

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Requests for Waiver of Sections 90.1307(c)) WT Docket No. 18-353
and (d) and Sections 90.1338(a) and (b) of the)
Commission’s Rules)
)

ORDER

Adopted: October 16, 2020

Released: October 16, 2020

By the Chief, Wireless Telecommunications Bureau

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) grants requests for waiver of the requirements in sections 90.1307, 90.1311, 90.1338, and 96.21 of the Commission’s rules to allow the wireless broadband licensees identified in Appendices A and B additional time to transition their part 90 operations to part 96 operations in the 3650-3700 MHz band. Each of these requests satisfies the three prongs articulated in the Bureau’s Extension Order and otherwise meets the Commission’s high bar for relief. Given the circumstances that caused delays for these licensees, and in the interest of keeping their customers connected amidst “a series of disruptions to the economic, educational, medical, and civic life of our country” that are unique and unprecedented in modern history, we find good cause to again extend, for limited periods of time, the deadline for these licensees to complete their transition to part 96-based operations. The individual waiver requests we grant, to the extent described herein, are listed in Appendices A and B.

1 47 CFR §§ 90.1307, 90.1311, 90.1338, and 96.21. See also 47 CFR § 1.3 (allowing any provision of the Commission’s rules to be waived upon a showing of good cause); The Wireless Internet Service Providers Association and the Utilities Technology Council Request for Waiver of Sections 90.1307(c) and (d) and Sections 90.1338(a) and (b) of the Commission’s Rules, Order, 35 FCC Rcd 2750, 2754-2755, paras. 1-2, 9 (2020) (Extension Order); Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 4071-80, paras. 387-412 (2015) (2015 Report and Order).

2 Extension Order, 35 FCC Rcd at 2054, para. 11; see also, e.g., WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert denied, 409 U.S. 1027 (1972) (noting that “an applicant for waiver faces a high hurdle even at the starting gate”).

3 See Press Release, FCC, Chairman Pai Launches the Keep Americans Connected Pledge (Mar. 13, 2020), https://www.fcc.gov/document/chairman-pai-launches-keep-americans-connected-pledge.

4 See Letter from Louis Peraertz, Vice President of Policy, WISPA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-353, at 1-2 (filed Oct. 15, 2020) (explaining that “the conditions that led to the Bureau’s grant of waiver in March remain in October”).

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II. BACKGROUND

2. In 2015, the Commission adopted rules for commercial use of the 3550-3700 MHz band that allow dynamic spectrum sharing through a three-tiered access and authorization framework to coordinate shared federal and non-federal use of the band among incumbents, Priority Access Licenses (PAL) and General Authorized Access (GAA) users.⁵ Incumbent users comprise the highest priority tier and receive protection from all other users; they include federal users, Fixed Satellite Service earth stations and, for a finite period, grandfathered terrestrial wireless broadband licensees in the 3650-3700 MHz band.⁶ Operations under the new framework already have commenced, and automated frequency coordinators, known as Spectrum Access System Administrators, facilitate sharing between and among the tiers of users.⁷

3. In the *2015 Report and Order*, the Commission also adopted a transition period for certain part 90 incumbent grandfathered wireless broadband licensees in the 3650-3700 MHz band to transition to part 96 rules.⁸ Wireless broadband licensees in the 3650-3700 MHz band operate under part 90, subpart Z, on a nationwide, non-exclusive basis.⁹ Consistent with the Commission's rules and the *Extension Order*, the transition periods for 3650-3700 MHz band wireless broadband licensees end between October 17, 2020 and January 8, 2023, depending on the grant and expiration dates of each individual license.¹⁰

4. To qualify as a grandfathered wireless broadband licensee, the licensee must have registered its stations on or before April 17, 2015, and the registered stations must have been "constructed, in service, and fully compliant with the rules in Part 90, subpart Z as of April 17, 2016."¹¹ During the transition period, grandfathered licensees are granted incumbent status with respect to Citizens Broadband Radio Service operations in their protection zones.¹² Non-grandfathered licensees, i.e., part 90 licensees that did not apply for grandfathered status or did not have qualifying sites, have the right to operate at existing registered sites under part 90 (on a non-exclusive, unprotected basis) until the date for which each licensee would have qualified for grandfathered status had they applied.¹³ For most of these licensees, this date is the same as the end of their license term. For any license issued or renewed after

⁵ See *2015 Report and Order*, 30 FCC Rcd at 3962, para. 4.

⁶ See 47 CFR § 96.3.

⁷ See 47 CFR §§ 96.15, 96.67; *Extension Order*, 35 FCC Rcd at 2751, para. 4.

⁸ See *2015 Report and Order*, 30 FCC Rcd at 4071-80, paras. 387-412. See also 47 CFR §§ 90.1307, 90.1311, 90.1338.

⁹ 47 CFR § 90.1307(a).

¹⁰ To ensure customers are able to stay connected to broadband and essential services during the declared state of national emergency because of the COVID-19 pandemic, all licensees in the 3650-3700 MHz band that would have had to transition from part 90 to part 96 rules between April 17, 2020 and October 17, 2020 must now transition by October 17, 2020. See *Extension Order*, 35 FCC Rcd at 2750, para. 1; see also 47 CFR §§ 90.1307, 90.1311, 90.1338.

¹¹ 47 CFR § 90.1338(a).

¹² See *2015 Report and Order*, 30 FCC Rcd at 4076, para. 402.

¹³ See *Wireless Telecommunications Bureau Announces Filing Window and Procedures for 3650-3700 MHz Band Licensees to File Supplemental Information Necessary for Creating Grandfathered Wireless Protection Zones*, GN Docket No. 12-354, Public Notice, 32 FCC Rcd 2977 (WTB 2017); *Extension Order*, 35 FCC Rcd at 2752-53, para. 5.

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January 8, 2013, grandfathered status (and the right to operate under part 90) initially extended only until April 17, 2020—and was later extended—regardless of when each license terminates.¹⁴

5. Specifically, in March 2020, the Bureau extended this deadline by six months to October 17, 2020. It found that this extension was warranted by “the evolving and unpredictable nature of the [COVID-19] pandemic, and its potential to cause delays for even diligent licensees.”¹⁵ The Bureau noted that licensees seeking a further extension of the transition period would be required to “plead with particularity the facts and circumstances which warrant such action”¹⁶ and would be expected to “describe: (1) the licensee’s good faith efforts to purchase, install, and test the necessary upgrades or equipment required to operate their networks pursuant to part 96 prior to the transition deadline; (2) the unique or unusual circumstances that prevented them from completing the part 96 transition by October 17, 2020; and (3) the specific steps—including the time required to complete those steps—that the licensee will take to complete its transition expeditiously.”¹⁷ The Bureau also reminded licensees that “an applicant for waiver faces a high hurdle even at the starting gate.”¹⁸

III. DISCUSSION

6. The Commission may waive any of its rules for good cause shown and where a request establishes that unique or unusual factual circumstances warrant relief.¹⁹ We find good cause to waive the requirements in sections 90.1307, 90.1311, 90.1338, and 96.21 of the Commission’s rules²⁰ for the wireless broadband licensees listed in Appendices A and B. Specifically, we find that it would serve the public interest to grant a limited, 60-day extension (to December 16, 2020) to the licensees listed in Appendix A and a limited, 120-day extension (to February 14, 2021) to the licensees listed in Appendix B to transition their part 90 operations to part 96 operations.

7. Each of these licensees submitted a waiver request before October 17, 2020 and made an individual showing that addressed the specific circumstances described in the *Extension Order*.²¹ During their applicable extension periods, licensees will be permitted to continue operating consistent with their current status (i.e., grandfathered or non-grandfathered).²² All 3650-3700 MHz band licensees listed in Appendix A are required to complete the transition of their part 90 operations to part 96 rules or cease operating at non-transitioned sites by December 16, 2020, and licensees listed in Appendix B are required to do the same no later than February 14, 2021. Consistent with the Commission’s usual practices, the Bureau performed a case-by-case review of each request.²³

¹⁴ See generally *2015 Report and Order*, 30 FCC Rcd at 4075-76, paras. 399-412.

¹⁵ *Extension Order*, 35 FCC Rcd at 2052-53, para. 5.

¹⁶ See *Extension Order*, 35 FCC Rcd at 2054, para. 11 (quoting *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968)).

¹⁷ *Id.*

¹⁸ See *id.* (quoting *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972)).

¹⁹ 47 CFR §§ 1.3, 1.925.

²⁰ *Id.* at §§ 90.1307, 90.1311, and 90.1338.

²¹ See *Extension Order*, 35 FCC Rcd at 2054, para. 11.

²² Specifically, grandfathered licensees may continue to operate within their designated protection zones and operational frequencies consistent with the technical rules in part 90, subpart Z; non-grandfathered licensees may continue to operate at existing registered sites under part 90 on a non-exclusive and unprotected basis.

²³ See *Extension Order*, 35 FCC Rcd at 2054, para. 10.

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8. *Good Faith Efforts.* The licensees' requests describe in varying detail their good faith efforts to complete the transition from part 90 to part 96 operations. The efforts described include, but are not limited to: placing orders for required equipment; making staffing decisions to facilitate the transition, such as hiring additional workers to install equipment; starting customer premise equipment replacement installations; and successfully programming new equipment.²⁴

9. For example, JAB Wireless, Inc., on behalf of its license-holding subsidiaries (collectively, Rise Broadband) explains that, notwithstanding its having ordered (and received) some equipment and having changed out more than 50% of its access points and nearly 70% of its customer premise equipment, it will need additional time to complete the transition.²⁵ Rise Broadband requested an additional 90 days, until January 15, 2021, by which to complete the transition. Other actors have taken some steps toward meeting the transition deadline, but not acted in a manner that merits additional relief beyond 120 days. For example, Neptuno Media, Inc. (Neptuno) requests an extension until April 17, 2021, to meet the transition deadline.²⁶ Neptuno only recently identified and selected a manufacturer to supply equipment for its transition, has not yet finalized agreements with contractor teams for deployment of CPE points, or commenced deployment of tower technicians to migrate access points.²⁷ We do not agree that an extension of six months is warranted based on these facts.²⁸

10. *Unique and Unusual Circumstances.* Each of the licensees requesting waivers described in varying detail the unique and unusual intervening circumstances, events or other factors that prevented them from timely completing the transition. For example, licensees explained that restrictions and safety precautions related to the COVID-19 pandemic posed a significant barrier to operations and, in some cases, caused a halt to transition plans.²⁹ Meanwhile, an increased demand for broadband forced some licensees to divert resources to accommodate new service requests and increase capacity to existing sites in order to allow new and existing customers to work, go to school, and procure healthcare from home.³⁰ In addition, many licensees did not learn until late 2019 or early 2020 that their existing equipment is not part 96 compliant, and their filings describe the individual challenges encountered in procuring new

²⁴ See, e.g., SmarterBroadband, Inc., Request for Limited Waiver, ULS File No. 0009250640 (filed Oct. 5, 2020); Virginia Everywhere, LLC dba All Points Broadband, Request for Limited Waiver, ULS File No. 0009259590 (filed Oct. 13, 2020); Q-Wireless, LLC, Request for Limited Waiver, ULS File No. 0009260419 (filed Oct. 13, 2020).

²⁵ See, e.g., JAB Wireless, Inc., on behalf of LP Broadband, Inc., Petition for Limited Waiver at iii-v, ULS File No. 0009228893 (filed Sept. 18, 2020).

²⁶ See, e.g., Neptuno Media, Inc. d/b/a Neptuno Networks, Request for Waiver, ULS File No. 0009237301 (filed Sept. 23, 2020).

²⁷ See, e.g., Neptuno Media, Inc. d/b/a Neptuno Networks, Request for Waiver at 5, 8-9, ULS File No. 0009237301 (filed Sept. 23, 2020).

²⁸ We deny in part other requests for longer extensions for similar reasons. For example, Worrell Enterprises LLC (Wave2Net) requests a six-month extension of time but provides no details on its efforts to secure part 96 equipment other than to say that it "is diligently working with its vendors . . . to obtain the required equipment, and [] will, upon receipt, immediately commence sourcing and testing the Part-96 compatible equipment, as well as registering with the SAS." Worrell Enterprises LLC, Petition for Waiver at 6-7, ULS File No. 0009236244 (filed Sept. 23, 2020). We find no justification in support of requests for much longer periods of time. See, e.g., Southeast Colorado Power Ass'n, Petition for Waiver, ULS File No. 0009218036 (filed Sept. 10, 2020) (requesting "a short waiver, up to and including *October 17, 2021*" of the transition deadline) (emphasis added).

²⁹ See, e.g., Southeast Colorado Power Ass'n, Petition for Waiver, ULS File No. 0009218036 (filed Sept. 10, 2020).

³⁰ See, e.g., Worrell Enterprises LLC, Petition for Waiver, ULS File No. 0009236244 (filed Sept. 23, 2020).

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equipment.³¹ Licensees asserted that the process of ordering, receiving, programing, and installing replacement equipment could not be completed by the October 17, 2020 deadline. They advised that equipment was often delivered late, and, in some cases, has not arrived yet because demand for part 96 equipment exceeds supply.³² The COVID-19 pandemic has interrupted the supply chain by hampering vendor manufacturing capabilities and by causing a surge in shipping delays.³³ Moreover, several licensees were impacted by natural disasters, including wildfires and hurricanes, that halted or impaired operations and required resource diversion.³⁴

11. *Specific Steps.* The licensees also explained the specific steps that they will take to complete the transition expeditiously from part 90 to part 96 operations. For instance, the licensees described what equipment they still need to replace, when they expect to be able to replace it, how they plan to hire additional employees and contractors to increase workload capacity, and what they will do to respond to potential delays caused by events like severe weather and employee illness.³⁵

12. We find that, in several cases, licensees are likely to be able to complete the remaining transition steps earlier than their requested extension periods. For example, Colorado Central Telecom, Inc. requested a waiver until December 31, 2020, notwithstanding the fact that it received replacement CPE hardware in late August, merely stating—without further detail—that it “fully expects that its Part 96 transition will be completed by December 31, 2020.”³⁶ Visionary Communications, Inc. and SkyWex Industries, LLC (collectively, Visionary) have similarly requested an extension until December 31, 2020 to complete the transition and outlined several steps that they will take during November and December to complete the transition.³⁷ Visionary does not explain with specificity what actions would fall in the last 15 days of the month and we are doubtful that the necessary work could not be completed prior to December 16.³⁸

13. In conclusion, we find that the limited extensions of time we grant in this Order strike an appropriate balance between affording licensees additional time to complete their transitions to part 96-compliant equipment (in light of their good faith efforts to date and unique circumstances, as presented in

³¹ See, e.g., Softcom Internet Comm’n, Inc., Request for Limited Waiver, ULS File No. 0009252825 (filed Oct. 6, 2020).

³² See, e.g., Southern Ohio Comm’n Servs., Request for Limited Waiver, ULS File No. 0009243713 (filed Sept. 29, 2020); North Coast Wireless Comm’n, LLC, Request for Waiver, ULS File No. 0009249140 (filed Oct. 2, 2020).

³³ See, e.g., Visionary Commc’n Inc. and SkyWerx Industries, LLC, Request for Waiver, ULS File No. 0009219129 (filed Sept. 11, 2020); Colorado Central Telecom, Inc., Petition for Waiver, ULS File No. 0009242630 (filed Sept. 28, 2020).

³⁴ See, e.g., Arizona Pub. Serv., Petition for Waiver, ULS File No.0009226208 (filed Sept. 17, 2020); Donna J. Olson, Petition for Waiver, ULS File No. 0009260889 (filed Oct. 13, 2020); Cal-Ore Comm’n, Inc., Petition for Temporary Waiver, ULS File No. 0009247011 (filed Oct. 1, 2020).

³⁵ See, e.g., JAB Wireless, Inc., on behalf of Air Canopy Internet Servs., Petition for Limited Waiver, ULS File No. 0009228727 (filed Sept. 18, 2020); W.A.T.C.H. TV Company, Request for Limited Waiver, ULS File No. 0009260171 (filed Oct. 13, 2020).

³⁶ Colorado Central Telecom, Inc., Petition for Waiver at 2, 7, ULS File No. 0009242630 (filed Sept. 28, 2020).

³⁷ Visionary Commc’n Inc. and SkyWerx Industries, LLC, Request for Waiver at 13-14, ULS File Nos. 0009219129 and 0009219184 (filed Sept. 11, 2020); see also ACS Wireless License Sub., LLC, Alaska Comm’n, Petition for Extension of License Term and Waiver of Commission Rules at 1, ULS File No. 000956689 (filed Oct. 9, 2020) (seeking relief to continue operating Wireless Broadband Service radios “until they are replaced, which will occur no later than the end of 2020.”).

³⁸ Indeed, it is worth noting that, in its initial waiver request filed earlier this year, Visionary “stated its belief that it would take until April 17, 2021 to complete the transition process.” Visionary Commc’n Inc. and SkyWerx Industries, LLC, Request for Waiver at 6, ULS File Nos. 0009219129 and 0009219184 (filed Sept. 11, 2020).

their waiver requests) while encouraging licensees to act with appropriate diligence and not creating incentives for undue delay.

IV. ORDERING CLAUSES

14. Accordingly, pursuant to Sections 1, 2, 4(i), 4(j), 302a, 303, 304, 307(e), 308(a), and 316 of the Communications Act, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 302a, 303, 304, 307(e), 308(a), and 316, and Sections 0.131, 0.331, 1.3, and 1.925 of the Commission's rules, 47 CFR §§ 0.131, 0.331, 1.3, and 1.925, the waiver requests listed in Appendices A and B are GRANTED to the extent described above and are otherwise DENIED. The part 90 wireless broadband licensees listed in Appendix A are hereby granted a limited waiver of the transition period in Sections 90.1307, 90.1311, 90.1338, and 96.21 of the Commission's rules, 47 CFR §§ 90.1307, 90.1338(a), and 96.21, until December 16, 2020. The part 90 wireless broadband licensees listed in Appendix B are hereby granted a limited waiver of the transition period in Sections 90.1307, 90.1311, 90.1338, and 96.21 of the Commission's rules, 47 CFR §§ 90.1307, 90.1338(a), and 96.21, until February 14, 2021. The expiration date of affected licenses will be modified, where necessary, to reflect this limited waiver.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale
Chief
Wireless Telecommunications Bureau

APPENDIX A
Transition Date Extended to December 16, 2020

ULS File Number	Call Sign	Licensee
0009243713	WQLU282	Southern Ohio Communication Services, Inc.
0009260419	WQLN535	Q-Wireless, LLC
0009260171	WQNB971	W.A.T.C.H. TV Company
0009259590	WQIX997	Virginia Everywhere, LLC
0009242630	WQTJ623	Colorado Central Telecom Inc.
0009219129	WQIS540	SkyWerx Industries, LLC
0009219184	WQJK717	Visionary Communications, Inc
0009256689	WQKR607	ACS Wireless License Sub, LLC
0009261361	WQLX338	Internet Communications Inc.

APPENDIX B
Transition Date Extended to February 14, 2021

ULS File Number	Call Sign	Licensee
0009236244	WQLL491	Worrell Enterprises LLC
0009258859	WQKF909	Cloudburst9 LLC
0009252825	WQIG223	Softcom Internet Communications, Inc.
0009226208	WQKM394	Arizona Public Service Company
0009237301	WQHW752	Neptunomedia, Inc.
0009247011	WQLL480	Cal-Ore Communications
0009260889	WQHx870	Olson, Donna J
0009218036	WQOA482	Southeast Colorado Power Association
0009249140	WQLB653	North Coast Wireless Communications LLC
0009250640	WQLM532	SmarterBroadband Inc.
0009258883	WQJT704	Country Wireless LLC
0009261808	WQKH680	Minnesota Valley TV Improvement Corporation
0009228727	WQIP473	Air Canopy Internet Services Inc.
0009228752	WQJI704	Air Canopy Internet Services Inc.
0009228831	WQJC234	Digis, LLC.
0009228880	WQLU285	Essex Telcom, Inc.
0009228869	WQJA669	Essex Telecom, Inc
0009229003	WQLX341	Essex Telecom, Inc
0009228898	WQJC216	LP Broadband
0009228971	WQJC241	LP Broadband
0009228893	WQIX998	LP Broadband, Inc.
0009228944	WQJC236	LP Broadband, Inc.
0009228978	WQJE591	LP Broadband, Inc.
0009228986	WQJM423	LP Broadband, Inc.
0009229216	WQUQ272	Rhino Communications
0009229241	WQIU804	Skybeam Acquisition Corporation
0009229259	WQJA664	Skybeam Acquisition Corporation
0009229280	WQJA665	Skybeam Acquisition Corporation

ULS File Number	Call Sign	Licensee
0009229294	WQMC623	Skybeam Acquisition Corporation
0009261192	WQOI560	Williamson Enterprise, LLC dba Winchester Wireless
0009262950	WQSG754	Avangrid Networks, Inc.
0009262621	WQMQ231	Exelon Energy
0009263037	WQVI978	Texoma Broadband Services, LLC