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PRA Comments

Via Electronic Mail: [Nicholas A. Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov);
PRA@fcc.gov; Cathy.Williams@fcc.gov

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Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: PRA Comments – *Transforming the 2.5 GHz Band*, OMB 3060-1094

Dear Mr. Nicholas Fraser and Ms. Cathy Williams:

MuralNet respectfully offers comments regarding the Federal Communications Commission's (FCC) Information Collection Requirement submitted to the Office of Management and Budget for Emergency Review and Approval, OMB Control Number 3060-1094.

MuralNet is a 501(c)(3) nonprofit whose purpose is to bring broadband to under-connected people on tribal lands on a grand scale.¹ We work with tribal entities, libraries, and schools in rural areas to provide high-speed internet access to their students at home. Specifically, MuralNet leverages affordable, reliable LTE technology to build high-speed internet networks in partnership with tribes. Access to the 2.5 GHz band is a necessary component of this strategy to close the digital divide in tribal lands. Thus, it is critical for our mission, to ensure that the FCC's efforts to administer the *Transforming the 2.5 GHz Band* proceeding do not inadvertently jeopardize the opportunity for tribes to apply for a spectrum license via this proceeding.

There are 573 federally-recognized tribes.² That means that there are 573 potential participants for the Tribal Priority Filing Window of the FCC's *Transforming the 2.5 GHz Band* proceeding. As sovereigns, Indian Nations have the inherent power to govern all matters involving their members. Self-government is the essence of tribal sovereignty. Tribal governments determine their own

¹ For more information about MuralNet, please visit our website at www.muralnet.org.

² *An Overview*, Tribal Nations and the United States: An Introduction, National Congress of American Indians, <http://www.ncai.org/about-tribes> (last visited Oct. 1, 2019).

unique governance structures and are responsible for a broad range of governmental activities on tribal lands, including the development and maintenance of telecommunications infrastructure.³

For example, when the Havasupai Tribe was considering whether to build an LTE high-speed internet network in Supai, AZ with MuralNet's assistance, a member of the Tribal Council held conversations with hundreds of members of the Tribe. After hundreds of conversations, the Tribe collectively decided to build the network in partnership with our organization, Northern Arizona University and Niles Radio Communications.

Given our experiences working across Indian Country in partnership with sovereign Indian Nations, we see four problems with the FCC's request for emergency review of its ICR:

1. There is no emergency. In its publicly-available ICR, the FCC does not provide a justification as to why it needs emergency review and approval to collect information regarding this proceeding. Per OMB guidelines, when OMB grants emergency review an approval, the requesting agency "must provide an explanation for why the normal process will result in public harm or is not possible because of an unanticipated event."⁴ The Commission states as reasoning, "to make more middle-band spectrum available," but fails to explain the emergency. To be clear, MuralNet supports the *Transforming the 2.5 GHz Band* and its accompanying Tribal Priority Filing Window. However, we are concerned that rushing the PRA will mean fewer tribes will have the time they need to participate in the proceeding, undermining the FCC's goals and the success of the Tribal Priority Filing Window. We want to make sure that the time available for all 573 tribes to educate and prepare themselves is not cut-short by expedited approval.

2. The FCC does not match its claim of emergency with efforts to inform tribes about how to participate in this proceeding. While some tribes and organizations already know about the Tribal Priority Filing Window and can contact the FCC for more information about how to participate, most tribes are unaware of this opportunity. On September 24, 2019, the Commission hosted an informational session about the proceeding at the National Tribal Broadband Summit in Washington, D.C. MuralNet attended the session and observed about 40 people in attendance. Unfortunately, the session was not live-streamed and thus not accessible to the hundreds of tribes that were not in the room. A request for emergency review indicates that the Commission wants to move fast in regards to the Tribal Priority Filing Window. The scope and import of this proceeding requires that potential participants, especially tribes in remote areas, be informed of the opportunity to participate. The FCC's stated goal is to "hold a Tribal priority window to enable Tribal nations an opportunity to obtain 2.5 GHz licenses to provide service on rural Tribal lands."⁵ To effectuate that goal, the FCC must do more, significant and sustained outreach to tribes.

3. The FCC's burden estimate regarding the Tribal Priority Filing Window is flawed and inaccurate. The Commission estimates that there will be 32 respondents for the Tribal Priority Filing Window. The FCC assumes that these respondents will use an "in-house" staff attorney, "in-house" electronic engineer, or a consultant to prepare a filing with a burden of 10 hours. Unfortunately, this estimate and assumption is wrong.

³ *Id.*

⁴ *Information Clearance Process*, FAQ, Reginfo.gov, https://www.reginfo.gov/public/jsp/Utilities/faq.myjsp#icr_info (last visited Oct. 1, 2019)

⁵ *See Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446(7), para. 13 (2019).

With 573 federally-recognized tribes potentially able to participate in the Tribal Priority Filing Window, an estimate of 32 respondents is simply too low. In addition, entities owned and operated by a tribe, such as a tribal utility or college can also participate. There are 32 tribal colleges and universities alone.⁶

The 10-hour time estimate is too low. It does not account for each tribe's decision-making and review processes, such as consulting with every member of the tribe or tribal council holding hearings with tribal members. Furthermore, the 10-hour estimate does not include other obligations such as mapping available EBS spectrum and completing terrain surveys. The Commission has yet to release an updated map of the available EBS spectrum over tribal lands; thus, interested respondents must plan to add time and expenses to conduct their own mapping of EBS spectrum over their territory.

Finally, while some tribes have ample resources, in-house legal and engineering teams, and are ready to file applications in the Tribal Priority Window, this is not the case for most tribes. American Indian tribes face varied economic, social, and political circumstances. Some will not have an in-house attorney, engineer, or even know a consultant that could help them participate in the Tribal Priority Filing Window. And the high-cost for such experts, even at the FCC's affordable rate estimates (\$69 per hour for an attorney, \$52 per hour for an engineer, \$250 per hour for a consultant), will present a challenge for tribes needing to secure funds in a shortened time-frame.

4. Approval of this emergency ICR could increase the burden on tribes, not reduce it.

Most tribes will be new respondents to the Tribal Priority Filing Window, and new entrants to the spectrum licensing market. As new respondents and entrants, tribes will need time to educate themselves, gather the necessary information, and prepare their filings. Given the diverse economic, social, and political circumstances of Indian Nations, some tribes are ready to participate while others have lots of preparation to do. In addition, some tribes will begin at a disadvantage as a result of having less resources and experience. Shortening the time available to tribes, by granting an emergency ICR approval, especially for tribes with less resources and experience in spectrum licensing, will increase the burden they face to be able to take advantage of this unique opportunity to close the digital divide.

The FCC and OMB should take the time needed to get the burden estimates right, and ensure that the ability of tribes to truly participate in the Tribal Priority Filing Window is not jeopardized. MuralNet is grateful for your kind attention to our comments.

Sincerely

/s/ Mariel Triggs
CEO
MuralNet

⁶ *Tribal Colleges and Universities*, White House Initiative on American Indian and Alaska Native Education, U.S. Dept. of Ed., <https://sites.ed.gov/whiaiane/tribes-tcus/tribal-colleges-and-universities/> (last visited Oct. 1, 2019).