

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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November 19, 2019

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Dear Chairman Pai:

We write to express concern that the very brief notice, and even shorter window for filing spectrum license applications in the 2.5 GHz proceeding¹ will prevent many tribes and tribal organizations from taking advantage of the priority window. In addition, the Federal Communications Commission (FCC) request that the Office of Management and Budget (OMB) expedite its Paperwork Reduction Act (PRA) approval of the order may further disadvantage eligible tribes and tribal organizations.

First, the 90-day notice period and 60-day priority application filing window are too short.² Tribal governments have collaborative processes for decision-making that often take longer than the period the FCC has allocated.³ For example, as Mariel Triggs wrote in her submitted testimony before the House Subcommittee on Communications and Technology, “Councilwoman Ophelia Watahomigie-Corliss . . . solicited input from community members about what they would want from an Internet network and worked with her colleagues to draw up a plan that reflected her people’s values, aspirations and way of life. Nearly five months after the initial discussions regarding the broadband project, the Tribal Council passed a resolution to build their high-speed Internet network.”⁴ This is why the FCC notice process will be important

¹ Federal Communications Commission, *Transforming the 2.5 GHz Band*, Report and Order, WT Docket No. 18-120, para. 61 (Jul. 10, 2019).

² House Committee on Energy and Commerce, Written Testimony of Mariel Triggs, CEO of MuralNet, *Hearing on Our Wireless Future: Building a Comprehensive Approach to Spectrum Policy*, 116th Cong. (Jul. 16, 2019), at 7.

³ *Id.*

⁴ *Id.* at 7-8.

for tribes and tribal organizations that want to apply for spectrum licenses, and why they simply need more time to file.

Second, the PRA process is intended to, among other things, “strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government.”⁵ Here, the FCC has requested an emergency decision from OMB,⁶ without articulating a valid emergency.⁷ Instead, the FCC argued that “[t]he Commission wants to auction spectrum in the 2.5 GHz band in 2020” and that regular PRA processing procedures “would significantly delay the auction and the provision of service in Tribal lands.”⁸

Unfortunately, we are concerned that truncating the PRA process will likely have the opposite effect. Instead of the customary two comment periods of 60 days and 30 days, the FCC requested that OMB provide “only one public notice comment period of 30 days.”⁹ On that timeline, tribes and tribal organizations would have 60 *fewer* days than usual to engage in the OMB process—a blow not likely to “strengthen the partnership” between the Federal Government and tribal governments or to expedite the provision of service to tribal lands.

We agree that moving swiftly toward our 5G future is imperative and should not be delayed, and therefore we strongly support the FCC’s decision to make a priority license application window available to Tribes. However, if the FCC sincerely wants to provide tribes and tribal organizations with this opportunity, then it must give them a meaningful opportunity to participate. You made it clear that providing a priority window for tribes and tribal organizations was an important step toward helping these communities, and now we urge you to follow through on that promise by giving them enough time to take advantage of it.

⁵ 44 U.S.C. § 3501(6).

⁶ Letter from FCC Deputy Managing Director Mindy J. Ginsburg to OMB Information Policy Branch Chief Alexander Hunt in fulfillment of the emergency processing rules, 5 C.F.R. § 1320(13) to request expedited review and approval under the paperwork Reduction Act of 1995, August 22, 2019.

⁷ 5 C.F.R. § 1320.13(2). OMB rules require an emergency request to show that (1) the regular process is reasonably likely to result in public harm; (2) an unanticipated event has occurred; or (3) the regular process would be “reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause the agency to miss a court or statutory deadline.”

⁸ *Id.*

⁹ Federal Communications Commission, *Information Collection Requirement Being Submitted to the Office of Management and Budget for Emergency Review and Approval*, 84 Fed. Reg. 46009 (Sept. 3, 2019).

If you have any questions, please contact AJ Brown at 202-225-2927.

Sincerely,



Frank Pallone, Jr.
Chairman



Mike Doyle
Chairman
Subcommittee on Communications
and Technology



Ben Ray Luján
Member of Congress



Tom O'Halleran
Member of Congress



Raul Ruiz, M.D.
Member of Congress

cc: The Honorable Geoffrey Starks, Commissioner
Federal Communications Commission

The Honorable Jessica Rosenworcel, Commissioner
Federal Communications Commission

The Honorable Brendan Carr, Commissioner
Federal Communications Commission

The Honorable Michael O'Rielly, Commissioner
Federal Communications Commission