



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 18-120; FCC 20-183; FRS 17359]

Transforming the 2.5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Dismissal of petitions for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) addresses the Petitions for Reconsideration (Petitions) filed by National Congress of American Indians (NCAI) and Schools, Health & Libraries Broadband Coalition and others (SHLB et al.), asking that the Commission reinstate the eligibility restrictions it eliminated in the *2.5 GHz Report and Order*, published on October 25, 2019, and create a window for additional educational use of the band. The Commission dismisses the Petitions in part and, alternatively and independently, denies the other two petitions. The Hawai'i Broadband Initiative filed a Petition for Reconsideration, which it subsequently requested leave to withdraw. The Commission grants Hawai'i Broadband Initiative's request to withdraw its petition.

DATES: The Commission adopted the Order on Reconsideration denying the Petitions for Reconsideration on December 9, 2020.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (Reconsideration Order), WT Docket No. 18-120; FCC 20-183, adopted on

December 9, 2020 and released on December 17, 2020. The full text of the Reconsideration Order is available electronically via the FCC's Electronic Document Management System (EDOCS) website at <https://www.fcc.gov/edocs> or via the FCC's Electronic Comment Filing System (ECFS) website at <http://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). The *2.5 GHz Report and Order*, WT Docket No. 18-120, FCC 19-62, released July 11, 2019 published at 84 FR 57343 on October 25, 2019.

Synopsis

I. INTRODUCTION

1. The 2.5 GHz band (2496-2690 MHz) is the single largest band of contiguous spectrum below 3 gigahertz. Too much of this spectrum, which is prime mid-band spectrum for next generation mobile operations, including 5G, has lain fallow for more than twenty years. In the *2.5 GHz Report and Order*, the Commission transformed the regulatory framework governing the band in order to move this spectrum into the hands of those who will provide service to Americans across the country, and particularly in rural and Tribal areas. The Commission replaced an outdated regulatory regime, developed in the days when educational TV was the only use envisioned for this spectrum, with one that not only gives incumbent users more flexibility in how they use the spectrum, but also provides opportunities for additional entities to obtain access to unused 2.5 GHz spectrum. Among other things, the Commission established a Tribal Priority Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas, and it decided to hold an overlay auction thereafter for remaining unassigned spectrum rights.

2. Three parties sought reconsideration of various aspects of the order. The National Congress of American Indians (NCAI) seeks reconsideration of the Commission's decision to focus the Tribal Priority Window opportunity on rural Tribal land. The Schools, Health & Libraries Broadband Coalition and others (SHLB et al.), meanwhile, ask that the Commission reinstate the eligibility restrictions the Commission eliminated in the *2.5 GHz Report and Order* and create a window for additional educational use of the band. And the Hawai'i Broadband Initiative filed a Petition for Reconsideration, which it subsequently requested leave to withdraw.

3. The Commission grants the Hawai'i Broadband Initiative's request to withdraw its petition, and the Commission dismisses in part and, alternatively and independently, denies the other two petitions. In doing so, the Commission affirms the framework it adopted to make available the 2.5 GHz band quickly by eliminating outdated legacy regulations that inhibited full use of the band and establishing flexible-use rules that will allow commercial providers to use this large swath of prime mid-band spectrum to provide 5G and other advanced services to American consumers.

II. BACKGROUND.

4. The Commission established a Tribal Priority Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas. The Tribal Priority Window represents a particularly important and unprecedented opportunity to address the communications needs of rural Tribal communities, many of which lack meaningful access to wired and wireless communications services. Successful applicants in the Tribal Priority Window will be able to acquire licenses for all available 2.5 GHz spectrum over their rural Tribal lands—for free, which should afford sufficient bandwidth to offer broadband wireless service to these communities.

5. The Commission established criteria for the Tribal Priority Window that would “provide the most effective and targeted way to achieve the Commission’s goal of closing the digital divide in Tribal lands.” Specifically, the Commission included four basic requirements for Tribes and Tribal entities seeking to take advantage of the Tribal Priority Window: (1) eligibility is limited to federally recognized American Indian Tribes and Alaska Native Villages or entities owned and controlled by federally recognized Tribes or a consortium of such Tribes; (2) the license must be for Tribal land, as defined in part 54 of the Commission’s rules; (3) the geographic service area requested must be rural, meaning not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000; and (4) the eligible Tribal entity must have a local presence on the rural Tribal land for which it is applying.¹

6. The Commission observed that, “[b]ecause the problem of access to wireless communications services is most acute in rural areas . . . the purpose of the Tribal priority window should be to promote service to areas that are currently unserved or underserved.” The Commission previously has reported that “the population of individuals living on Tribal lands is disproportionately skewed toward rural, rather than urban, areas.” As the Commission found in the *2.5 GHz Report and Order*, “individualized policies tailored to specific deployment issues, such as increasing access to spectrum over unserved rural Tribal areas,” honored the Commission’s trust relationship with Tribal Nations. As such, the Commission established the Tribal Priority Window for *rural* Tribal lands that “are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000.”

7. Tribal land for purposes of the Tribal Priority Window consists of: Any federally recognized Indian Tribe’s reservation, pueblo or colony, including former reservations in

¹ Licenses obtained in the Tribal Priority Window will operate as overlay licenses subject to protecting incumbent operations within the relevant geographic area.

Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e), 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; and any lands designated prior to July 10, 2019, as Tribal Lands pursuant to the designation process contained in § 54.412.

8. As explained in the *2.5 GHz Report and Order*, the Commission adopted the same general definition of Tribal land as set forth in part 54 of its rules related to the Universal Service Fund. In addition to “on-reservation” lands, the Commission also included off-reservation Tribal lands as eligible for the Tribal Priority Window if they were designated as Tribal lands prior to July 10, 2019 pursuant to the process set forth in § 54.412 of its rules.

9. After the Tribal Priority Window closes, any remaining unassigned 2.5 GHz spectrum will be made available for commercial use via competitive bidding, as the Commission found this to be the best way to assign spectrum quickly and efficiently for its highest-valued use. In seeking to modernize the 2.5 GHz band and make this valuable spectrum available expeditiously for a wide range of consumer uses, the Commission also determined that the original motivations for adopting restrictions on Educational Broadband Service (EBS) licenses were now obsolete. In the *2.5 GHz Report and Order*, the Commission explained: “The circumstances that led to the creation of a dedicated educational service no longer exist. Substantial technological changes over the last 30 years enable any educator with a broadband connection to access a myriad of educational resources—a content distribution model that does not require dedicated educational spectrum licensed to educational institutions. . . . [T]oday there are a multiplicity of other sources of educational programming available to institutions with broadband connections. All of these factors support eliminating the eligibility restrictions at this time.”

10. Meanwhile, only a handful of EBS licensees have deployed their own networks or use their EBS licenses in a way that requires dedicated spectrum. Instead, most licensees rely on lessees to deploy and operate broadband networks using their licensed spectrum, and they use the leases as a source for revenues or devices. In considering the arguments surrounding the former EBS eligibility restrictions, the Commission determined that its elimination would promote more efficient use of the spectrum, improve operators' ability to attract capital, make the spectrum more appealing for commercial operators to include in their long-term service plans, and better align these licenses with the flexible-use licensing policies used in similar spectrum bands. Based on the record, the Commission found that eliminating long-standing, but obsolete, eligibility restrictions on EBS licenses was the best way of ensuring that the band could be fully used for high-speed broadband services.

11. For similar reasons, the Commission declined to establish a priority window for educational institutions. In the *2.5 GHz Report and Order*, the Commission explained that an educational priority window "would be at odds with its other decisions to provide greater flexibility for more providers to make use of the 2.5 GHz band to offer high-speed broadband service to the public." An educational priority window raised the additional complication that mutually exclusive applications for licenses sought through such a window would need to be resolved through a system of competitive bidding, and that educational institutions in a majority of states would likely be precluded from participating in such a process.²

² *2.5 GHz Report and Order*, 34 FCC Rcd at 5469-70, paras. 67-68; *see id.* at 5471, para. 73 (concluding that "a Tribal priority window is less likely to trigger mutual exclusivity in a significant number of license areas than a priority window for educational institutions" because "most rural Tribal lands areas will likely be associated with a single Tribal entity, whereas many localities have a wide variety of educational institutions that could have a local presence").

SHLB et al. argue that the Commission failed to address the use of a settlement window to resolve mutual exclusive applications. To the contrary, the Commission rejected the use of a settlement window, along with all the other alternatives suggested by the parties as possible means of avoiding mutual exclusivity, because it would not comply with the public interest test of section 309(j)(6)(E) the Communications Act of 1934. *See 2.5 GHz Report and*

12. In its petition, NCAI supports the Commission’s decision to establish a Tribal Priority Window but asks that the Commission: (1) allow non-rural Tribal lands to be eligible in the Tribal Priority Window, and (2) revise the applicable rules for defining eligible Tribal lands. SHLB et al. ask that the Commission reconsider its decisions to eliminate the educational eligibility restrictions and to not create an educational priority window.

13. The Tribal Priority Window commenced on February 3, 2020 and lasted until September 2, 2020. In the *Bureau Procedures Public Notice (PN)*, PN 35 FCC Rcd 308, the Wireless Telecommunications Bureau specified a simplified application process to allow for the inclusion of any waiver request(s) as part of a specific application—including a waiver of the Tribal land definition as applied in the Report and Order. A number of Tribes have filed applications availing themselves of this waiver mechanism to seek licenses for lands falling outside the § 27.1204(b)(2) definition following release of the *Bureau Procedures PN*.³

III. DISCUSSION

14. It is well established that reconsideration “will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken.” Petitions for reconsideration that rely on arguments that have been fully considered and rejected by the Commission may be dismissed or denied. Both the NCAI and SHLB et al. petitions primarily repeat arguments that the Commission considered and rejected previously. The Commission fully considered the policy benefits of focusing on rural Tribal lands in the 2.5

Order, 34 FCC Rcd at 5470, para. 68 & n.195; *id.* at 5470, para. 68 (rejecting all suggested alternatives to avoid mutual exclusivity, including, but not limited to, the examples listed in the text, as “inconsistent either with the Communications Act’s requirement that the Commission use competitive bidding to resolve mutually exclusive applications or with the public interest test applicable to alternatives that avoid mutual exclusivity.”).

³ See, e.g., File Nos. 0009056169 (Stockbridge Munsee Community), 0009133181 (Confederated Tribes of the Chehalis Reservation), 0009164208 (Duckwater Shoshone Tribe). Under the Commission’s rules, waivers will be granted if it is shown that: (i) the underlying purpose of the rules(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 the 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.

GHz Report and Order. And the Commission adopted the definition of Tribal lands contained in its part 54 rules. To the extent NCAI's petition reiterates already rejected arguments, it is procedurally improper, and the Commission dismisses the petition and otherwise deny it in its entirety.

15. Regarding the SHLB et al. Petition, the Commission previously fully considered all the arguments raised therein, including whether an educational window or flexible use would be the best means of promoting broadband deployment, the likelihood of mutually exclusive applications if the Commission opened an educational window, and the distinctions between the Tribal Priority Window and any educational window. Since the petition merely repeats previously raised and rejected arguments, the petition is procedurally improper and dismissed. As a separate and independent ground for rejecting this argument, the Commission finds that in any event it lacks merit. SHLB et al. present no compelling argument that warrants reconsideration of the Commission's decision to make this spectrum available for flexible use nor to limit any priority application window to Tribal entities.

16. In short, the Commission dismisses in part and denies both petitions for reconsideration. The Commission discusses each issue raised by the petitions in turn.

17. *First*, the Commission finds that the NCAI petition provides no new facts or arguments that would provide a basis for reconsidering its decision to focus the Tribal Priority Window on *rural* but not other Tribal lands. In its comments, NCAI claimed that limiting the Tribal Priority Window, *inter alia*, would "create separate classes of tribal governments, which is inconsistent with the intent of Congress." NCAI now repeats its argument that the trust relationship between federally recognized tribes and the Federal government "applies equally to *all* federally recognized tribal nations, not just to certain sub-sets of tribal nations based on location of tribal lands." In other words, it repeats the same argument that the Commission already rejected. And for good reason. NCAI has failed to demonstrate that the Commission, in

affording Tribes in this window an opportunity to obtain spectrum licenses over their rural Tribal lands, has failed to uphold any specific trust responsibility expressed by Congress. In contrast, the Commission does have a statutory responsibility to manage the radio spectrum and Congress has exhorted us to speed the deployment of broadband to all Americans in a reasonable and timely manner. In managing this important mid-band spectrum, the Commission continues to believe that an approach of targeting rural Tribal lands for the Tribal Priority Window, where the problem of access to wireless communications services is most acute,⁴ and subsequently offering overlay licenses for any remaining unassigned spectrum via a competitive bidding process is the most effective way to make this spectrum available for next generation wireless services. The Commission carefully considered how to make this spectrum available quickly to those able to deploy service, and determined that, while spectrum over urban areas should be made available via competitive bidding, the Commission would first make spectrum available over rural Tribal Lands for free to Tribal entities to help them meet the communications needs of these rural areas without the delay and cost of engaging in competitive bidding.

18. Although NCAI claims that limiting rural lands to areas “not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000” was arbitrary and prevents Tribes from serving more populated portions of their lands, focusing this spectrum opportunity on rural Tribal Lands is in furtherance of a specific policy goal of lowering the cost for Tribes to serve the unserved. Indeed, NCAI fails to explain its claim that the Commission’s choice is unsupported. Further, NCAI does not offer a single example of a Tribe whose ability to

⁴ See *2.5 GHz Report and 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 Progress 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.”).

serve its Tribal lands is hampered by the limitation. NCAI’s argument overlooks the fact that the underlying purpose of the Tribal Priority Window is “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.” Focusing the Tribal Priority Window opportunity on rural Tribal lands not only satisfied this policy objective but also makes sense from a licensing perspective, as most of the spectrum over urban Tribal lands already is assigned and thus unavailable for licensing as part of the Window.⁵

19. Moreover, the Commission regularly distinguishes between rural and non-rural areas in carrying out policy objectives—in its universal service rules, in its competition rules, and even in its spectrum-bidding rules⁶—because the wide geographies and dispersed populations in rural areas merit a different policy response than the challenges faced in non-rural areas. The Commission has never before suggested that such differentiation impugns the sovereignty of the states nor its trust responsibilities to Tribes, and (as the Commission noted in the *2.5 GHz Report and Order*) the Commission fails to see how such differentiation here could have such effects. The Commission also notes that its definition of what land would be considered “rural” is both administrable and objective—not something that requires us to make discretionary judgments about individual Tribes.

20. And to the extent that NCAI thinks this decision contravenes the Commission’s 2000 *Tribal Policy Statement* (65 FR 41668), the Commission disagrees. There the Commission committed to working with Tribes “to ensure, through its regulations and policy initiatives, and

⁵ Interested parties can use the 2.5 GHz Rural Tribal Priority Window mapping tool, available at <https://www.fcc.gov/rural-tribal-window-updates>, to see where eligible Tribal lands are located, which reservations contain urban lands, and where 2.5 GHz spectrum is licensed.

⁶ See, e.g., 47 CFR part 54, subpart G (Universal Service for Rural Health Care Program); 47 CFR 1.2110(f)(4) (rural service provider bidding credit); *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, notice of proposed rulemaking, 85 FR 472, January 6, 2020, 34 FCC Rcd 11290, 11304-05 (2019) (proposing differing regulatory treatment depending on whether an area is a rural or not).

consistent with section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.” Making spectrum available over rural Tribal lands in the Tribal Priority Window before making remaining unassigned spectrum available via competitive bidding does exactly that; NCAI fails to show otherwise.

21. *Second*, the Commission declines NCAI’s request to use the Commission’s definition of Tribal lands contained in its part 73 rules in lieu of the definition based on part 54. NCAI has not convinced us that the part 73 definition of Tribal lands (which includes off reservation trust lands) is more appropriate in this context than the part 54 definition.⁷ The part 73 definition was adopted for a completely different purpose than the Tribal Priority Window: *i.e.*, to permit comparison between non-commercial educators applying for broadcast stations. By contrast, the Tribal Priority Window was adopted to encourage the provision of necessary communications services in rural areas and to provide federally recognized Tribes with direct access to unassigned 2.5 GHz spectrum over their *own* Tribal lands before making any remaining unassigned spectrum available to any eligible provider via competitive bidding. The 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.

22. The Commission nonetheless recognized that there may be exceptions to the general rule. That’s why case-by-case waivers are available, effectively allowing for a result

⁷ The Commission adopted the definition of “Tribal lands” almost verbatim from the part 54 universal service rules. *Compare* 47 CFR 27.1204(b)(2), *with id.* § 54.5, *and id.* § 54.400(e). Although the Commission has extended “Tribal lands” in the universal service context to include certain off-reservation lands, the Commission notes that the Lifeline and high-cost programs serve a different purpose than the Tribal Priority Window—*i.e.*, those programs award funding “for the provision, maintenance, and upgrading of facilities and services.” In other words, when targeting universal service funds, the Commission increases funding for rural Tribal areas because they (and off-reservation lands) face similar broadband deployment and adoption challenges. In contrast, the Tribal Priority Window is designed to provide federally recognized Tribes with direct access to spectrum over their own Tribal lands—as such, a narrower initial definition accompanied by a waiver process that contemplates possible expansion of Tribal lands in special circumstances is more appropriate.

similar to designation of off-reservation lands in the specific context of applying for unassigned 2.5 GHz spectrum. Indeed, the Commission has received a number of waiver requests during the Tribal Priority Window to include certain off-reservation lands as Tribal lands. And this approach mirrors the Commission's approach in the context of spectrum auctions, excluding off-reservation lands from the definition of "Tribal lands," requiring a winning bidder to provide a certification from a Tribal government in order to receive Tribal land bidding credits and entertaining waivers to include off-reservation lands within the scope of such bidding credits.

23. *Third*, the Commission rejects NCAI's request to re-open the off-reservation designation process in § 54.412 of the Commission's rules. Contrary to NCAI's claim, the Commission already addressed this issue by creating a waiver process that applicants can take advantage of to the extent they seek to include additional off-reservation lands as part of their applications. This case-by-case waiver process is not dissimilar from the designation procedure provided for in part 54. In circumstances where Tribes can show good cause to include as eligible off-reservation lands specifically for purposes of participation in the Tribal Priority Window, the waiver process provides an opportunity for them to do so. That waiver process was made part of the application procedures to allow Tribes to seek eligibility for off-reservation lands without delaying the Tribal Priority Window or unreasonably limiting the ability of Tribes to apply for this spectrum. More than 50 such waivers were filed in the Tribal Priority Window, which closed on September 2, 2020.

24. The Commission is not legally required to, and it sees no benefit in, reopening and starting anew a different process that would not only require Tribes to make additional filings but also delay the processing of all applications already filed during the Tribal Priority Window, including applications of those Tribes who properly sought eligibility for such off-reservation lands using the waiver process available to them in the Tribal Priority Window.

25. *Fourth*, SHLB et al.'s suggestion that, were the Commission to maintain eligibility restrictions and adopt a separate priority window, most new educational licensees would choose to deploy their own networks, belies strong evidence in the record to the contrary. The Commission disagreed with this perspective in the *2.5 GHz Report and Order*.

26. To start, the vast majority of existing licensees, including in rural areas, have not deployed their own networks but instead lease to commercial providers. As of May 13, 2019, there were 2,087 active leases of EBS spectrum, compared with 2,193 licenses. In fact, SHLB et al.'s assertion that "the record is replete with examples of EBS licensees offering service" qualifies that assertion by acknowledging that they are offering service "through the EBS leasing model." This "EBS leasing model" is not an example of EBS licensees providing service, but of EBS licensees merely leasing spectrum to a commercial provider; that the vast majority of EBS licensees chose to lease spectrum rather than use the spectrum to provide service is one of the very reasons the Commission concluded that liberating this spectrum and making it readily available for flexible use by providers—rather than engage in a delayed process that put the spectrum in the hands of hundreds of entities, with each of whom the service provider must negotiate a lease—was in the public interest.

27. In fact, the instances that SHLB et al. identify where EBS licensees deployed their own networks are notable because of how rare they are. For example, SHLB et al. cite the self-deployment undertaken by Northern Michigan University (NMU), under a waiver of the EBS filing freeze. In granting the waiver, however, the Bureau noted: "NMU is unique among EBS licensees—while most EBS licensees have not built their own facilities and have leased their spectrum to commercial providers, NMU has built and operates its own LTE broadband network that covers a significant portion of the rugged, underserved territory in Michigan's Upper Peninsula." Although SHLB et al. state that the Commission has granted seven waivers in the last six years to "allow[] educational entities access to EBS spectrum for the purpose of building

wireless networks,” these seven waivers cover only three entities (i.e., NMU, Kings County, CA, and Monterey County, CA), which further demonstrates the rarity of self-deployed systems. SHLB et al. also point to the interest in developing statewide broadband networks expressed by states such as Nebraska and Utah, but they fail to explain how such interest will result in actual deployment, given that much of the spectrum in more populated areas of those states is already licensed and used by commercial providers, in contrast with northern Michigan where the spectrum was mostly unassigned. In short, although NMU has shown itself to be a motivated educational institution with access to technical expertise, the Commission would expect most EBS licensees to act consistently with their behavior to date and lease spectrum to commercial providers if the Commission retained the former eligibility rules.

28. In short, the Commission finds little support for the argument that educators are better positioned to deploy their own broadband networks in areas that are not served by commercial operators. Even in rural areas, that simply has not been the case. For example, the Wireless Internet Service Providers Association (WISPA) explains that several WISPs “have acquired EBS spectrum lease rights . . . to improve service to subscribers and/or expand service to new areas, in many cases to rural communities” and lists examples of these WISPs. WISPA further argues that “WISPs have shown time and again that they can deploy licensed, lightly licensed, and unlicensed fixed wireless services in rural areas—and do so cost-efficiently with unencumbered access to licensed 2.5 GHz spectrum.” And SHLB et al. demonstrate the success of commercial operators (rather than educational institutions) in building out this spectrum: “WISPs like BeamSpeed, LLC, Everttek, Inc., Redzone Wireless, Rise Broadband, SiouxLan Communications, and Watch Communications have ‘invested many millions of dollars’ in networks that ‘utilize leased [EBS] spectrum to provide high-quality, competitive broadband services to consumers, often in more rural areas of the United States where broadband options are limited.’” SoniqWave Networks LLC also intends to participate in the upcoming auction and

is planning deployments using spectrum it has acquired in the secondary market from former EBS licensees.

29. In sum, SHLB et al. have failed to present any new facts or arguments that would cause us to change the Commission's conclusion that the best approach to accelerate deployment and enable a wide range of potential uses for consumers nationwide is to license this spectrum for flexible use and eliminate the transaction costs (both money and time) associated with leasing by educational institutions.⁸

30. *Fifth*, the Commission rejects SHLB et al.'s continued reliance on a flawed study in support of maintaining the eligibility requirements. The Commission previously found this study to be premised on an unrealistic deployment model. Not only did the Commission find that history and experience discredit the study's assumption that, in unserved rural areas, EBS licensees would self-deploy rather than seek to enter into a lease agreement with a commercial carrier; the Commission also found problems with the study's assumption that, in rural served areas, licensees would be able to provide broadband service at \$15/month.⁹ Further, the Commission notes that, while the Catholic Technology Network (CTN) and National Educational Broadband Service Association (NEBSA) supported the existing eligibility requirements, they did not view the proposal around which the SHLB Economic Study was based as workable. Finally,

⁸ SHLB et al.'s argument that EBS licensees should be given additional access to free 2.5 GHz spectrum in a priority window because E-Rate funding cannot be used to support off-campus or home use of E-Rate supported infrastructure (SHLB et al. Petition at 5) is unpersuasive; this fact is not new. *See* 47 U.S.C. 254(h)(1)(B), (h)(2). SHLB's argument ignores the fact that this statutory restriction was in place when the vast majority of EBS licensees chose to lease the spectrum, rather than self-deploy networks.

⁹ SHLB et al. claim that the Commission wrongly characterize the SHLB Economic Study as assuming a \$15/month price for both served and unserved areas. SHLB et al. Petition at 7-8. The Commission recognizes that the \$15/month price applies only to the served areas and that the price is assumed to be \$35/month in the unserved areas. The Commission finds it unrealistic, however, that educational providers could sustain service to *rural* areas at the \$15/month price. The Commission found no evidence in the record of such low prices except in the case of Mobile Citizen and Mobile Beacon, which have leases with Sprint for spectrum licenses in "major and more densely populated markets." Furthermore, the Commission finds that the \$35/month price in unserved rural areas would be unrealistic because it assumes that educational providers would self-deploy in those areas, which is contrary to the Commission's history and experience with the 2.5 GHz band. History has shown that the vast majority of EBS licensees simply do not provide service—at any price—but, instead, lease the spectrum. The Commission is unpersuaded that repeating history will provide a different result.

the Commission found the study to undervalue the potential benefits of an auction rather than a direct assignment to educational and/or tribal entities on numerous counts.¹⁰ Generation of revenue is not the only measure of value of an auction;¹¹ society benefits when spectrum available for flexible use for next-generation wireless services and assigned to those who are most likely to use it themselves to deploy. The Commission therefore finds that making the remaining unassigned spectrum available via competitive bidding is in the public interest and is more likely to expeditiously put this spectrum to its highest and best use for the benefit of all Americans.

31. *Sixth*, the Commission previously stated its reasons for establishing the Tribal Priority Window but not a broad window for educational institutions. Specifically, the Commission concluded that Tribes have an interest in obtaining access to 2.5 GHz spectrum to serve their rural Tribal lands that is greater than and distinct from that of educational institutions, based on: (1) the unique status of federally recognized Tribes and the nature of the Commission's federal trust responsibility, (2) the right of Tribes to set their own communications policies in the lands they govern, (3) the unique and significant obstacles to

¹⁰ The SHLB et al. claim that the Commission mischaracterizes the SHLB Economic Study as purely county-based. While the Commission recognizes that the deployment model of the educational license holders is not county-based, its concern is that the SHLB Economic Study assumes that for winners of a potential auction, the "commercial deployment model only considers deployment to entire counties." This is because the SHLB Economic Study rules out any deployment to a county with partial deployment or change in plan offerings by non-educational providers, which the Commission finds unreasonable. The SHLB et al. also claim that the Commission's belief in the potential for price reduction after the auction via cost reduction is misguided because "competitive dynamics are the key driver of reduced wireless prices." While competition is an important determinant of wireless prices, the Commission has also recognized the roles of costs. For example, the Commission recognized substantial cost reductions from spectrum combinations in the T-Mobile/Sprint transaction that would allow lower prices. However, the Commission does not assert that cost "primarily" determines price as claimed by the petitioners.

¹¹ The Petitioners also argue any resulting lower price would still not match the price educational institutions could provide, but this is based on the \$15/month price the Commission discounts for rural areas. In general, based on the historic success of spectrum auctions at the FCC and the ability of the overlay auction format to rationalize the irregular patchwork of EBS license areas with often complicated licensing arrangements, the Commission believes that auctioning the fallow 2.5 GHz spectrum will provide the most benefit to the American consumers.

offering service in Tribal areas, and (4) the fact that Tribes have not previously had access to this spectrum. The SHLB et al. fail to address these distinctions.¹²

32. In turn, the Commission finds that SHLB et al.'s advocacy for a narrower educational priority window analogous to the Tribal Priority Window, or an educational priority window limited to New Channel Group 3 (old Channels G1, G2, and G3), would not address the Commission stated deployment objectives. The Tribal Priority Window is readily distinguishable from any form of educator window. Moreover, their suggestion of creating an educational priority window limited to New Channel Group 3, comprised of 17.5 megahertz of spectrum, would not only suffer from the same concerns the Commission has previously identified, but also would result in inefficient allocation of mid-band spectrum. Under that proposal, only the 17.5 megahertz of non-contiguous spectrum in New Channel Group 3 would be assigned and licensed differently than the adjacent commercial Broadband Radio Service spectrum. The result would be that educators would end up only with a narrow spectrum band that they might not be able to use fully because of the need to protect adjacent channel commercial operations. In contrast, in the auction context, potential bidders can take into consideration the availability of and ability to aggregate spectrum to make the best use of this smaller Channel Group.

33. For these reasons, the Commission affirms its conclusion in the *2.5 GHz Report and Order* that, “[g]iven the time and effort and delay that would be involved in establishing and running [an educational] priority window, and the likelihood that such a window for all

¹² The SHLB et al. acknowledge that the Commission “attempt[ed] to distinguish the reasons for the Tribal priority window from the more general educational priority windows.” *Id.* at 16. Rather than address the reasons for distinguishing Tribal entities, the SHLB et al. cite a handful of submissions in the record to contend that the Commission’s “conclusion that many educators might not be positioned to provide broadband is unsupported in fact and in the record.” As discussed above and in the *2.5 GHz Report and Order*, however, the Commission’s experience with the EBS service and its review of the record indicate that only “a small fraction of educational institutions” have expressed an interest in providing broadband service in rural areas, which does not provide a sufficient basis for establishing an educational priority window.

educational institutions would result in having to auction the spectrum anyway, the Commission finds that moving directly to flexible use and open eligibility would be the most expeditious method of making spectrum available to provide broadband service in rural and underserved areas, consistent with the Commission's statutory objective to ensure 'the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.'" The Commission therefore denies the SHLB et al. Petition.

IV. ORDERING CLAUSES

34. Accordingly, IT IS ORDERED pursuant to sections 4(i), 4(j), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 309(j), as well as § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petitions for Reconsideration filed by the National Congress of American Indians and jointly by the Schools, Health & Libraries Broadband Coalition; Consortium for School Networking; State Educational Technology Directors Association; American Library Association; National Digital Inclusion Alliance; Nebraska Department of Education; Utah Education and Telehealth Network; Council of Chief State School Officers; A Better Wireless; and Access Humboldt on November 25, 2019, ARE DISMISSED to the extent specified in this Order on Reconsideration and, alternatively and independently, DENIED as specified herein.

35. IT IS FURTHER ORDERED, pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Request for Withdrawal of Petition for Reconsideration filed by the Hawaii Broadband Initiative on March

30, 2020, IS GRANTED, and the Petition for Reconsideration by the Hawaii Broadband Initiative
on November 25, 2019, IS DISMISSED.
FEDERAL COMMUNICATIONS COMMISSION.

Marlene Dortch,
Secretary,
Office of the Secretary.

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