

Congress of the United States
Washington, DC 20510

August 18, 2020

The Honorable Ajit Pai, Chairman
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Re: 30-day Extension Period — 2.5 GHz Rural Tribal Priority Window Order

Dear Chairman Pai:

We write to express our deep concern regarding the Federal Communications Commission's (FCC) recent decision to grant a limited 30-day extension for the 2.5 GHz Rural Tribal Priority Window (Window) that was set to expire on August 3, 2020.¹ We request that the Commission immediately extend the deadline by no less than 180 days as Tribal nations continue to respond to the novel coronavirus (COVID-19) public health crisis.

Since the beginning of April, the Commission has received *numerous* requests to extend the 2.5 GHz Rural Tribal Priority Window for application by no less than 180 days from the August 3 deadline. Over the past four months, the Commission was made aware of this timely and widely supported request by bipartisan members of the United States Congress²³⁴⁵, the Assistant Secretary of Indian Affairs at the Department of the Interior⁶, Indian Tribes, and Native Hawaiian organizations. Additionally, an emergency motion was filed by national telecommunications and inter-Tribal government organizations to delay the close of the Commission's planned tribal spectrum auction due to the devastating toll that the COVID-19 pandemic is having in Indian Country⁷.⁸⁹¹⁰ Our request for the 180-day Window application extension period was also requested in person to the members of the Commission during

¹ Federal Communications Commission, *2.5 GHz Rural Tribal Priority Window Extension Order*, Public Notice, WT Docket No. 18-120, DA 20-819 (July 31, 2020). <https://www.fcc.gov/document/25-ghz-rural-tribal-priority-window-extension-order>

² Letter from bipartisan Congressional Native American Caucus to FCC, Chairman Pai requesting COVID-19 2.5 GHz Rural Tribal Priority Window extension BY 180-days (Apr. 9, 2020).

³ Letter from 18 U.S. Senators to FCC, Chairman Pai requesting 2.5 GHz Rural Tribal Priority Window extension by 180-days (May 19, 2020).

⁴ Letter from 11 U.S. House Representatives and Senators to FCC Chairman Pai requesting 2.5 GHz Rural Tribal Priority Window extension by no less than 180-days (July 24, 2020).

⁵ Written testimony of Rep. Deb Haaland for *Addressing the Urgent Needs of Our Tribal Communities*: Hearing on Broadband on Tribal Lands Before the H. Comm. On Energy and Commerce, 116th Cong. (July 6, 2020), expressing concern regarding FCC's refusal to grant 180-day extension to 2.5 GHz tribal priority filing window (Pub. July 8, 2020).

⁶ Letter from Tara Sweeney, Assistant Secretary of Ind. Affairs, U.S. Dept. of Inter. to FCC, Chairman Pai requesting 2.5 GHz Rural Tribal Priority Window extension by 180-days (July 24, 2020).

⁷ Emergency Motion for Stay of 2.5 GHz Rural Tribal Priority Window filed with Federal Communication's Commission (July 20, 2020). <https://ecfsapi.fcc.gov/file/1072172954611/Motion%20For%20Stay%20of%202.5%20GHz%20Tribal%20Window%20FINAL.pdf>

⁸ Letter from T-Mobile to FCC Sec. Marlene Dortch requesting timeline extension for 2.5 GHz Rural Tribal Priority Window (July 30, 2020).

⁹ Letter from Dept. Hawaiian Home Lands (DHHL) to FCC Chairman Pai and Commissioners requesting 12 mo. Rural Tribal Priority Window extension (April 3, 2020).

¹⁰ Letter from Nat'l Cong. Am. Indians (NCAI) to FCC Chairman Pai requesting 2.5 GHz tribal priority filing window extension by 180 days (Apr. 22, 2020).

multiple congressional hearings in both the United States Senate and House of Representatives.¹¹¹²

On Friday, July 31, 2020, the Commission published an order granting an extremely limited 30-day extension of this application deadline, which is 150 days fewer than prior requests from members of Congress and the U.S. Department of the Interior’s Assistant Secretary.¹³ We find this very disconcerting as “the 2.5 GHz band is the single largest band of contiguous spectrum below 3 gigahertz [and is] prime spectrum for next-generation mobile operations, including 5G” on Tribal lands. Denying an extension for native communities to claim spectrum over their lands during this unprecedented pandemic is unconscionable. Tribes continue to encounter significant regulatory barriers that excluded them, as this order does, from the ability to effectively deploy wireless services.

We are deeply troubled with the Commission’s refusal to implement a 180-day Window extension, which lacks consistency with the agency’s recent decisions to delay Auctions 105 and 106 to allow all parties adequate time to prepare and participate during this pandemic.¹⁴ However, in this case, a review of the docket reveals no proposals or support for a limited 30-day extension. Further, both non-tribal telecom advocates, and the FCC’s Native Nations Communications Task Force, support a longer Window extension. This aligns with native communities’ request for a 180-day extension and the Commission’s similar pandemic extensions.¹⁵

Contrary to the Commission’s July 31 order, this Window extension will not impede the timeline of Tribes that have previously filed for licenses, as the Commission can grant immediate special temporary authority to empower Tribes to proceed with immediate buildout. It is unacceptable that sovereign Tribal Nations are not provided adequate time by the Commission to apply for access to unassigned spectrum over their Tribal lands. This is a failure of the Commission’s trust responsibility to Tribal Nations and its unique responsibility on Hawaiian Home Lands.

We request that the Commission immediately extend the Rural Tribal Priority Window deadline by no less than 150 days, for a total of 180 days. Given the burden that the COVID-19 pandemic is placing on Tribal communities, we hope that our offices can work together to appropriately address our shared goal of closing the digital divide in Indian Country.

Sincerely,

/s/ Martin Heinrich
Martin Heinrich
United States Senator

/s/ Deb Haaland
Deb Haaland
Member of Congress

¹¹ *Oversight of the Federal Communications Commission: Hearing on Rural Tribal Priority Window Before the S. Comm. On Commerce, Science, & Transp.*, 116th Cong. (June 24, 2020) (Stmnt. of Senator Sinema at 3:29). <https://www.commerce.senate.gov/2020/6/oversight-of-the-federal-communications-commission>

¹² *Addressing the Urgent Needs of Our Tribal Communities: Hearing on Broadband on Tribal Lands Before the H. Comm. On Energy and Commerce*, 116th Cong. (July 6, 2020). (See member stmnts. and witness testimony). <https://energycommerce.house.gov/committee-activity/hearings/full-committee-hearing-on-addressing-the-urgent-needs-of-our-tribal>

¹³ *See Id.* notes 3,4, and 6.

¹⁴ *See* Federal Communications Commission, FCC Changes Upcoming Auction 105 Schedule, Postpones Auction 106: Adjustments Made in Light of COVID-19 Pandemic (Mar. 25, 2020) (press release).

¹⁵ *Id.*

/s/ Maria Cantwell
Maria Cantwell
United States Senator

/s/ Tom Cole
Tom Cole
Member of Congress

/s/ Tom Udall
Tom Udall
United States Senator

/s/ Don Young
Don Young
Member of Congress

/s/ Jacky Rosen
Jacky Rosen
United States Senator

/s/ Ruben Gallego
Ruben Gallego
Member of Congress

/s/ Tina Smith
Tina Smith
United States Senator

/s/ Raúl M. Grijalva
Raúl M. Grijalva
Member of Congress

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

/s/ Derek Kilmer
Derek Kilmer
Member of Congress

/s/ Ron Wyden
Ron Wyden
United States Senator

/s/ Anna G. Eshoo
Anna G. Eshoo
Member of Congress

/s/ Jeffrey A. Merkley
Jeffrey A. Merkley
United States Senator

/s/ Susan K. DelBene
Suzan K. DelBene
Member of Congress

/s/ Mazie K. Hirono
Mazie K. Hirono
United States Senator

/s/ Jared Huffman
Jared Huffman
Member of Congress

/s/ Mark R. Warner
Mark R. Warner
United States Senator

/s/ Greg Stanton
Greg Stanton
Member of Congress

/s/ Tim Kaine
Tim Kaine
United States Senator

/s/ Betty McCollum
Betty McCollum
Member of Congress

/s/ Kamala D. Harris
Kamala D. Harris
United States Senator

/s/ Ed Case
Ed Case
Member of Congress

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator

/s/ Ben Ray Luján
Ben Ray Luján
Member of Congress

/s/ Cory A. Booker
Cory A. Booker
United States Senator

/s/ Steven Horsford
Steven Horsford
Member of Congress

/s/ Angus S. King, Jr.
Angus S. King, Jr.
United States Senator

/s/ Sharice L. Davids
Sharice L. Davids
Member of Congress

/s/ Catherine Cortez Masto
Catherine Cortez Masto
United States Senator

/s/ Patty Murray
Patty Murray
United States Senator

/s/ Edward J. Markey
Edward J. Markey
United States Senator

/s/ Brian Schatz
Brian Schatz
United States Senator

/s/ Richard Blumenthal
Richard Blumenthal
United States Senator