

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

In the Matter of
3.5 GHz SAS and ESC Applications
Federated Wireless, CommScope, Inc., and
Google LLC's Expedited Requests for Emergency
Waiver of Citizens Broadband Radio Service
Incumbent Protection Rules
GN Docket No. 15-319

ORDER

Adopted: September 30, 2022

Released: September 30, 2022

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau) conditionally grants Federated Wireless's, CommScope, Inc.'s, and Google LLC's (Petitioners) requests for emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules governing the Citizen's Broadband Radio Service. Petitioners request that the Commission grant emergency waiver relief of sections 96.67(c)(2) and (3) to relieve them of the requirement for Environmental Sensing Capabilities (ESC) to detect and protect federal incumbent users in the 3550-3700 MHz band (3.5 GHz band) from harmful interference in Dynamic Protection Areas (DPAs) East 2, 13, 17, 18, 19, 20, 2, and Mayport impacted by Hurricane Ian. For the reasons discussed below, we grant Petitioners' Waiver Requests subject to the conditions described herein.

1 CommScope and Google jointly operate an ESC. See Press Release, CommScope, CommScope and Google Team Up to Drive CBRS Forward (Oct. 18, 2018), https://www.commscope.com/press-releases/2018/commscope-and-google-team-up-to-drive-cbrs-forward/.

2 See Expedited Request of Federated Wireless for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed Sept. 27, 2022) (Federated Wireless Waiver Request); Expedited Request of Federated Wireless for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed Sept. 29, 2022) (Federated Wireless Waiver Supplement); Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules Due to Hurricane Ian, GN Docket No. 15-319 (filed Sept. 29, 2022) (CommScope Waiver Request); Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules Due to Hurricane Ian, GN Docket No. 15-319 (filed Sept. 29, 2022) (CommScope Waiver Supplement); Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules Due to Hurricane Ian, GN Docket No. 15-319 (filed Sept. 29, 2022) (Google Waiver Request).

3 47 CFR § 96.67(c)(2)-(3).

4 Federated Wireless sought relief for DPAs East 17, 18, 19, 20, and 21. CommScope sought relief for DPAs East 2, 13, 18, and 19. To minimize service disruptions and provide equitable treatment to both ESC operators and their associated SASS, we grant relief to both Petitioners for each of the listed DPAs.

II. BACKGROUND

2. In 2015, the Commission adopted rules for shared commercial use of the 3.5 GHz band.⁵ The Commission established the Citizens Broadband Radio Service and created a three-tiered access and authorization framework to accommodate shared federal and non-federal use of the band.⁶ Access and operations are managed by a Commission-approved, automated frequency coordinator, known as a Spectrum Access System (SAS). SASs coordinate operations between federal and non-federal uses by relying on ESCs in DPAs to detect and protect federal incumbent users in the 3.5 GHz band from harmful interference. When there are federal incumbent users operating in the band, ESCs detect their signals and activate the DPA. When the DPA is activated, federal incumbent users are given priority over the other two tiers of users: Priority Access Licensees (PALs) and General Authorized Access (GAA) users. In the case that an ESC cannot accurately determine whether federal incumbents are active in the band, they must automatically activate the DPAs.⁷

3. Petitioners seeks a temporary waiver of sections 96.67(c)(2) and (3) of the Commission's rules to relieve themselves of the requirement to detect the presence of a signal from a federal system in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.⁸ This waiver would allow Petitioners to treat the subject DPAs as "inactive" for the duration of the waiver authority and thus avoid the need for the ESCs to automatically activate the DPAs in areas affected by Hurricane Ian. Petitioners seeks waiver of these requirements in the interest of providing uninterrupted service to over 1,000 Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to thousands of customers in the affected areas.⁹

III. DISCUSSION

4. Section 1.925(b)(3) of the Commission's rules states that the Commission may grant a waiver when either (i) "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest," or (ii) "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."¹⁰ Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.¹¹

5. Here, we find that Petitioners' showings, when considered with the conditions established herein, meet the second prong of the Commission's waiver standard. In its Waiver Request, Federated Wireless asserts that, due to the impact of Hurricane Ian, ESC sensors covering DPAs 17, 18, 19, 20, and

⁵ See *In the Matter of Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 3975, paras. 44-45 (2015) (*2015 Report and Order*).

⁶ *Id.*

⁷ See *Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 15-319, 17-258, Order, 33 FCC Rcd 4987, 4990-91, paras. 6, 9 (2018).

⁸ 47 CFR § 96.67(c)(2)-(3). Additionally, to the extent necessary, we also waive applicable sections of 96.15(a)(2), (a)(3)(i)-(iii), (b)(3), 96.45(b), 96.53(a), (e)-(g), 96.55(a), 96.57(d), 96.63(a), and (h).

⁹ See Federated Wireless Waiver Request at 1-2; Federated Wireless Waiver Supplement; CommScope Waiver Request; CommScope Waiver Supplement.

¹⁰ 47 CFR § 1.925(b)(3).

¹¹ 47 CFR § 1.3.

21 are expected to lose commercial power.¹² In its Waiver Supplement, Federated Wireless confirms that five ESC sensors lost commercial power and are currently running on backup generators due to Hurricane Ian.¹³ Further, Federated Wireless asserts that backhaul access is unstable or unavailable at these sites and that it is unsure when they will be able to refuel the generators.¹⁴ Federated Wireless contends that, absent the requested relief, these power outages could cause DPAs in the affected areas to be activated, potentially disconnecting thousands of customers—including residential and enterprise customers, schools, and oil and gas companies—from critical broadband, voice, and data services.¹⁵ According to the Petitioner, “[m]any of these customers will be relying on these services to stay apprised about ongoing dangers in the aftermath of the storm, while others will leverage connectivity to aid in the restoration of critical services, such as water and electricity.”¹⁶

6. Similarly, CommScope asserts that ESC sensors covering the East 2, 13, 18, and 19 DPAs have lost commercial power and have exhausted available backup sources.¹⁷ Google indicates that the ESC sensors covering the East 17, 20, and Mayport DPAs have lost commercial power as well.¹⁸ CommScope claims that the utility provider is unable to provide an estimated time for restoration of commercial power and that physical access to the affected ESC sensor sites is impossible due to destruction caused by Hurricane Ian. Cumulatively, CommScope and Google assert that these outages are affecting CBSDs that serve thousands of customers located in areas that have been directly affected by Hurricane Ian.¹⁹ According to CommScope, “[m]any customers rely on these services to receive updates about ongoing dangers and the status of restoration of water, electricity, and other critical services.”²⁰ Google asserts that “[m]any customers, including those who have electric service or electricity through the use of generators, rely on these services to receive updates about ongoing dangers and essential services.”

7. Accordingly, we grant the Petitioners’ request for waiver of section 96.67(c)(2) and (3) of the Commission’s rules, subject to the conditions set forth herein, to allow their associated SASs to treat the subject DPAs as “inactive” for the duration of this waiver and thereby obviate their ESCs from the obligation to detect the presence of signals from federal systems in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.

8. Specifically, we find the following conditions are required: (1) this waiver only applies to periods where the subject ESC sensors are unable to communicate with their associated SASs due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either October 13, 2022, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Petitioner must provide confirmation to the Commission, the Department of Defense (DoD), and the Navy within three business days of power restoration to the subject ESC sensors and restoration of backhaul service; (4) extension requests must be justified through demonstration of the specific steps taken to reactivate the subject ESC sensors and the remaining steps necessary to reactivate, and such requests must be filed no later than three business days before expiration of this waiver; (5) ESC operators must immediately

¹² See Federated Wireless Waiver Request at 1-2.

¹³ See Federated Wireless Waiver Supplement.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 2.

¹⁷ See CommScope Waiver Supplement.

¹⁸ See Google Waiver Request at 1.

¹⁹ See CommScope Waiver Supplement; Google Waiver Request at 2.

²⁰ See CommScope Waiver Supplement.

activate the subject DPAs, and their associated SASs must protect those DPAs, upon notification from the Commission, the National Telecommunications and Information Administration, or the DoD.

9. In consideration of the emergency presented by Hurricane Ian, we find that these are unique circumstances that make application of the rules inequitable, unduly burdensome, and contrary to the public interest. For these reasons, we find it is in the public interest to conditionally grant Petitioner's requests for a waiver of sections 96.67(c)(2) and (3), on a time-limited basis and subject to conditions described herein.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the requests filed by Federated Wireless, CommScope, Inc., and Google LLC for waiver of sections 96.67(c)(2) and (3) of the Commission's rules, 47 CFR §§ 96.67(c)(2) and (3) are GRANTED to the extent described, and with the conditions specified, herein.

11. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission's Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

12. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau