

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)
)

ORDER

Adopted: September 22, 2022

Released: September 22, 2022

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (“Bureau”) conditionally grants Federated Wireless’s,¹ request for an emergency waiver of sections 96.67(c)(2) and (3) of the Commission’s rules governing the Citizen’s Broadband Radio Service.² 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”) Puerto Rico 4 and 5 impacted by Hurricane Fiona. 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.³ 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.⁴ 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 Sept. 21, 2022) (Waiver Request), <https://www.fcc.gov/ecfs/search/search-filings/filing/10921892230473>.

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.⁵

3. Petitioner seeks a temporary 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.⁶ 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 Hurricane Fiona. Petitioner seeks waiver of these requirements in the interest of providing uninterrupted service to over 1,400 Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to thousands of customers in Puerto Rico.⁷

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."⁸ Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.⁹

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 Hurricane Fiona, ESC sensors covering DPAs Puerto Rico 4 and Puerto Rico 5 have lost commercial power.¹⁰ While the ESC sensors are currently operating on backup power, the generators are expected to run out of fuel shortly, and refueling the backup generators will be difficult or impossible under current conditions.¹¹ In addition, backhaul at the ESC sensors has been unreliable as the Petitioner's backhaul providers work to stabilize their networks.¹² Federated Wireless expects these issues will persist until commercial power is restored to the affected areas.¹³ 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.

⁵ 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).

⁶ 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), (h).

⁷ See Waiver Request at 2.

⁸ 47 CFR § 1.925(b)(3).

⁹ 47 CFR § 1.3.

¹⁰ See Waiver Request at 1.

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.*

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 October 6, 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 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 Hurricane Fiona, 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