Attachs. A, B (WTB 2021).

³⁴ *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 36 FCC Rcd 16276, 16279, 16280, Attachs. A, B (WTB 2021).

³⁵ Letters of support for each of the Virginia applications and the Narragansett Application were submitted by their respective Congressional representatives. *See* Letter from United States Senators Mark R. Warner and Tim Kaine to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Sept. 2, 2020); Letter from the Honorable Robert C. "Bobby" Scott to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Sept. 1, 2020); Letter from the Honorable Robert J. Wittman to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Aug. 21, 2020); Letter from the Honorable Abigail Spanberger to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Sept. 29, 2020); Letter from the Honorable Jack Reed, United States Senator, the Honorable Sheldon Whitehouse, United States Senator, the Honorable James R. Langevin, Member of Congress, and David N. Cicilline, Member of Congress, to Ajit Pai, Chair, FCC (July 30, 2020).

applications advocating that any licenses be limited to rural areas where spectrum is available.³⁶ The Monacan, Nansemond, and VTC filed a response.³⁷

III. DISCUSSION

8. 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.³⁸ Here, we find that with limited exceptions noted below, 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, with the limited exceptions noted below, 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.

9. The Commission established the Tribal Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.³⁹ 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 Tribally-owned 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.⁴⁰ We note that the off-reservation trust and Tribally-owned fee lands in question are areas subject to the Tribe's current, demonstrated authority. In addition, we find that a waiver would be in the public interest because the applicants plan to use the 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 adequately demonstrated that it has "the requisite authority over the deployment of facilities and service[s]"⁴¹ over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

10. 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

³⁶ File Nos. 0009209343, 0009209358, 0009209344, 0009167733, Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, at 2–4 (filed May 10, 2021) (T-Mobile Letter).

³⁷ File Nos. 0009209343, 0009209358, 0009209344, Letter from Jessica R. G. Krauss, Associate Attorney, Cultural Heritage Partners, PLLC, to Marlene H. Dortch, Secretary, FCC (filed May 20, 2021) (Response Letter).

³⁸ 47 CFR § 1.925(b)(3).

³⁹ *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

⁴⁰ 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.").

⁴¹ *Reconsideration Order*, 35 FCC Rcd at 15081, para. 22.

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. With the exception of certain land areas in the Osni Ponca application discussed below, 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.⁴² We therefore grant the Waiver Requests, with the limited exceptions specified below.

11. We note that the scope of these waivers does not extend to the limited circumstances in which any requested land areas either have no unassigned spectrum or have urban land, or the applicant has not demonstrated local presence. The *2.5 GHz Report & Order* and the *Bureau Procedures PN* adopted in connection with the Tribal Window specified that areas with no available spectrum were not eligible.⁴³ Specifically, each of the applications except for Kiowa include waiver areas without unassigned spectrum, and no waiver of this specific requirement was sought, nor was any related public interest showing made, in the relevant applications.⁴⁴ As such, to the extent the applications seek to license areas where no unassigned spectrum is available, the associated Waiver Requests with respect to the Tribal Lands definition in section 27.1204(b)(2) of the Commission's rules are denied. Furthermore, as noted by T-Mobile and confirmed by staff analysis,⁴⁵ no spectrum is available in channel block 3 in the rural portion of Monacan's and Nansemond's proposed service areas. Accordingly, any license issued to Monacan and Nansemond will be limited to channel blocks 1 and 2.

12. The *2.5 GHz Report & Order*, *Reconsideration Order*, and *Bureau Procedures PN* also specified that the Tribal Window was limited to rural areas and urban areas were not eligible.⁴⁶ Each of the proposed license areas except for Chickahominy contain some ineligible urban land, as determined by United States Census Bureau.⁴⁷ Except for Kiowa⁴⁸ none of the applications explicitly sought seek a

⁴² *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

⁴³ See *2.5 GHz Report & Order*, 34 FCC Rcd at 5469, para. 65. Further, in the *Bureau Procedures PN*, we reiterated that Tribal Window "applications will only be accepted for channel groups for which there is currently unassigned spectrum in the eligible portion of the 2.5 GHz band . . . over the relevant rural Tribal land." *Bureau Procedures PN*, 35 FCC Rcd at 309, 312 paras. 3, 15.

⁴⁴ The portions of the application shapefiles without unassigned spectrum are visible in the mapping tool available at the dedicated webpage for the Tribal Window by activating the existing licenses filter for all three channel groups. See *2.5 GHz Rural Tribal Maps*, <https://www.fcc.gov/25-ghz-rural-tribal-maps> (*2.5 GHz Rural Tribal Maps*).

⁴⁵ See T-Mobile Letter.

⁴⁶ See *2.5 GHz Report & Order*, 34 FCC Rcd at 5466, para. 56; *Reconsideration Order*, 34 FCC Rcd at 5469, para. 65; *Bureau Procedures PN*, 35 FCC Rcd at 313, para. 20.

⁴⁷ See *Bureau Procedures Public Notice*, 35 FCC Rcd at 313, para. 20 (citing <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html>).

⁴⁸ Kiowa Waiver Request at 1–2.

waiver of the rural limitation,⁴⁹ and Osni Ponca does not offer a separate justification for its requested waiver thereof.⁵⁰ While Kiowa argues that excluding the Lawton Urban area would make it more difficult to serve the adjacent rural area and certain facilities near the border of its proposed service area,⁵¹ its application has not established that it is situated any differently from other potential licensees, nor that any unique or unusual factual circumstances exist in this case. Moreover, grant of the Waiver Request would likely not resolve the Kiowa's concerns about the difficulties of providing service near the border. There are several existing, incumbent licensees throughout the Kiowa-Comanche-Apache-Fort Sill Apache OTSA, and the Kiowa are required to protect those operations, whether or not the Waiver Request is granted.⁵² We therefore deny the Waiver Requests to the extent they seek to cover urban lands, but will process the remainder of the Kiowa application because it requests eligible rural Tribal land.⁵³

13. With respect to the Osni Ponca Waiver Request, we grant in part to the extent that the applicant has demonstrated both that certain non-Tribal land within its requested service area is directly adjacent to the Ponca Tribe's off-reservation trust land, and the applicant has sufficiently demonstrated a physical local presence as required by the *Bureau Procedures PN*.⁵⁴ The shapefile accompanying the Osni Ponca application reflects the Ponca Tribe's off-reservation trust parcel in Knox County, Nebraska. As discussed above, we grant a waiver for this trust land under the first prong of the Commission's waiver standard, and we further grant a waiver for the adjacent non-Tribal land area in Knox County (with the exception of the portion already licensed to the Nebraska Indian Community College) under the second prong of this standard to facilitate service to the off-reservation trust land through a contiguous

⁴⁹ Monacan, Nansemond, and VTC expressed the view that their respective Waiver Requests do not include urban lands. Response Letter at 1. As noted by T-Mobile in its comments and confirmed by staff analysis, each of their shapefiles do include urban lands. The urban lands can be seen on the *2.5 GHz Rural Tribal Maps* by activating the filter for "Urban Areas GTE 50,000 population."

⁵⁰ See Osni Ponca Waiver Request at 1, 3, 4, 7. While Osni Ponca refers to a waiver of the rural limitation it does not seek a license for areas that are "both (a) an urbanized area or urban cluster area with a population equal to or greater than 50,000, and (b) part of a geographical service area subject to an existing incumbent Channel 1, Channel 2, or Channel 3 license." Osni Ponca Waiver Request at 1, n.1. Two of the three urbanized areas located within the counties Osni Ponca references (Lincoln, Nebraska and Grand Island, Nebraska) have no available spectrum on any channel. Accordingly, we conclude that Osni Ponca is not seeking a license for those areas. In the third urbanized area in question (Omaha, Nebraska), there is a limited amount of spectrum available, but Osni Ponca does not offer a separate justification for a waiver of the rural limitation.

⁵¹ Kiowa Waiver Request at 1–2.

⁵² A review of the Commission's Universal Licensing System (ULS) database shows several incumbent 2.5 GHz licenses that have licenses that cover the same area on the same channels that the Kiowa are requesting. The Kiowa will receive a license for the eligible rural Tribal land area for which they applied, but must protect any such incumbent operations.

⁵³ Before the Broadband Division is able to process the applications that are the subject of this *Memorandum Opinion and Order*, Commission staff will create revised shapefiles to exclude areas where the relevant waiver requests are denied. The final shapefiles will be reflected in the licenses granted by the Broadband Division in lieu of the application records. Bureau staff will be available to respond to any questions about either the final shapefiles or the Tribes' license records.

⁵⁴ The *Bureau Procedures PN* specified that a "Tribe or eligible Tribally owned entity must specifically describe the nature of the local presence and demonstrate that the applicant is physically located on the Tribal land" and "[a]n eligible Tribally owned and controlled corporation must demonstrate local presence on the Tribal land for which [it] applies. Local presence could be demonstrated, for example, by showing that the corporation is owned and controlled by the Tribe for whose rural land it is applying and that the corporation provides services or goods on that Tribal land." *Bureau Procedures PN*, 35 FCC Rcd at 313–14, paras. 21, 23.

service area.⁵⁵ The remaining 14 counties described in the waiver request as part of the Ponca Tribe's service area are largely not contiguous to Knox County and also contain in part the reservation lands of other Tribes, in addition to areas that have no unassigned spectrum or has urban land.⁵⁶ While Osni Ponca has indicated that it is not seeking to license the eligible Tribal lands of other Tribes, it has not identified both the presence of the Ponca Tribe's own Tribal land in these counties combined with the required physical local presence as a Tribally-owned and controlled business entity.⁵⁷ As noted above, "[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."⁵⁸ In light of these dual requirements, we hereby grant the requested waiver only to the extent described above.

14. We note that our decision here is limited to the suitability of these specific lands 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

15. Accordingly, IT IS ORDERED, pursuant to section 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 Narragansett Indian Tribe on July 30, 2020; Chickahominy Consortium on July 30, 2020; Osni Ponca, LLC, on August 14, 2020; the Monacan Indian Nation on September 1, 2020; the Nansemond Indian Tribe on September 1, 2020; and the Virginia Tribal Consortium on September 1, 2020, as amended, ARE GRANTED IN PART and section 27.1204(b)(2) of the Commission's rules IS WAIVED IN PART to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal lands specified in each application. Otherwise, the waiver requests ARE DENIED, and the waiver request filed by the Kiowa Tribe on September 1, 2020, as amended, IS DENIED.

16. 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 applications filed by the Narragansett Indian Tribe (ULS File No. 0009167606), the Chickahominy Consortium (ULS File No. 0009167733), Osni Ponca, LLC (ULS File No. 0009185897), the Monacan Indian Nation (ULS File No. 0009209343), the Virginia Tribal Consortium (ULS File No. 0009209344), the Nansemond Indian Tribe (ULS File No. 0009209358), and the Kiowa Tribe (ULS File No. 0009209295) for new 2.5

⁵⁵ As noted above, we will not issue a license where an applicant cannot demonstrate local presence, such as the Tribal lands of another Tribe. *Id.* at 314, para. 23; *see* FCC License WRJS952, licensed to the Nebraska Indian Community College.

⁵⁶ The reservation lands of other Tribes within the Ponca Tribe's service area include the: (1) Yankton Sioux Tribe; (2) Santee Sioux Tribe; (3) Winnebago Tribe; and (4) Omaha Tribe.

⁵⁷ Osni Ponca Waiver Request at 2, n.1; *see Bureau Procedures PN*, 35 FCC Rcd at 313–14, paras. 21, 23. While the Osni Ponca application notes the Ponca Tribe's provisioning of social and other services to members throughout its broader service area, and references housing rental arrangements in eleven counties, the application only details the physical presence of certain facilities maintained by the Ponca Tribe in five counties, two of which are specific to the applicant. Osni Ponca Amended Eligibility Exhibit at 2–4. Further, the only Tribal land parcel that has been identified as directly held by, or held in benefit for, the Ponca Tribe is the off-reservation trust land in Knox County. Osni Ponca Waiver Request at 5.

⁵⁸ *Reconsideration Order*, at 15081, para. 22.

GHz licenses in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

17. 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