



Federal Communications Commission
Washington, D.C. 20554

June 16, 2025

DA 25-519
Released: June 16, 2025

In Reply Refer to:
1800B3-TSN

Business Council of the Northern Arapaho Tribe
c/o Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
Eleventh Floor
Arlington, VA 22209

In re: **New(FM), Ethete, Wyoming**
Business Council of the Northern
Arapaho Tribe
Facility ID No: 791360
Application File No: 0000256686

Dear Counsel:

We have before us the application (Application) of the Business Council of the Northern Arapaho Tribe (Council) for a new FM broadcast station at Ethete, Wyoming.¹ The Application was filed simultaneously with Council's petition for a new Tribal Allotment at Ethete (Petition), utilizing the "threshold qualifications" procedures for asserting a Tribal Priority for the new allotment.² As part of its Petition, Council seeks a waiver of certain of the requirements needed to establish threshold qualifications (Waiver Request). After examining Council's application and giving its Waiver Request the requisite "hard look," we grant the Waiver Request and the Application.

Background. Council filed the Application, and its Petition, on November 5, 2024. Council seeks a new FM broadcast station on Channel 260C0 at Ethete, Wyoming, which is a community located on the Wind River Indian Reservation, which is shared by the Northern Arapaho Tribe and the Eastern Shoshone Tribe.³

¹ Application File No. 0000256686.

² See generally *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642 (2011) (*Rural Radio Third R&O*).

³ Petition at 3.

In the Petition, Council sought to add the allotment at Ethete as a Tribal Allotment, using our threshold qualification procedures.⁴ As set forth in the *Rural Radio Third R&O*, as well as Note 5 to section 73.3573 of our rules,⁵ a Tribal Applicant seeking a Tribal Priority must demonstrate that it meets all of the following eligibility criteria for grant of a Tribal Priority at the allotment stage:

- (a) The applicant is either a federally recognized Tribe or Tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes. Qualifying Tribes or Tribal entities must be those at least a portion of whose Tribal Lands lie within the principal community contour of the proposed facility. Although the 51 or greater percent Tribal control threshold need not consist of a single Tribe, the qualifying entity must be 51 percent or more owned or controlled by Tribes at least a portion of whose Tribal Lands lie within the proposed facility's principal community contour;
- (b) (1) At least 50 percent of the area within the proposed principal community contour is over that Tribe's Tribal Lands, or (2) the proposed principal community contour (i) encompasses 50 percent or more of that Tribe's Tribal Lands, (ii) serves at least 2,000 people living on Tribal Lands, and (iii) the total population on Tribal Lands residing within the proposed station's service contour constitutes at least 50 percent of the total covered population⁶ (and, in the case of either (b)(1) or (b)(2), the proposed station's principal community contour does not cover more than 50 percent of the Tribal Lands of a Tribe that is not a party to the application); (citation omitted)
- (c) The proposed community of license must be located on Tribal Lands; and
- (d) The proposed service must constitute first or second aural (reception) service, or first local Tribal-owned commercial transmission service at the proposed community of license.⁷

The Tribal Allotment for Channel 260C0 at Ethete, Wyoming, was added to the Table of Allotments by Report and Order released February 26, 2025.⁸ The Media Bureau released a Threshold Qualifications Public Notice on April 23, 2025,⁹ inviting qualified applicants to file competing applications to the Application. No competing applications were filed, and Council filed an expression of continuing interest in the Ethete allotment, and requested that the Application be processed immediately.

In the Waiver Request, Council states that the allotment coordinates meet all of the above criteria to qualify for a Tribal Priority.¹⁰ The Northern Arapaho Tribe is a federally recognized Native American

⁴ *Rural Radio Third R&O*, 26 FCC Rcd at 17646-47.

⁵ 47 CFR § 73.3573 Note 5.

⁶ For purposes of qualifying for the Tribal Priority at the FM allotment stage, the service contour is the class reference contour as set forth in 47 CFR § 73.211(b), which is the 1 mV/m (60 dBμ) contour. *Rural Radio Third R&O*, 26 FCC Rcd at 17646, para. 8 n.29.

⁷ 47 CFR § 73.3573 Note 5. *See also Rural Radio Third R&O*, 26 FCC Rcd at 17646-47, para. 8.

⁸ *Ethete, Wyoming*, Report and Order, DA 25-165 (MB Feb. 26, 2025).

⁹ *Media Bureau Announces Threshold Qualification Window for Tribal Allotment at Ethete, Wyoming*, Public Notice, DA 25-358 (MB Apr. 23, 2025).

¹⁰ Council does not seek a waiver of the criterion prohibiting coverage of more than 50% of another Tribe's Tribal Lands, as the Wind River Indian Reservation is occupied simultaneously by, and under joint and equal control of, two different Tribes, only one of which seeks to establish radio service. Petition at 3-4. We note, however, that the documents submitted, including a letter from the Wind River Intertribal Council signed by the chairmen of both the

Tribe.¹¹ Council describes itself as the administrative arm of the Tribal government, and the Council members carry out governmental functions of the Tribe.¹² A signal from the allotment coordinates would cover the required percentages of Tribal Lands.¹³ The proposed station would constitute the first local tribal-owned transmission service (and, indeed, the first local transmission service) at Ethete, a community located on the Wind River Indian Reservation.¹⁴ Thus, the Tribal Allotment at Ethete comports with all requirements of the Tribal Priority. However, evaluating the Tribal Priority criteria from the transmitter site for the proposed new FM station set forth in the Application, Council concedes that the facilities do not satisfy either criterion (b)(1) or (b)(2), insofar as the requisite signal contours do not meet the 50% Tribal Lands coverage requirements, and accordingly seeks waiver of one of those criteria.¹⁵ Council states in the Waiver Request that 41% of the area within the proposed facility's principal community contour (70 dBμ) is over Tribal Lands, 9% short of the 50% set forth in criterion (b)(1), and the proposed station's 70 dBμ contour encompasses 47.6% of Tribal Lands, 2.4% short of the 50% set forth in criterion (b)(2)(i).¹⁶ Council points out that the proposed transmitter site, Boysen Peak, while falling somewhat short of these coverage criteria due to its location at the edge of Tribal Lands, is an established transmitter site with power and access, and with sufficient elevation to cover substantial parts of Tribal Lands.¹⁷

Additionally, Council notes that the proposed station's service contour (60 dBμ) encompasses a population of 48,370, of whom over half (25,524) reside on Tribal Lands. The 70 dBμ principal community contour covers 25,759 persons, of whom 85.8%, or 22,109, reside on Tribal Lands.¹⁸

Discussion. Generally, the Commission's rules may be waived for good cause shown.¹⁹ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances that warrant such action.²⁰ The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"²¹ and must support its waiver request with a

Council and the Eastern Shoshone Business Council, indicate that the Eastern Shoshone Tribe has been apprised of the Application and the Petition, and supports the proposed station's covering the co-occupied reservation. Petition at 4-5 and Exhibit 3.

¹¹ Petition at 1.

¹² *Id.*

¹³ Waiver Request at 4-5.

¹⁴ *Id.* at 1-2. *See also* Waiver Request at 7.

¹⁵ Waiver Request at 5-6.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 6-7.

¹⁸ *Id.* at 6.

¹⁹ 47 CFR § 1.3.

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969) (*WAIT Radio*).

²¹ *WAIT Radio*, 418 F.2d at 1157, para. 2.

compelling showing.²² Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.²³

The Commission has indicated a willingness to waive certain of the Tribal Priority criteria, including but not limited to the Tribal Land coverage criteria.²⁴ Applicants often request, and are granted, waiver of the requirement that a proposed facility serve at least 2,000 persons on Tribal Lands and that the population served on Tribal Lands constitute at least 50% of the total population served.²⁵ In this case, the Waiver Request concerns the area covered rather than the population, involving as it does an exceptionally large coverage area. Council points out that the Wind River Indian Reservation comprises 9,132 square kilometers, more than the states of Rhode Island and Delaware combined, highlighting the difficulty of covering over 50% of that area from an established transmitter site near one edge of the reservation.²⁶ Given this size and the coverage available from the proposed transmitter site, we find the fact that Council falls short of 50% Tribal Lands area coverage by less than three percentage points to be *de minimis*. Moreover, the minimal shortage in Tribal Lands area coverage is more than compensated by the fact that a signal from the proposed site would serve over 20,000 residents on Tribal Lands, over 85% of the total served population. This comports with the Commission's goal, in establishing the Tribal Priority, of licensing Tribal radio stations that will enable Tribal governments to provide radio service tailored to the needs and interests of their local communities that they are uniquely capable of providing.²⁷ Further, it is a truism that people, not land, listen to radio, and as noted the proposed Ethete station would overwhelmingly serve residents of the Wind River Indian Reservation.

Overall, we find that the special circumstances (i.e., the location of the existing antenna site) warrant the requested minor deviation from the general rule, and that this deviation better serves the public interest by providing new Tribal radio service to a large population residing on the Wind River Indian Reservation.

²² *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999).

²³ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

²⁴ See, e.g., *Rural Radio Third R&O*, 26 FCC Rcd at 17647 n.30 ("To the extent that a Tribe lacks Tribal Lands, the applicant may demonstrate eligibility for waiver of the above-listed tribal land coverage provisions, by demonstrating a geographic area identified with the Tribe. (citation omitted) Likewise, we will consider requests for waiver of the other requirements where appropriate.").

²⁵ See, e.g., *Threshold Fair Distribution Analysis of Mutually Exclusive Applications of the Southern California Tribal Chairmen's Ass'n and the Foundation for Economic Justice d/b/a Center for Economic Justice for Permits to Construct New Noncommercial Educational FM Stations Filed in November 2021 Window*, Memorandum Opinion and Order, 37 FCC Rcd 5327, 5331-34, paras. 6-12 (2022); *Red Lake, Minnesota*, Notice of Proposed Rulemaking, 31 FCC Rcd 11996, 11997-98, para. 4 (MB 2016).

²⁶ Waiver Request at 6-7.

²⁷ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1588, para. 8 (2010).

Conclusion. Accordingly, the Waiver Request IS GRANTED. We have examined the Application and find that grant would serve the public interest, convenience, and necessity. Therefore, the Application of the Business Council of the Northern Arapaho Tribe, Application File No. 0000256686, IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau