

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Upper C-band (3.98 to 4.2 GHz))	GN Docket No. 25-59
)	
To: The Commission		

**COMMENTS OF
NATIONAL CONGRESS OF AMERICAN INDIANS, TRIBAL DIGITAL VILLAGE
NETWORK, WASKAWIWIN, PUBLIC KNOWLEDGE, INSTITUTE FOR LOCAL
SELF-RELIANCE, X-LAB, BENTON INSTITUTE FOR INTERNET AND SOCIETY,
AND OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

The National Congress of American Indians, Tribal Digital Village Network, Waskawiwin, Public Knowledge, the Institute for Local Self-Reliance, X-Lab, Benton Institute for Internet & Society, and Open Technology Institute at New America, submit these comments in support of including a Tribal Licensing Window as part of any future reorganization of the Upper C-Band. As NCAI *et al.* explained in their recent comments in the AWS-3 Auction docket, Tribal Licensing Windows are an important tool for economic development for Tribes and a recognition of the appropriate government-to-government relationship between the FCC and federally recognized Tribes pursuant to the federal trust relationship and the FCC's own policies reflecting that relationship.¹

The arguments for a TLW are even more compelling here. Unlike the AWS-3 auction, no cloud of uncertainty exists as a consequence of the statutory language. Additionally, any auction of C-Band spectrum will auction spectrum in all U.S. states and territories, whereas the AWS-3 auction merely auctions the remaining inventory of licenses in the band. As a result, a properly

¹ Comments of the NCAI, *et al.*, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025).

structured auction has the potential to directly benefit all federally recognized Tribal governments.²

ARGUMENT

I. THE SUCCESS OF THE 2.5 GHZ WINDOW DEMONSTRATES THE VALUE OF INCLUDING A TLW IN C-BAND.

The Commission granted approximately 335 licenses, to Tribal governments, Tribal consortia, and Tribal controlled entities, representing more than 350 unique Tribes in 30 states.³ This makes it the Commission’s single most successful program to promote Tribal connectivity on Tribal lands. As Tribal providers build and deploy networks based on the combination of licensed spectrum, CBRs, and unlicensed spectrum, they reap the economic and social benefits of broadband connectivity.

For example, the Navajo Nation uses wireless networks to serve Tribal lands covering over 27,000 square miles. Since the Commission made 2.5 GHz spectrum available to the Tribe, Navajo Nation has exceeded its interim build out obligation of service to 50% of the resident population⁴ and expects to meet its full service requirement of 80% well before the final

² The term “Tribal governments” refers to the 347 federally recognized Indian Tribes within the contiguous 48 states. *See* Department of the Interior, Bureau of Indian Affairs, Public Notice, 88 Fed. Reg. 2112 (Jan 12, 2023) Available at: <https://www.federalregister.gov/documents/2023/01/12/2023-00504/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of> It also includes Alaskan Native Villages and Native Corporations. Although Hawaiian Native Homelands are not recognized as Tribes, NCAI, *et al.* support the waiver process adopted in the 2.5 GHz proceeding allowing Hawaiian Native Homelands to participate in the TLW. *See Department of Hawaiian Homelands Request for Waiver to File as an eligible Entity in the 2.5 GHz Rural Tribal Priority Window*, Docket No. 20-21, Memorandum Opinion and Order, 35 FCC Rcd 2820 (WTB 2020). For convenience, this filing refers to all of these entities as Tribal governments and Tribal lands.

³ Public Notice, “Wireless Telecommunications Bureau Waives 2.5 GHz Rural Tribal Window Specific Interim and Final Performance Deadlines,” DA 22-73 rel. July 8, 2022 (WTB).

⁴ Comments of Navajo Nation Telecommunications Regulatory Commission, *Enhancing National Security Through Auction of AWS-3 Spectrum Licenses; Applying New Average Annual Gross Revenue Benchmarks for Small Business Bidding Credits; Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 17555-1780*

deadline. In the Grand Canyon, the Havasupai Tribe uses its 2.5 GHz license to connect its teachers and Head Start students.⁵ The Hoopa Valley Tribe, in remote Northern California, is integrating its 2.5 GHz license to overcome difficult topological issues to provide connectivity in some of the most remote areas of their reservation. These are only a few examples of how Tribes have used access to licensed spectrum to address their continued broadband access crisis.

C-Band has the potential to surpass the benefits of 2.5 GHz because it represents a clean band available nationwide. The 2.5 GHz band had a long and complicated history. But C-Band, once cleared, will have no encumbrances. The Commission will therefore be free to offer licenses, including licenses to Tribes, unencumbered by a complicated history and existing licensees. Tribes making effective use of 2.5 GHz spectrum – and Tribes that did not have access to 2.5 GHz spectrum – will be able to use C-Band licenses in new, innovative and productive ways.

II. THE COMMISSION HAS CLEAR AUTHORITY TO INCLUDE A TLW IN C-BAND.

As the Commission found in the 2.5 GHz Order,⁶ a tribal licensing window is fully consistent with its obligations under Section 309(j) and broader Commission policy. As the Commission found previously, a TLW furthers the Commission’s goals of expanding rural broadband access.⁷ Indeed, in both the 2.5 GHz Order and actions taken since, the Commission has clearly stated the policy of enhancing access to spectrum for Tribal Nations in recognition of its obligation to make spectrum access available to Tribes to promote broadband access on Tribal

MHz, and 2155-2180 MHz, GN Docket Nos. 25-59, 25-70, 25-71, 13-185 (filed March 31, 2025) (“*NNTRC Comments*”) These are preliminary numbers, subject to final verification.

⁵ Letter of National Congress of the American Indians, et al., to Chairman Brendan Carr, Docket Nos. GN 22-59, WT Docket No. 25-70, 25-71, GN Docket No. 13-185. (filed Feb. 20, 2025).

⁶ *In re Transforming the 2.5 GHz Band*, 34 FCC Rcd 5446 at ¶ 70 (2019) (“*2.5 GHz Order*”)

⁷ *2.5 GHz Order* at ¶ 56.

lands.⁸ A Tribal Window will therefore further Federal policy by providing necessary spectrum access to a substantial number of Tribes.

Section 309(j)⁹ itself further supports that a TLW is more than permissible, but furthers the explicit directions of Congress. Section 309(j) states that any system of competitive bidding should further the purposes specified in Section 151,¹⁰ *i.e.*, “to make available to ***all*** the people of the United States” a world class system of communication by wire and wireless with “adequate facilities at reasonable charges” (emphasis added). Section 309(j)(3)(B) instructs the Commission to ensure distribution of licenses to, among others, Native Americans.¹¹ Section 309(j)(4)(C) instructs the Commission to “prescribe area designations and bandwidth assignments” that promote “an equitable distribution of licenses and services among geographic areas” and, again, to ensure economic opportunity for – among others – Native Americans. In this regard, it is noteworthy that, in the *Tribal Broadcast Window Order*,¹² the Commission found similar language in Section 307(b) regarding distribution among states and communities to include an obligation to ensure provision of licenses to Native Americans to serve Tribal Lands.¹³

⁸ *Id.* at ¶ 49; Memorandum of Understanding Among the Department of the Interior, the Federal Communications Commission, and the Department of Commerce National Telecommunications Information Administration (November 23, 2022). (“Spectrum MoU”) Available at: https://www.bia.gov/sites/default/files/dup/inline-files/mou_esb46-009818_doi-fcc-ntia_electromagnetic_spectrum_on_tribal_lands_2022-11-23_final_fcc_ntia_doi_signed_508.pdf; Partitioning, Disaggregation and Leasing of Spectrum, 2nd Report and Order, 37 FCC Rcd 8825 at ¶ 28 (2022).

⁹ 47 U.S.C. § 309(j).

¹⁰ 47 U.S.C. § 151.

¹¹ Although Tribes are sovereign nations and not “minority groups” in the traditional sense, Section 309 defines “minority group” to include “American Indians, Alaskan natives . . . and Pacific Islanders (e.g., Hawaiians). 47 U.S.C. § 309(i)(C)(ii).

¹² *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 (2010).

¹³ *Id.* at ¶ 25.

Finally, Section 309(j)(6)(E) provides the precise mechanism for the Commission to follow. “Nothing in this Section shall be construed *to relieve the Commission of the obligation in the public interest*, to continue to use engineering solutions, negotiation, threshold qualifications, service rules and other means in order to avoid mutual exclusivity.” (Emphasis added). Consistent with the instructions of the statute, the Commission should use geographic licensing (providing a license that covers Tribal lands), threshold requirements (limiting eligibility to the governments of federally recognized Tribes or designated representatives as was done in the 2.5 GHz Order), and service rules to avoid mutual exclusivity.

If the direct commands of Section 151 and Section 309(j) are insufficient to demonstrate that a TLW providing spectrum access to Tribal governments does not serve the public interest, the Commission has repeatedly emphasized its responsibility as a federal agency subject to the federal trust relationship to provide Tribes with access to spectrum for communications services generally and broadband specifically.¹⁴ Indeed, in the previous Commission C-Band proceeding, the Commission expressly noted its obligation to use spectrum auctions to encourage deployment of wireless services on Tribal lands.¹⁵ In 2022, the Commission further memorialized its obligation under the federal trust relationship to provide Tribes greater access to spectrum on Tribal lands in a Memorandum of Understanding pledging to work jointly with the Department of Interior and NTIA for this purpose.¹⁶

¹⁴ See, e.g., *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000); *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011).

¹⁵ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2353–90, at ¶ 24 (2020).

¹⁶ Spectrum MoU, *supra* note 8.

Commenters further note that a Tribal licensing window would not be necessary if wireless carriers were genuinely interested in serving Tribal lands. To the contrary, despite the availability of bidding credits expressly designed to entice providers to serve Tribes within their license area, they have generally declined to do so. As a result, Tribal lands remain among the most poorly connected in the United States. Even non-rural Tribal lands suffer in comparison with surrounding non-Tribal lands. Accordingly, a TLW will not diminish the value of auctioned licenses. To the contrary, removing territory licensees do not wish to serve (and which constitute a small portion of any license area) is more likely to increase the value at auction, rather than decrease it.

Given the Commission's past experience, a TLW should not impose any significant burden. The hard work of running a TLW the first time is done. Nor is there any reason to delay an auction until after completion of the TLW. The processes can easily be run in tandem, eliminating any delay.

In short, the Commission has the authority to adopt a TLW as part of any future C-Band auction. Indeed, pursuant to the *Spectrum MoU* and the instructions of Section 309(j), it can fairly be said to have – in the words of Section 309(j)(6)(E) – an affirmative obligation to do so. Doing so will neither delay the auction nor impact the auction results. The Commission should therefore not hesitate to adopt a TLW as part of any future auction in the C-Band.

III. THE COMMISSION SHOULD EXPAND THE ELIGIBILITY OF TRIBES TO PARTICIPATE AND TO SERVE TRIBAL LANDS.

Those tribes that have had the opportunity to apply for 2.5 GHz licenses, and Tribal members on lands covered by these licenses, have reaped considerable rewards from the availability of new, terrestrial wireless networks. Unfortunately, the limitations adopted in the

2.5 GHz Order leave considerable Tribal lands and Tribal citizens excluded from these benefits.¹⁷

The experience in managing the 2.5 GHz window demonstrates that licensees serving urban areas which include tribal lands continue to ignore their responsibilities to serve Tribal lands. This problem is particularly acute where Tribal Nations were initially situated in areas far from urban centers, but where population growth has expanded these communities so that all or some of these Tribal lands are not considered “rural” under the definition used in the 2.5 GHz Order.

Commenters agree that the Commission should limit availability of licenses to federally recognized Tribes, with a waiver available for Native Hawaiian Homelands which, for reasons of history, do not have available to them the same Federally recognized status as available to Native Tribes. The adjustments relate first to the exclusion of federally recognized Tribes on Tribal lands not recognized as “rural.” The Commission should follow the precedent established in the ECIP Order, and expand eligibility to all Federally recognized Tribes. Second, the Commission should expand the definition of Tribal lands to include tribal trust lands not included under the 2.5 GHz Order.¹⁸

A. THE TLW SHOULD INCLUDE ALL FEDERALLY RECOGNIZED TRIBES, NOT ONLY RURAL TRIBES.

The Commission should remove the “rural” limitation and allow all federally recognized Tribes to participate in the TLW. Last year, in extending the Enhanced Competition Incentive

¹⁷ See Comments of Shoshone-Bannock Tribes, Land Use Department, Tribal Broadband, filed in Docket No. 25-70, 25-71 (filed March 31, 2025) (noting that the definition of Tribal lands prevented them from eligibility for a license in 2.5 GHz and denying them the substantial benefits of building their own wireless network).

¹⁸ 2.5 GHz Order at ¶ 54.

Program (ECIP) to all federally recognized Tribes, the Commission expressly recognized the need to expand the availability of spectrum to both rural and non-rural Tribal lands.¹⁹ Native lands still suffer compared to surrounding areas from fewer access choices and lower connectivity as a direct consequence of the lack of access to spectrum for Tribal governments and the unwillingness of those holding licenses that cover Tribal lands to serve them.²⁰

Experience since with the 2.5 GHz window demonstrates that the population limit of 50,000 or fewer to define “rural” still leaves too much Tribal land without access to spectrum. The expansion of urban and exurban communities has not resulted in carriers that serve neighboring non-Tribal communities extending their networks to Tribal lands. Tribal providers find themselves forced to serve these unserved “urban” Tribal lands with networks exclusively dependent on CBRS and unlicensed networks. Additional licensed spectrum would allow Tribes to serve their members throughout their community with equally powerful networks for all, rather than networks capable of using licensed spectrum in some areas but not in others of the same Tribal communities.

B. THE FCC SHOULD EXPAND THE DEFINITION OF “TRIBAL LAND” TO INCLUDE TRIBAL TRUST LANDS.

The Commission declined to adopt the definition of Tribal lands in 47 C.F.R. § 73.7000, finding instead that the definition developed in the context of Universal Service was a better fit. As the Commission noted in the 2.5 GHz Order, numerous tribal commenters and NCAI requested that Part 73.7000 be used as the definition for tribal lands because it is broader and

¹⁹ ECIP Order at ¶ 28. (“We recognize the acute connectivity challenges that Tribal Nations face and believe that inclusion in the ECIP program will facilitate spectrum access by Tribal Nations in *both* rural and nonrural areas to help meet their communications needs.”).

²⁰ See Daniel Mejia, “American Indians and Alaska Natives In Tribal Areas Have Among the Lowest Rates of High Speed Internet Access,” United States Census Bureau (June 18, 2024). Available at: <https://www.census.gov/library/stories/2024/06/broadband-access-tribal-areas.html>.

covers all “tribal trust land,” which is excluded from coverage under Part 54.5. In explaining its support for the latter definition, the Commission stated that “the Part 54 definition has a similar purpose to the Tribal priority window, to encourage provision of broadband service on rural lands.”²¹ In selecting Part 54, the Commission recognized that off-reservation lands may be excluded. To address this issue, the Commission proposed a Part 54 Plus definition for tribal lands under the TLW. The “plus” entailed utilization of the off-reservation designation process for Universal Service Support for Low-Income Consumers contained in 47 C.F.R. § 54.412. However, the Commission determined that this off-reservation allowance for the TLW would only apply to those tribal nations that had achieved such a designation as of the July 10, 2019 adoption date of the 2.5 GHz Order – effectively making it impossible for Tribes to utilize this corrective mechanism and thus excluding numerous Tribal citizens from coverage.²²

This time, the Commission should not adopt the same definition and exclude the same Tribal lands. Ideally, the Commission should adopt the definition of Tribal land used in Rule 73.7000. This definition includes Reservations, Trust lands and Native Hawaiian Homelands.²³ However, if the Commission remains concerned about the lack of a federally recognized status for Native Hawaiian Homelands, the Commission should continue to use the process adopted by the Bureau in 2020 permitting the Department of Hawaiian Homelands to apply on behalf of Native Hawaiian Homelands.²⁴ At a minimum, if the Commission adopts the Part 54 Plus definition, it should provide reasonable notice and sufficient time for Tribes to utilize the off-reservation designation process.

²¹ 2.5 GHz Order at ¶ 51.

²² 2.5 GHz Order at ¶ 54.

²³ 47 C.F.R. § 73.7000.

²⁴ WTB Waiver Order *supra* n.2.

CONCLUSION

The Commission does not ask in this proceeding “why do wireless carriers need more spectrum? Do they even deserve it? Have they put it to productive use?” Yet Tribal governments find themselves subjected to this inquiry. The question of whether Tribal governments need more spectrum is rendered more absurd when one realizes that Tribal providers perform the same functions as commercial providers *and* the functions of government. The need to provide Tribes with adequate spectrum to serve Tribal lands should be self-evident. Even if it were not, respect for Tribal sovereignty should prompt the Commission to make licenses available to Tribal governments on Tribal land.

But the evidence shows that Tribes have made efficient use of licensed spectrum, combining it with CBRS shared spectrum and unlicensed spectrum to bring connectivity to their communities in the face of ongoing carrier neglect. The possibility of a C-Band auction provides the Commission with an opportunity to serve the public interest and further its oft-repeated policy goal to provide access to broadband to all Americans. As Tribal governments have done, the Commission should seize this opportunity with both hands and adopt a Tribal Licensing Window as part of any future C-Band Auction.

Respectfully submitted,

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