

**WRITTEN STATEMENT OF DONALD K. STOCKDALE, JR.  
CHIEF OF THE FEDERAL COMMUNICATIONS COMMISSION'S  
WIRELESS TELECOMMUNICATIONS BUREAU**

**GAO REPORT ON TRIBAL ACCESS TO SPECTRUM: PROMOTING COMMUNICATIONS  
SERVICES IN INDIAN COUNTRY**

**BEFORE THE UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS**

**September 18, 2019**

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, thank you for the opportunity to testify today regarding the GAO report on the Federal Communication Commission's (Commission or FCC) efforts to promote Tribal access to spectrum.

Chairman Pai's top priority has been to close the digital divide and bring the benefits of the Internet to all Americans, particularly those in rural areas and on rural Tribal Lands. Radiofrequency (RF) spectrum is crucial to narrowing the digital divide on Tribal Lands. That's why a key component of the Chairman's 5G FAST Plan—a comprehensive strategy to Facilitate America's Superiority in 5G Technology—is making spectrum available in low-, mid-, and high-frequency bands to facilitate deployment of advanced wireless services to all Americans.

Tribal Nations face unique and significant obstacles to offering service in rural Tribal areas, even when compared to rural non-Tribal lands. Many Tribal areas have characteristics that increase the cost of deployment and of providing service, including challenging terrain, low population density, jurisdictional issues involving states and sovereign Tribal governments, and the absence of necessary infrastructure. At the same time, the expected revenues in Tribal areas tend to be lower, in part due to a smaller number of business customers. The Commission recognizes the need to work in close collaboration with Tribal Nations as well as non-Tribal stakeholders, to overcome these barriers and ensure that no one who lives in Indian country is on the wrong side of the digital divide.

Making mid-band spectrum available for advanced wireless services, including 5G, provides a critical opportunity to address the need for wireless broadband in rural and Tribal areas. Mid-band spectrum offers a desirable combination of coverage and capacity for wireless services. In recent years, the demand for mid-band spectrum has increased dramatically worldwide, as more countries have realized that this spectrum has characteristics that will be useful for 5G deployments. Under Chairman Pai's leadership, the Commission has sought not only to make mid-band spectrum available for 5G generally, but also to identify specific opportunities for rural Tribal Nations to obtain access to this spectrum.

For example, the Commission recently took action to prioritize access to the 2.5 GHz band for Tribal Nations to provide advanced wireless services, including 5G, to rural Tribal Lands. The 2.5 GHz band, the largest contiguous block of spectrum below 3 GHz, is dramatically underused today, particularly in rural and Tribal areas. Existing licenses cover only about half of the geography of the United States, and much of the band is not even assigned across swaths of the country west of the Mississippi River. The Commission, at its July 10, 2019 meeting, acted to change that by replacing an outdated regulatory framework governing this band with new rules and procedures that will make this spectrum available for advanced wireless

services across the country, and particularly in Tribal areas. Specifically, the Commission, for the first time ever, established a priority window for flexible-use licenses for rural Tribal Nations to obtain spectrum for free—before any auction of the spectrum—to enable Tribal Nations to address communication needs on rural Tribal Lands. This is a groundbreaking measure that demonstrates the Commission’s commitment to expanding Tribal Nations’ ability to access spectrum. The Commission will open the priority window for 2.5 GHz spectrum early next year, and Commission staff outreach to Tribes is already underway, including an August 20 workshop in Billings, Montana and an upcoming panel at the Department of the Interior’s National Tribal Broadband Summit.

The Commission also has established a framework to access additional mid-band spectrum, specifically in the 3.5 GHz band, which should provide opportunities for a variety of rural and remote communities, as well as wireless providers that seek to serve them. The Citizens Broadband Radio Service is a novel, three-tiered access and authorization framework to accommodate shared federal and non-federal use of the 3550-3700 MHz band. Access and operations are managed by automated frequency coordinators, known as Spectrum Access Systems. The Commission will vote later this month to seek comment on bidding procedures for an auction of Priority Access Licenses (PALs) in the 3550-3650 MHz band. PALs are 10-year, county-based licenses of 10-megahertz channel blocks that receive protection from General Authorized Access (GAA) users. The GAA tier, in turn, is licensed-by-rule to permit access to the 3550-3700 MHz band, with at least 80 megahertz in any given license area available to potential GAA users and not available to PAL users. The 3.5 GHz band’s opportunistic access regime and smaller geographic license areas provide low-cost entry points to mid-band spectrum and another key opportunity for deployment of advanced wireless services to Tribal entities.

Under this framework, Tribal entities will have two ways to access this spectrum. They can gain GAA access to spectrum in areas where there is no commercial buildout, or they can seek PAL licenses in the auction, utilizing Tribal Land bidding credits and other bidding credits.

Tribal Land bidding credits are another example of how the Commission promotes the deployment of spectrum-based services to Tribal Lands through its auction rules. The Commission has adopted Tribal Land bidding credits for many spectrum auctions. For example, the Commission awarded credits for 20 licenses in the 600 MHz auction, and winning bidders have applied for Tribal Land bidding credits in the recent 24 GHz and 28 GHz auctions, in a total of 13 pending license applications. Also, the Commission has adopted Tribal Land bidding credits in the upcoming mid-band spectrum auctions of the 2.5 GHz and 3.5 GHz bands and the high-band spectrum auction of 37 GHz, 39 GHz, and 47 GHz bands. The Tribal Land bidding credit program provides the opportunity for spectrum auction winners to obtain a discount (in the form of a refund) for providing service to qualifying Tribal Lands. To qualify for the credit, the winning bidder must demonstrate that it will serve qualifying Tribal Lands, provide certifications from the applicable Tribal government, and attest that it will construct and operate a system capable of serving 75 percent of the qualifying Tribal Land population within three years of license grant.

The Commission recognizes that many Tribal entities can benefit from additional information, outreach, coordination, and assistance in meeting the communications needs of their communities. The Commission’s Office of Native Affairs and Policy (ONAP) provides a home for dedicated Commission staff with specialized experience to serve as official Commission liaisons for ongoing consultation, engagement, and outreach to the American Indian, Alaska

Native Village, Hawaiian Homelands, and other Native communities. Most importantly, ONAP fosters Commission dialogue and engagement with Tribes, Tribal governments, and inter-Tribal organizations, furthers the Commission's trust relationship with Tribal Nations, and demonstrates the Commission's ongoing commitment to its 2000 *Tribal Policy Statement*.<sup>1</sup> In addition to emails and calls to provide technical assistance to individual Tribes, ONAP participated in 23 events and gatherings with tribes since 2018, with several more planned before the end of this year. Finally, last year the FCC renewed its Native Nations Communications Task Force. The Task Force is comprised of elected or appointed leaders from federally recognized Tribal governments and senior Commission staff. It provides the Commission with guidance on such matters as identifying barriers to broadband deployment unique to Tribal Lands and ensuring that Tribal concerns are considered in all Commission proceedings related to broadband and other Commission undertakings that affect Tribal interests.<sup>2</sup>

Yet, despite our best efforts, we recognize there is more work to be done. In November 2018, the GAO released a report on spectrum use by Tribal entities. Even before the Commission's decision to adopt a Tribal priority window for 2.5 GHz spectrum, that report noted that the "FCC has taken steps to promote and support Tribal access to spectrum," but nevertheless offered three recommendations to improve access to spectrum on Tribal Lands. The Commission continues to work to implement the report's recommendations.

First, GAO recommended that the FCC should collect data on the extent to which Tribal entities are obtaining and accessing spectrum and use this information as the FCC implements ongoing spectrum initiatives. The FCC collects information on licensees to determine eligibility to hold a particular license, but because eligibility generally is not based on Tribal entity status, the FCC has not required reporting of Tribal entity status for every license. The Commission is analyzing the extent to which bidding credit information provides insight into Tribal entities' access to, and use of, spectrum. And, of course, the Commission will collect information on rural Tribal entities in the context of the 2.5 GHz priority window. Further, as the Commission creates new application forms or revises existing forms, it will consider whether to add the option for the applicant to voluntarily identify itself as a "tribal entity."

Second, GAO recommended that the FCC "should analyze data to better understand the extent that unused spectrum licenses exist over Tribal Lands, such as by analyzing the data for a sample of Tribal Lands, and as appropriate use this information to inform its oversight of the secondary market." Staff from the FCC's Office of Economics and Analytics and Wireless Telecommunications Bureau (WTB) are currently developing a sample of spectrum licenses on Tribal Lands, which will then be analyzed to inform ongoing spectrum policies.

Third, GAO recommended that the FCC make information on spectrum license holders more accessible and easier to understand for interested parties, including Tribal entities, to promote their ability to purchase or lease spectrum licenses from other providers. The FCC's Universal Licensing System (ULS) is available to Tribal entities and other members of the public. The Commission is currently engaged in a multi-year project to modernize ULS, transitioning to a new platform that will provide more consistent performance, easier access to

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<sup>1</sup> *Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000).

<sup>2</sup> Public Notice, *FCC Seeks Nominations for Tribal Government Representatives to Serve on Renewed FCC Native Nations Communications Task Force* (DA 18-127) (rel. Feb. 8, 2018).

information, and enhanced functionality. This modernization work will take time, as ULS is a complex system that issues and maintains over 2.2 million wireless licenses and processes over 400,000 applications annually. GAO's recommendation that the Commission make information on spectrum license holders more accessible and understandable is in alignment with the Commission's goals for a modernized ULS.

In the meantime, the Commission has provided Tribes with information about, and assistance in, accessing ULS. The Commission provided information about opportunities to access spectrum through new licenses as well as through partitioning, disaggregating, and leasing existing licenses. The Commission has provided this information at FCC Tribal Workshops, and in presentations at inter-Tribal events. Examples include inter-Tribal meetings and FCC workshops in Washington, DC in February and March of 2019, in Mescalero, New Mexico in April 2019, in Ada and Norman, Oklahoma in May and June 2019, respectively, in Spokane, Washington in May 2019, and in Billings, Montana in August 2019. ONAP and WTB staff are also planning and conducting extensive outreach regarding the Tribal Priority Window for access to 2.5 GHz spectrum, including holding several Tribal workshops, providing on-line tutorials, and providing assistance on how to complete the forms necessary to apply for spectrum during the priority window. Both ONAP and WTB staff are always available to assist any individual Tribe that has questions or requests assistance accessing information through ULS.

Chairman Hoeven, Vice Chairman Udall, and the Members of the Committee, thank you once again for the opportunity to testify this afternoon, and I look forward to the opportunity to answer your questions.