

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

In the Matter of )
)
Federated Wireless Expedited Request for ) GN Docket No. 15-319
Emergency Waiver of Citizens Broadband Radio )
Service Incumbent Protection Rules )
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)
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ORDER

Adopted: November 9, 2022

Released: November 9, 2022

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau ("Bureau"), Mobility Division, conditionally grants Federated Wireless's request for a conditional emergency waiver of sections 96.67(c)(2) and (3) of the Commission's rules governing the Citizens Broadband Radio Service. Petitioner requests the Commission grant emergency waiver relief of sections 96.67(c)(2) and (3) to relieve Federated Wireless 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") 14, 15, 16, and 17 that are likely to be impacted by Tropical Storm Nicole. For the reasons discussed below, we grant Petitioner's Waiver Request subject to the conditions described herein.

II. BACKGROUND

2. In 2015, the Commission adopted rules for shared commercial use of the 3.5 GHz band. 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. 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.

1 See Expedited Request of Federated Wireless for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed Nov. 8, 2022) (Waiver Request), https://www.fcc.gov/ecfs/document/110875786228/1.

2 47 CFR § 96.67(c)(2)-(3).

3 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).

4 Id.

In the case that an ESC cannot accurately determine whether federal incumbents are active in the band, they must automatically activate the DPAs.<sup>5</sup>

3. Petitioner seeks a temporary conditional waiver of sections 96.67(c)(2) and (3) of the Commission's rules to relieve itself 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.<sup>6</sup> This waiver would allow Federated Wireless 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 Tropical Storm Nicole. Petitioner seeks waiver of these requirements in the interest of providing uninterrupted service to over 2,400 Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to thousands of customers in areas that are expected to be impacted by Tropical Storm Nicole.<sup>7</sup> Federated Wireless also requests that the relief be granted subject to conditions that are consistent with the ESC waiver orders that the Bureau issued in response to Hurricanes Ian and Fiona earlier this year.<sup>8</sup>

### 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."<sup>9</sup> Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.<sup>10</sup>

5. Here, we find that Petitioner's showing, when considered with the conditions established herein, meets the second prong of the Commission's waiver standard. Petitioner asserts that, due to the impact of Tropical Storm Nicole, which is expected to strengthen into a hurricane before making landfall in Florida, ESC sensors covering DPAs 14, 15, 16, and 17 are expected to lose commercial power once the hurricane makes landfall.<sup>11</sup> Petitioner also asserts that backhaul at the affected sites will likely be unreliable while carriers attempt to stabilize their operations after the storm.<sup>12</sup> Petitioner 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.<sup>13</sup> 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

<sup>5</sup> See *Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 15-319, 17-258, Order, 33 FCC Red 4987, 4990-91, paras. 6, 9 (2018).

<sup>6</sup> 47 CFR § 96.67(c)(2)-(3). Additionally, to the extent necessary, we also waive applicable sections of 96.15(a)(2), (a)(3), (b)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d).

<sup>7</sup> See Waiver Request at 1-2.

<sup>8</sup> *Id.* at 2. See *In the Matter of Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-999 (rel. Sept. 22, 2022); *In the Matter of 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, DA 22-1042 (rel. Sept. 30, 2022)

<sup>9</sup> 47 CFR § 1.925(b)(3).

<sup>10</sup> 47 CFR § 1.3.

<sup>11</sup> See Waiver Request at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 1-2.

restoration of critical services, such as water and electricity.”<sup>14</sup> Accordingly, we grant a waiver of section 96.67(c)(2) and (3) of the Commission’s rules, subject to the conditions set forth herein, to allow the Federated Wireless SAS to treat the subject DPAs as “inactive” for the duration of this waiver and thereby obviate its ESC from its obligation 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.

6. 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 the Federated Wireless SAS due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either November 23, 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; and (5) the ESC operator must immediately activate the subject DPAs upon notification from the Commission, the National Telecommunications and Information Administration, or the DoD.

7. In consideration of the emergency presented by Tropical Storm Nicole, 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**

8. 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 request filed by Federated Wireless for waiver of sections 96.67(c)(2) and (3) of the Commission’s rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>14</sup> *Id.* at 2.