

Committee on Energy & Commerce
Hearing on “Addressing the Urgent Needs of Our Tribal Communities”
Testimony of Rep. Deb Haaland (NM-01)
July 8, 2020

Chairman Pallone, Ranking Member Walden, and members of the Committee, thank you for the opportunity to discuss the urgent needs of Indian Country, especially as it relates to the long-standing lack of communications and technological services on tribal lands that has been exasperated since the onset of the COVID-19 pandemic.

Indian Country’s Growing Digital Divide during COVID-19

As one of the first Native American women elected to Congress and Co-Chair of the Native American Caucus, I urge you to address the longstanding telecommunications needs and administrative barriers to access spectrum on tribal lands and Hawaiian Home Lands to fully honor the federal government’s unique government-to-government relationship with Native Nations in the United States.

The disproportionate effects of this unprecedented pandemic on Native Nations continue to severely impact American Indian, Alaska Native, and Native Hawaiian people. The Administration’s failure to uphold the trust responsibility to provide adequate relief, health services, and public safety resources to tribal communities has exacerbated the pandemic’s impact. COVID-19 has contributed to the devastation of Nation Nations’ economies, and has prevented tribal citizens from accessing healthcare, education, employment, and public safety resources. The federal government’s insufficient response to this crisis to date represents yet another broken promise to sovereign tribal governments.

Coronavirus Aid, Relief, and Economic Security (CARES) Act¹— is aid that is crucial for tribal nations to provide needed government services to their citizens.² The CARES Act provided less than Indian Country requested for pandemic health care needs,³ and as telehealth becomes increasingly important, almost half of IHS facilities lack access to broadband or reliable bandwidth,⁴ as do many people living on tribal lands⁵, further evidenced in FCC and Government Accountability Office (GAO) findings stating that only 65 percent of American Indian and Alaska Natives (AI/AN) living on tribal lands have access to fixed broadband services, and only 68 percent of households on tribal lands have telephone services. These findings follow the GAO’s statements that health IT systems at the Indian Health Service (IHS) rank as the federal government’s third highest need for agency system modernization since fifty percent of IHS facilities depend on outdated circuit connections creating slower response times than any other health facility in the country.⁶ Bureau of Indian Education’s (BIE) recent COVID-19 estimates further

¹ P.L. 116-136.

² HuffPost, “The White House Wanted To Give \$0 To Tribes In The \$2 Trillion Stimulus Bill,” Jennifer Bendery, April 1, 2020, https://www.huffpost.com/entry/tribes-stimulus-coronavirus-white-house-republicans_n_5e839c10c5b6871702a5dc10.

³ Letter from National Congress of American Indians, et al., to Senate Majority Leader Mitch McConnell and Senate Minority Leader Charles Schumer, March 20, 2020, http://www.ncai.org/Tribal_Priorities_for_Health_Education_and_Nutrition_for_COVID-19_Stimulus_Package_FINAL.pdf.

⁴ Comment Letter from National Congress of American Indians and National Indian Health Board to FCC, “Lack of Broadband Infrastructure,” May 24, 2018, p. 3, <https://www.nihb.org/tribalhealthreform/wp-content/uploads/2017/05/FCC-Comment-NIHB-NCAI-Joint-Recommendations.pdf>.

⁵ U.S. Government Accountability Office, “FCC’s Data Overstate Access on Tribal Lands,” September 2018, <https://www.gao.gov/assets/700/694386.pdf>.

⁶ *Id.*

found that up to 95 percent of AI/AN students do not have access to home internet services depending on their physical location and data cap limitations.

In total, Indian Country's digital divide and longstanding administrative barriers for Tribes to access spectrum over their own lands has left approximately 1.5 million people without basic access to broadband and wireless services on tribal lands and Hawaiian Home Lands. These rates are comparable, and on some reservations lower, than developing countries. This is unacceptable where the GAO and FCC have found that 92 percent of people living outside of tribal lands have access to fixed broadband services, and 98 percent of American households have basic access to telephone services.

In a critical time when the COVID-19 pandemic has disproportionately impacted tribal communities at some of the highest rates in the country⁷, it is more important than ever to empower the United States' federally recognized Native Nations and Native Hawaiian communities by upholding our trust and treaty responsibilities.

Timeline Extension Request— FCC Tribal Priority Filing Window for 2.5 GHz Spectrum

Since the onset of the COVID-19 pandemic, my office has received overwhelming outreach from Tribes, Native Hawaiian communities, and advocates regarding the upcoming Federal Communications Commission's tribal priority filing window timeline that is set to close on August 3, 2020. With both tribal and state stay-at-home orders in place across most of Indian Country, and as the rates of positive cases of COVID-19 dramatically increase across the country, Native Nations are working to prioritize life-saving measures and deployment of critical government services to combat the negative impacts of the pandemic in an effort to keep their respective tribal communities safe. While critically important to tribal governments and their entities, the 2.5 GHz spectrum opportunity has necessarily taken a subordinate position in this national emergency. This pandemic has created unparalleled barriers for Indian Country to focus on unprecedented matters in their respective communities.

In response to numerous requests from around the country, the bipartisan Congressional Native American Caucus (CNAC) wrote a letter on April 9, 2020 to the Federal Communications Commission requesting a 180 day extension to the 2.5 GHz tribal priority filing window timeline to give Tribes a fair opportunity to participate in the tribal window. In response, our offices received a noncommittal response from the FCC despite an outpour of requests from both the U.S House of Representatives and Senate, in addition to, Native Hawaiian communities and Tribes across the country.⁸ **We find the FCC's refusal to grant a 180-day extension to the 2.5 GHz tribal priority filing window timeline extremely problematic and request Committee assistance to convince this agency to extend this timeline for Tribes since the August 3 deadline is quickly approaching.**

In furtherance of these requests, I also included an amendment to extend the 2.5 GHz Rural Tribal Priority Window deadline by not less than 180 days, which successfully passed the U.S. House of Representatives on July 1, 2020 under HR 2, *INVEST in America Act*. I urge leadership to further support this provision as the infrastructure package moves through the Senate to address this fundamental injustice so that Indian Country will no longer remain digitally disconnected from the rest of the world, and the unnecessary loss of lives does not continue on tribal lands, especially amidst the pandemic.

Thank you again for the opportunity to testify. I look forward to working with you on these important issues.

⁷ New York Times, "Tribal Nations Face Most Severe Crisis in Decades as the Coronavirus Closes Casinos," Simon Romero and Jack Healy, May 13, 2020, <https://www.nytimes.com/2020/05/11/us/coronavirus-native-americans-indian-country.html>.

⁸ See attached House and Senate letters to the FCC requesting 180-day tribal priority filing window extension.



Congress of the United States
House of Representatives

April 9, 2020

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

Re: COVID-19 Adjustment to FCC Timelines Governing Tribal Priority Filing Windows

Dear Chairman Pai,

We write to ask your immediate attention to our request to extend the Federal Communications Commission's tribal priority filing window timeline that is set to close on August 3, 2020, and our request that you extend the start of the upcoming Rural Digital Opportunity Fund auction (Auction 904) that is set to begin on October 22, 2020. The COVID-19 pandemic is having devastating impacts across the country, including Indian Country. At no time in our history has robust and universal broadband been more important to the most vulnerable among us – whether for public safety, education, health care, or digital employment viability. Due to the unprecedented impact of COVID-19, and its current and future effects in Indian Country, we request that you reconsider these existing timelines to help some of the most marginalized communities in the country.

In our prior communications, the Commission was helpful to extend the tribal priority filing window through a 182-day window, which began on February 3, 2020. We are greatly appreciative of your work to accommodate our request so Native Nations can seek licensure to provide critical services on tribal lands and in furtherance of the federal government's trust responsibility. However, in the midst of this pandemic, we believe the current August 3 deadline will hinder the overriding purpose of the Commission's original decision to extend this timeline and will result in the failure of the deployment of projects in the 2.5 GHz Band on tribal lands.

With both tribal and state stay-at-home orders in place across most of Indian Country, and as the rates of positive cases of COVID-19 dramatically increase across the country, Native Nations are working to prioritize life-saving measures and deployment of critical government services to combat the negative impacts of the pandemic in an effort to keep their respective tribal communities safe. While critically important to tribal governments and their entities, the 2.5 GHz spectrum opportunity has necessarily taken a subordinate position in this national emergency. This pandemic has created unparalleled barriers for Indian Country to focus on supplementary matters as tribal leadership, and elected leadership across the country, has poured resources into pressing emergency health care, public safety, unemployment, and other immediate needs while combatting the coronavirus in an effort to keep the country afloat.

Similarly, with respect to the upcoming Rural Digital Opportunity Fund auction (Auction 904), we believe that the start of the auction should be extended. With \$16 billion of federal funding over a ten-year period at stake in Auction 904, it is important that the opportunity to participate in the auction be as expansive as

possible. If this deadline is not extended, we believe that an enormous opportunity to extend broadband coverage to the unserved will be lost, at the expense of our Nation's least connected – those living in Indian Country.

In addition, the pandemic is preventing the widespread training and outreach engagement efforts necessary to ensure that all Native Nations are fully informed and empowered to take full advantage of this extremely unique opportunity to obtain spectrum licenses over their own lands. While remote outreach events that require a robust broadband connection may be an option in some communities, we know that the lack of such a connection across much of Indian Country renders such an option impossible for many throughout Indian Country. This tragic fact underlines the sense of urgency that we relay to you today.

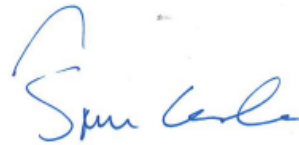
In furtherance of the federal trust responsibility to the 574 Native Nations in the United States, we respectfully request that the Commission extend the tribal priority filing window from August 3, 2020 to January 27, 2021. This is extending by 180 days, beginning on August 1 when the United States is expected to physically return to work. With respect to the Rural Digital Opportunity Fund, we ask you to extend the start of Auction 904 by 180 days. In these unprecedented times, these extensions will help give our offices and Native Nations and their eligible entities a reasonable amount of time to focus on their immediate emergencies and appropriately address our shared goal of closing the digital divide in Indian Country.

We greatly appreciate your time and attention to this issue. If you have additional questions, please reach out to either Heidi Todacheene (Heidi.Todacheene@house.mail.gov) in Rep. Deb Haaland's office or Joshua Jackson (Joshua.Jackson@mail.house.gov) in Rep. Tom Cole's office.

Sincerely,



Deb Haaland, Co-Chair
Congressional Native American Caucus



Tom Cole, Co-Chair
Congressional Native American Caucus

United States Senate

WASHINGTON, DC 20510

May 19, 2020

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

Dear Chairman Pai:

In light of the continuing novel coronavirus (COVID-19) pandemic and to ensure Indian tribes in rural areas enjoy the same access to the Internet as the rest of the United States, we respectfully request that the Federal Communications Commission (FCC) extend the 2.5 GHz Rural Tribal Priority Window opened on February 3, 2020, by 180 days.

As you know, on July 10, 2019, the FCC adopted new rules to bring 2.5 GHz spectrum to auction. The agency established a “priority window” to serve rural tribal lands. In addition, the FCC committed to keeping that window open for 180 days to give tribes time to apply.

As the number of confirmed cases of COVID-19 in the U.S. continues to rise and more and more Americans are told to stay home, the true extent of the crisis is becoming more apparent daily. For most Americans, the immediate focus is on the health and safety of our families, our neighbors, and the nation as a whole. To that end, we are pleased to see that the FCC has extended the time for the public to prepare for and participate in some of its upcoming auctions, such as the 3.5 GHz band and the FM broadcast service. This will help ensure that the public has adequate time to participate as we get through this crisis.

These same challenges are also impacting the ability of Tribal governments to participate in FCC proceedings. Additionally, rural tribal communities represent some of the least connected people in America. For example, according to the FCC's most recent Broadband Progress Report, more than 60 percent of residents on New Mexico's tribal lands lack access to high-speed broadband. Furthermore, the Government Accountability Office (GAO) found that the broadband data collected by the FCC overstates service in tribal communities, meaning the number of residents without access is higher than what was reported by the FCC. All of this underscores the need for more comprehensive assistance and engagement on tribal lands.

As you know, this spectrum can deliver significant benefits to rural tribal communities. Tribal governments should not be precluded from having an opportunity to apply for spectrum as a result of this public health emergency. An extension of the 2.5 GHz priority window will help ensure that tribes have adequate time to make the most of this first-of-its-kind opportunity. Accordingly, we urge the FCC to extend the Rural Tribal Priority Window by 180 days and commit to ensuring every rural tribal community has an equitable opportunity to receive spectrum licenses.

Thank you for your prompt attention to this request.

Sincerely,

/s/ Martin Heinrich
Martin Heinrich
United States Senator

/s/ Maria Cantwell
Maria Cantwell
United States Senator

/s/ Jacky Rosen
Jacky Rosen
United States Senator

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

/s/ Bernard Sanders
Bernard Sanders
United States Senator

/s/ Ron Wyden
Ron Wyden
United States Senator

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator

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

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

/s/ Tom Udall
Tom Udall
United States Senator

/s/ Richard Blumenthal
Richard Blumenthal
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

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

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

/s/ Patty Murray
Patty Murray
United States Senator

/s/ Brian Schatz
Brian Schatz
United States Senator

/s/ Cory A. Booker
Edward J. Markey
United States Senator

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



NATIONAL CONGRESS OF AMERICAN INDIANS

April 22, 2020

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

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SOUTHWEST
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CHIEF EXECUTIVE OFFICER
Kevin Allis
FOREST COUNTY POTAWATOMI COMMUNITY

NCAI HEADQUARTERS
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www.ncai.org

Re: In Support of COVID-19 Adjustment to FCC Timelines Governing Tribal Priority Filing Windows

Dear Chairman Pai:

On behalf of the National Congress of American Indians (NCAI), the oldest and largest national organization composed of American Indian and Alaska Native tribal nations, we write in support of the Congressional Native American Caucus’s April 9, 2020, letter requesting that the Federal Communications Commission (Commission) extend the tribal priority filing window for the 2.5GHz band over tribal lands to close on January 27, 2021 and extend the start of Rural Digital Opportunity Fund (Auction 904) by 180 days.

Like all governments across the United States, tribal nations are working diligently to immediately respond to the 2019 novel coronavirus (COVID-19) pandemic. However, the urgency, infection rate, and death toll of COVID-19 continue to increase. American Indian and Alaska Native communities are disproportionately impacted by the health conditions that the Centers for Disease Control and Prevention (CDC) notes increase risk for a more serious COVID-19 illness, including respiratory illnesses, diabetes, and other health conditions. As a result, tribal nations are currently providing essential services to their communities and dedicating resources to the unique circumstances of COVID-19 response that would otherwise be used on opportunities like the 2.5GHz tribal priority filing window and Rural Digital Opportunity Fund. Consequently, an extension of the tribal priority filing window and the start of the Rural Digital Opportunity Fund is essential.

NCAI thanks the Commission for these historic opportunities for tribal nations to bridge the digital divide in Indian Country. We urge the Commission to account for the widespread impacts of COVID-19 in tribal communities by extending the end date for the tribal priority window and the start date for the Rural Digital Opportunity Fund. Thank you for your consideration and if you have any questions, please do not hesitate to contact Tyler Scribner, Policy Analyst, at tscribner@NCAI.org.

Sincerely,

Kevin J. Allis
Chief Executive Officer
National Congress of American Indians

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

April 3, 2020

Chairman Ajit Pai
Commissioner Mike O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Mr. Chairman and Commissioners:

Across the nation, state,¹ local,² and tribal governments³ are taking critical steps to protect the health of Americans as the COVID-19 pandemic unfolds. Tribal businesses have also paused operations to do their part in preventing the spread of the virus.⁴ With tribal governments, tribal businesses, and outreach in indigenous communities on hold for the wellbeing of all, we respectfully request an extension of the 2.5 GHz Rural Tribal Priority Window for an additional 12 months.

In Hawai'i, the Department of Hawaiian Homelands ("DHHL") closed its offices statewide through April 30, 2020.⁵ DHHL oversees home sales, transfers, successorships, direct loans, water bills, general leases, and rights of entry in Hawaiian Home Lands. The closing of our offices will create delays of the services we offer Native Hawaiians. In addition, because DHHL meetings are largely attended by *kupuna* or elders, a community at higher risk from severe illness, the Department has postponed all upcoming Commission

¹ Sarah Mervosh & Denise Lu, *See Which States and Cities Have Told Residents to Stay at Home*, NYTIMES (Mar. 24, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

² Paris Martineau, *What's a 'Shelter in Place' Order, and Who's Affected?*, WIRED (Mar. 20, 2020), <https://www.wired.com/story/whats-shelter-place-order-whos-affected/>.

³ Erik Ortiz, *Native American tribes brace for coronavirus: 'It's going to be a test.'* NBC NEWS (Mar. 15, 2020), <https://www.nbcnews.com/news/us-news/native-american-tribes-brace-coronavirus-it-s-going-be-test-n1156961>; Arlyssa Becenti, *Nation ordered to shelter in place*, NAVAJO TIMES (Mar. 21, 2020), <https://navajotimes.com/coronavirus-updates/nation-ordered-to-shelter-in-place/>.

⁴ Patty Talahongva, *Casino closed to 'make sure no one gets lost, no one.'* INDIAN COUNTRY TODAY (Mar. 16, 2020), <https://indiancountrytoday.com/news/casino-closed-to-make-sure-no-one-gets-lost-no-one-N1LajiABSE62In501peLcw>; Matt Trotter, *Tribes Running Oklahoma's Four Largest Gaming Operations Shut Down Casinos, Hotels*, PUBLIC RADIO TULSA (Mar. 17, 2020), <https://www.publicradiotulsa.org/post/tribes-running-oklahomas-four-largest-gaming-operations-shut-down-casinos-hotels>; Tribal casinos close due to COVID-19, State of New Mexico, <https://www.newmexico.gov/2020/03/19/tribal-casinos-close-due-to-covid-19/> (last visited on Mar. 23, 2020).

⁵ Press Release, Department of Hawaiian Home Lands, COVID-19 Impacts on DHHL Operations (Mar. 20, 2020) available at <https://dhhhl.hawaii.gov/2020/03/20/covid-19-impacts-on-dhhl-operations/>.

meetings.⁶ Our Department has created a website to provide the latest information about COVID-19 impacts on DHHL activities, dhhl.hawaii.gov/covid-19/.

The Federal Communications Commission (“FCC”) designed the 2.5 GHz Rural Tribal Priority Window to “enable Tribal nations an opportunity to obtain 2.5 GHz licenses to provide [internet] service on rural Tribal lands.”⁷ Recently, the FCC granted DHHL’s waiver request to be an eligible applicant for the licenses over Hawaiian Homelands.⁸ We commend this decision and look forward to applying for licenses. The Office of Hawaiian Affairs and the Department of Business, Economic Development, and Tourism support DHHL’s efforts to help close the digital divide for Native Hawaiians.

This opportunity is currently scheduled to close on August 3, 2020. However, for the foreseeable future, DHHL will be focused on getting back to our regular operations. In the coming weeks and possibly months, tribal governments will be focused on coordinating testing, prevention, and healthcare services for their members in addition to securing resources that provide financial assistance to their businesses.⁹

Our nation is facing an incredible task. Our collective efforts are fully directed towards ‘flattening the curve’ and protecting the health of every member of our society. We encourage the FCC to extend the 2.5 GHz Rural Tribal Priority Window to accommodate the necessary work that eligible applicants are doing to respond to the COVID-19 pandemic. Thank you for taking into consideration the challenging situation tribal governments and eligible applicants like DHHL are facing during this extraordinary time.

Respectfully submitted,

William Aila Jr

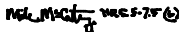
_____ Date: Apr 6, 2020

William J. Ailā, Jr.
Chairman
Hawaiian Homes Commission
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Kapolei, HI 96707
(808) 620-9501



_____ Date: Apr 7, 2020

Sylvia M. Hussey, Ed.D.
Ka Pouhana, Chief Executive Officer
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(808) 594-1835



_____ Date: Apr 7, 2020

Mike McCartney,
Director
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(808) 586-2355

⁶ *Id.*

⁷ *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446(7), para. 13 (2019).

⁸ *In the Matter of Department of Hawaiian Homelands, Request for Waiver to File as an Eligible Entity in the 2.5 GHz Rural Tribal Priority Window*, Memorandum Opinion and Order, WT Docket No. 20-21 (Released on Mar. 20, 2020).

⁹ Maria Givens and Jan Pytalski, *Funding Limbo Underscores Complexity of Pandemic Health Care in Indian Country*, DAILY YONDER (Mar. 19, 2020), <https://www.dailyyonder.com/funding-limbo-underscores-complexity-of-pandemic-health-care-in-indian-country/2020/03/19/>.