

FACT SHEET: Understanding the 2.5 GHz Rural Tribal Priority Window



What is the 2.5 GHz Rural Tribal Priority Window? From February 3 to August 3, 2020, federally-recognized tribes, Alaska Native Villages, and entities owned and controlled by a federally-recognized tribe or Alaska Native Village can apply for a license to control the unlicensed spectrum in the 2.5 GHz Band over their tribal lands. Eligible parties must submit an application with the Federal Communications Commission (FCC). Spectrum that is not claimed will be auctioned to the highest bidder.

Timeline

- May 2018 – FCC releases Notice of Proposed Rulemaking requesting public comment on proposals to remove the educational requirement, create the Rural Tribal Priority Window, and auction remaining spectrum.ⁱ 2.5 GHz Band previously known as EBS was reserved for use by entities with an educational purpose.
- July 2019 – FCC releases Report and Order, formally establishing the Window.ⁱⁱ
- January 2020 – FCC's Wireless Telecommunications Bureau releases Procedures Notice establishing timeline and procedures for the Window.ⁱⁱⁱ
- **Window Opens: February 3, 2020 at 9 AM Eastern Standard Time.**
- **Window Closes: August 3, 2020 at 6 PM Eastern Daylight Time.**
- August 2020 – 2.5 GHz Spectrum Auction.

Eligibility Requirements

- 1. Applicant must be a:**
 - federally-recognized tribe or Alaska Native Village,
 - consortium of federally-recognized tribes or Alaska Native Villages, or
 - entity majority owned and controlled by a federally-recognized tribe or Alaska Native Village.^{iv}
- 2. Rural land.** Defined as land with a population of less than 50,000.^v
- 3. Tribal land.**

"any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in 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."^{vi}
- 4. Local Presence.** Applicant must demonstrate that it has local presence throughout the tribal land for which it is applying, describe the nature of the presence and demonstrate it is physically located on the tribal land.^{vii}
- 5. Unlicensed spectrum.** Airwaves not licensed to another. Airwaves licensed to another, even if not in use, are not eligible.

Mutually Exclusive Applications

Applications that request a license for the same geographic area or the same spectrum, even if there is only a partial overlap, are mutually exclusive.^{viii} After the close of the Window, the FCC will establish a 90-day settlement period where applicants involved in mutually exclusive applications will be allowed to resolve the mutual exclusivity. If applicants do not reach a resolution, they can bid for the license at issue in a closed, single round, sealed bid auction.^{ix} Once applications are in this competitive bidding phase, applicants will be prohibited from discussing the applications or engaging in settlement discussions.^x Applicants are encouraged to talk to their neighbors to avoid mutual exclusivity.

Requirements to keep the License

The entity awarded a license must meet build-out requirements by Year 2 and Year 5 in order to keep the license.^{xi} The requirements vary by technology. Generally, the Licensee must cover:

50% of the population in the license area by Year 2

80% of the population in the license area by Year 5

- An applicant does not need to provide a build-out plan at the time of applying.
- An applicant awarded a license can work with others, such as an internet service provider, to meet the build-out requirements for its license.
- There is no monetary penalty for failing to meet the build-out requirements, but a licensee can lose the license.

Unique situation for Native Hawaiians

While Hawaiian Homelands are recognized as tribal lands by the FCC, Native Hawaiians do not fall under the applicant eligibility categories for the Window. Hawaiian broadband advocates reached out to the FCC to ensure Native Hawaiian participation in the Window.

- Letters from Department of Hawaiian Home Lands, Office of Hawaiian Affairs, and Governor David Ige.^{xii}
- Petition to Reconsider by Burt Lum, Dept. of Business, Economic Development & Tourism.
- DHHL Waiver requesting to be considered an eligible applicant.

The DHHL waiver does not grant a license, but allows the department to apply. DHHL or any other potential applicant still has to submit an application in order to receive a license.

ⁱ *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 4687(7) (2018).

ⁱⁱ *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019).

ⁱⁱⁱ *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, WT B Docket No. 18-120 (released on Jan. 6, 2020) [hereinafter Procedures Notice].

^{iv} Procedures Notice at para. 14.

^v Procedures Notice at para. 20. "rural, defined for purposes of the Rural Tribal Priority Window as not being part of an urbanized area or urban cluster with a population equal to or greater than 50,000."

^{vi} Procedures Notice at para. 18. See also 47 CFR § 54.5 (FCC's definition of tribal lands for Universal Service Fund programs).

^{vii} Procedures Notice at para. 21. See also 47 CFR § 27.1204(b)(4) (FCC's rule requiring local presence).

^{viii} Procedures Notice at para. 26.

^{ix} The FCC is required by Section 309(j) of the Communications Act of 1934 to resolve mutually exclusive applications by competitive bidding.

^x Applicants engaged in competitive bidding are required to follow the FCC's anti-collusion rules. See 47 CFR § 1.2105(c).

^{xi} *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446, para. 108 (2019).

^{xii} See Letter from William J. Aila, Jr., Department of Hawaiian Homelands, to Marlene Dortch, WT Docket No. 18-120 (filed Nov. 22, 2019); Letter from Sylvia M. Hussey, Office of Hawaiian Affairs, to Marlene Dortch, FCC, WT Docket No. 18-120 (filed Nov. 22, 2019); Letter from Governor David Ige, State of Hawai'i, to Marlene Dortch, FCC, WT Docket No. 18-120 (filed Nov. 22, 2019).