

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

In the Matter of)
)
Expedited Request of Federated Wireless for) GN Docket No. 15-319
Modification of Emergency Waiver of CBRS)
Incumbent Protection Rules)
)
Expedited Request of Google and CommScope for)
Emergency Waiver of CBRS Incumbent)
Protection Rules Due to Tropical Storm Nicole)

ORDER

Adopted: November 10, 2022

Released: November 10, 2022

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau ("Bureau"), Mobility Division, conditionally grants the requests of Federated Wireless, Inc. (Federated Wireless), Google LLC (Google), and CommScope, Inc. (CommScope) (collectively, Petitioners)1 for emergency waivers of sections 96.67(c)(2) and (3) of the Commission's rules governing the Citizens Broadband Radio Service.2 CommScope and Google 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 14 and East 15 that are likely to be impacted by Tropical Storm Nicole.3 Federated Wireless requests that the Bureau modify the Emergency ESC Waiver Order4 that was issued and released on November 9, 2022, to include DPA East 13.5 For the reasons discussed below, we grant Petitioners' Waiver Requests subject to the conditions described herein.

1 See Expedited Request of Federated Wireless for Modification of Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed Nov. 9, 2022) (Federated Wireless Modification Request), https://www.fcc.gov/ecfs/document/11100823529490/1; Expedited Request of Google and CommScope for Emergency Waiver of CBRS Incumbent Protection Rules Due to Tropical Storm Nicole, GN Docket No. 15-319 (filed Nov. 9, 2022) (Google/CommScope Waiver Request), https://www.fcc.gov/ecfs/document/1109257188278/1.

2 47 CFR § 96.67(c)(2)-(3).

3 See Google/CommScope Waiver Request.

4 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 22-1165 (rel. Nov. 9, 2022); see also Expedited Request of Federated Wireless for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed Nov. 8, 2022) (Federated Wireless Waiver Request), https://www.fcc.gov/ecfs/document/110875786228/1.

5 See Federated Wireless Modification Request.

II. BACKGROUND

2. In 2015, the Commission adopted rules for shared commercial use of the 3.5 GHz band.⁶ 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.⁷ 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.⁸

3. Google and CommScope seek an emergency waiver of sections 96.67(c)(2) and (3) of the Commission’s rules to relieve them 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.⁹ This waiver would allow Google and CommScope 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. Google and CommScope seek waiver of these requirements in the interest of providing uninterrupted service to thousands of Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to hundreds of customers in areas that are expected to be impacted by Tropical Storm Nicole.¹⁰

4. Federated Wireless seeks to modify the Emergency ESC Waiver Order that the Bureau issued on November 9, 2022, to include the East 13 DPA. Federated Wireless asserts that the trajectory of Tropical Storm Nicole shifted after it submitted its initial waiver request and, as a result, the East 13 DPA is now likely to be in the storm’s path.¹¹ Federated Wireless requests that the modification be granted subject to the same conditions imposed in the Emergency ESC Waiver Order.¹²

III. DISCUSSION

5. 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

⁶ 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*).

⁷ *Id.*

⁸ 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).

⁹ 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).

¹⁰ See Google/CommScope Waiver Request at 1.

¹¹ Federated Wireless Modification Request at 1.

¹² *Id.* at 2.

reasonable alternative.”¹³ Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.¹⁴

6. Here, we find that Petitioners’ showings, when considered with the conditions established herein, meet the second prong of the Commission’s waiver standard. Specifically, Google and CommScope assert that, due to the impact of Tropical Storm Nicole, ESC sensors covering the East 14 and East 15 DPAs may be unable to actively monitor the subject DPAs.¹⁵ Google and CommScope contend that, absent the requested relief, these power outages could cause DPAs in the affected areas to be activated, potentially disconnecting hundreds of customers—including homes and businesses—from critical broadband, telephone, and television services.¹⁶ According to Google and 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.”¹⁷ Similarly, in its Modification Request, Federated Wireless asserts that, since it submitted its original waiver request, the trajectory of Tropical Storm Nicole shifted. As a result, the East 13 DPA “is likely to be in the storm’s path and, as a result, subject to the same likelihood of widespread power outages and impacts on backhaul availability as the storm makes landfall and in its aftermath.”¹⁸ 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 Google, CommScope, and Federated Wireless SASs to treat the subject DPAs as “inactive” for the duration of this waiver and thereby obviate their ESCs from their 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.

7. 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 Federated Wireless, Google, and CommScope SASs due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either November 24, 2022, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Petitioners 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.

8. 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

9. 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 §§

¹³ 47 CFR § 1.925(b)(3).

¹⁴ 47 CFR § 1.3.

¹⁵ See Google/CommScope Waiver Request at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Federated Wire Modification Request at 1.

1.3, 1.925, that the requests filed by Federated Wireless, Google, and CommScope 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.

10. 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.

11. 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