

July 7, 2020

Rep. Frank Pallone, Jr., Chairman
Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Rep. Greg Walden, Ranking Member
Energy & Commerce Committee
2322 Rayburn House Office Building
Washington, DC 20515

Re: Extending the 2.5 GHz Priority Window for Indian Tribes

Dear Chairman Pallone and Ranking Member Walden,

Access Humboldt, American Library Association, Benton Institute for Broadband and Society, California Center for Rural Policy, First Nations Development Institute, NAFOA (Native American Finance Officers Association), National Consumer Law Center (on behalf of its low-income clients), National Congress of American Indians, National Hispanic Media Coalition, Native Public Media, New America's Open Technology Institute, Public Knowledge, Tribal Digital Village, Voqal, Washington State Broadband Office, and X-Lab commend the Energy & Commerce Committee for holding a hearing on “Addressing the Urgent Needs of Our Tribal Communities.” Recently, Public Knowledge (PK) requested that the FCC extend the 2.5 GHz Rural Tribal Priority Window opened on February 3, 2020 due to the significant impact the COVID-19 crisis has had on American Indian Tribes across America.¹ We now ask Congress to require the FCC to extend this deadline for 180 days until February 1, 2021.

As you pointed out in the press release announcing the hearing, “for far too long our nation’s tribal communities have suffered unnecessary...hardship and turmoil”—including “little to no broadband connectivity.”² According to the FCC’s 2019 Tribal Broadband Report³, 36% of tribal households—about 628,000 households nationwide—do not have access to any broadband at standard speeds.⁴ In comparison, the same is true for only 8% of non-tribal households.

¹ Harold Feld, *In re: WT Docket No. 18-120*, WT 18-120 (July 6, 2020) (ex-parte letter to Erin McGrath).

² *Hearing Announcement: E&C Announces Full Committee Hearing on the Growing Health, Environmental and Accessibility Needs of Indian Country*, Energy & Commerce Committee (July 1, 2020).

³ Federal Communications Commission, “*Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018*”, (May 2019)

⁴ Federal Communications Commission, *2015 BROADBAND PROGRESS REPORT AND NOTICE OF INQUIRY ON IMMEDIATE ACTION TO ACCELERATE DEPLOYMENT*, GN Docket No. 14-126, FCC 15-10 (Feb 4, 2015), pg. 45

These issues are not new. In 2000 the FCC recognized “a general trust relationship, and responsibility to, federally-recognized Indian Tribes.”⁵ The FCC also recognized the “rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.”⁶ As part of its commitment to work with Indian Tribes and ensure their access to communications networks, the FCC adopted 2.5 GHz Rural Tribal Priority Window. As the FCC explained this “spectrum offers sufficient bandwidth to give rural Tribal entities an opportunity to provide broadband wireless service.”⁷

Despite the promise of this opportunity for tribal communities, Tribes have faced significant hurdles to finishing their applications on time due to the COVID-19 crisis: (1) the vast majority of application workshops were cancelled, as were other forms of in-person outreach; (2) surveys of tribal lands to confirm maps have been difficult to complete, and requests for waivers based on survey data are time consuming due to the impacts of COVID-19; (3) stay-at-home orders have delayed tribal decision making; and (4) an extension will not impact timely filers, nor the 2.5 GHz auction. All these obstacles are further aggravated by the lack of broadband access, basic telephone service, or reliable electric power on many tribal lands. The unprecedented impact of the global crisis on this particular proceeding warrants a deadline extension.

First, most application workshops and other forms of in-person outreach were cancelled due to the COVID-19 pandemic. These workshops play a key role in facilitating the application process for Tribes that are unfamiliar with the FCC and its process. Although a network of nonprofits and state entities were planning to host workshops in every Tribal region with travel paid for, they were only able to host three before the COVID-19 crisis halted its plans. Moreover, an informal review of submissions show that 20% of submitted applications will need to be amended or are missing ownership filings. This is particularly troubling since the FCC has made it clear they will not allow any major amendments to applications after the deadline,⁸ essentially cutting off a Tribe’s opportunity to cure. Extending the deadline is necessary since Tribes have had reduced access to application training and education.

Second, applicants are required to submit shape files “describing the area for which they seek a license.”⁹ Because the shape maps provided by the FCC differ from Bureau of Indian Affairs (BIA) tribal area maps, Tribes need additional time to survey their land and reconcile the discrepancies between these two maps. This is particularly important for tribal areas near dense urban centers and close to other tribal lands, which may affect application eligibility. Due to the discrepancies in the FCC and BIA maps, Tribes must also file an application for a waiver to conform their application to the actual area to be covered by the license that differs from the FCC’s map. The global pandemic has delayed this work significantly since many people are incapacitated by the COVID-19 virus, and those able to work must generally do so from home—

⁵ *In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078, 4081 (released June 23, 2000).

⁶ *Id.*

⁷ Public Notice, *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, FCC, WT Docket No. 18-120, ¶2 (Jan. 6, 2020).

⁸ *Id.* at ¶9.

⁹ *Id.* at ¶19.

often without access to broadband. Extending the deadline is necessary for Tribes to perform these critical surveys.

Third, getting quick approval from tribal governments is particularly difficult during this unprecedented time. Not only are many people furloughed, but, as with the issues concerning land surveys, most of those that are working are doing so from home. Virtual decision making is difficult for Tribes due to a lack of broadband access—an issue this application process was created to help solve. Not granting an extension would significantly disservice an already extremely underserved group.

Finally, granting an extension would not harm those Tribes that were able to submit timely applications nor would it impact the timeline for the 2.5 GHz auction. Many would welcome an extension so that they can continue gathering information and finding partners to help build out their networks. The FCC can grant those Tribes in a position to utilize the spectrum today Special Temporary Authority (STAs). Additionally, since the CBRS and C-Band auctions are already scheduled for this year (with the C-Band auction scheduled to begin December 8), the FCC would need to wait until at least Q2 next year for the 2.5 GHz auction. Thus, requiring the FCC to extend the application deadline would not impact the timeline of the 2.5 GHz auction.

As you previously stated, the Tribes “deserve better.”¹⁰ Extending the 2.5GHz Rural Tribal Window is one small way Congress and the FCC can fulfill their commitment to Tribes. Doing so is the first step to addressing the inequities of this underserved population—it will give Tribes an actual chance to secure broadband access for their communities.

If you have any questions or concerns please contact Jenna Leventoff, Public Knowledge’s Senior Policy Counsel, at jenna@publicknowledge.org.

Respectfully submitted,

Access Humboldt

National Hispanic Media Coalition

American Library Association

Native Public Media

Benton Institute for Broadband and Society

New America's Open Technology Institute

California Center for Rural Policy

Public Knowledge

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¹⁰ *Hearing Announcement, supra* note 2.