

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

In the Matter of
COMMONWEALTH OF PUERTO RICO AND
UNITED STATES VIRGIN ISLANDS
Waiver of Section 90.20(d)(28) of the
Commission's Rules

ORDER

Adopted: September 28, 2017

Released: September 28, 2017

By the Acting Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Policy and Licensing Division grants, on our own motion, a waiver of Section 90.20(d)(28) of the Commission's rules to facilitate use of two nationwide interoperability channels (151.1375 MHz and 154.4525 MHz) in the Commonwealth of Puerto Rico (Puerto Rico) and the United States Virgin Islands (USVI). A waiver is necessary because Section 90.20(d)(28) does not authorize public safety use of the designated frequencies in Puerto Rico and the USVI. For the reasons discussed herein, we temporarily waive this limitation to allow public safety agencies to use these frequencies in support of hurricane response and recovery activities

II. DISCUSSION

2. In 2000, the Commission designated five channels in the public safety VHF band (150-174 MHz) for nationwide interoperability, including frequencies 151.1375 MHz (VTAC11) and 154.4525 MHz (VTAC12). To facilitate interoperable use, the Commission permitted mobile operation on these channels without an individual license (i.e., a blanket licensing approach). Thus, public safety licensees that are otherwise licensed under Part 90 of our rules are authorized to operate mobile units on these interoperability channels without an individual license for those interoperability channels. However, in Puerto Rico and the USVI, only three of the five interoperability channels (VCALL10, VTAC13 and

1 47 CFR § 90.20(d)(28).

2 See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, Third Memorandum Opinion and Order and Third Report and Order, 15 FCC Rcd 19844, 19883 para. 87 (2000) (Third Report and Order). Although the designations "VTAC1" and "VTAC2" are referenced in the Third Report and Order and associated with frequencies 151.1375 MHz and 154.4525 MHz, respectively, those designations were not carried forward into the Commission's rules. Id at 19883. We note that frequencies 151.1375 MHz and 154.4525 MHz are widely used in the field by public safety licensees, but are referred as "VTAC11" and "VTAC12," respectively. See National Interoperability Field Operations Guide, version 1.6.1 at 25 (Apr. 2016) (NIFOG). For ease of reference, we will refer to these channels as VTAC11 and VTAC12.

3 Third Report and Order, 15 FCC Rcd at 19885 para. 90.

4 Id.

VTAC14) are available for public safety use.⁵ VTAC11 is allocated to the Industrial/Business Pool in Puerto Rico and the USVI,⁶ and VTAC12 is currently unavailable for licensing in either location.

3. Section 1.3 of the Commission's rules authorizes waiver of Commission rules for good cause shown.⁷ We find that good cause exists for a temporary waiver of the restriction on public safety use of VTAC11 and VTAC12 in Puerto Rico and the USVI. First, the combined impact of Hurricanes Irma and Maria has resulted in massive damage and communications outages in both locations.⁸ Second, in response to Hurricanes Harvey, Irma, and Maria, the Commission has issued Special Temporary Authorizations (STAs) granting authority for out-of-area first responders, during recovery operations, to use land mobile radios licensed to their home areas.⁹ Third, we anticipate that additional out-of-area first responders will deploy to Puerto Rico and the USVI with radios equipped with the VHF interoperability channels. Waiving the restriction against public safety use of VTAC11 and VTAC12 will make all five interoperability channels available for use and obviate the need for these out-of-area first responders to obtain individual STAs to operate mobiles on VTAC11 and VTAC12. This will save valuable time in deploying assets as well as increase the capacity for interoperable communications traffic among first responders assisting in recovery efforts.

4. Our licensing records indicate that one business licensee, Amgen Manufacturing (Amgen), is licensed to operate in Puerto Rico on VTAC11 under call sign WQVK951. Amgen has concurred in the proposed use of VTAC11 for first responder interoperability.¹⁰ VTAC11 is not licensed in the USVI, and VTAC12 is not licensed in either Puerto Rico or the USVI.¹¹ Thus, we conclude that these channels represent a viable option for increasing interoperable communications capacity in Puerto Rico and the USVI. We will also take the following steps to protect against the risk of interference between Amgen and public safety users of VTAC11.

5. We grant a waiver for 60 days from the date of this Order authorizing mobile use of VTAC11 and VTAC12 by public safety eligibles on a blanket licensing basis in Puerto Rico and the USVI. To avoid potential interference on VTAC11, public safety use of VTAC11 in Puerto Rico will be

⁵ VCALL10, VTAC13, and VTAC14 commonly refer to the following nationwide interoperability frequencies: 155.7525 MHz, 158.7375 MHz, and 159.4725 MHz, respectively. *See* NIFOG at 25.

⁶ Frequency 151.1375 MHz may be assigned in the Industrial/Business Pool, but only in Puerto Rico and the USVI. *See* 47 CFR § 90.35(d)(31) ("Use of this frequency is limited to stations located in Puerto Rico and the Virgin Islands").

⁷ *See* 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown."); *see also* *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (waivers must show special circumstances warranting a deviation from the general rule, and show such a deviation will serve the public interest)).

⁸ *See* Remarks of Chris Anderson, Chief, Operations and Emergency Management Division Public Safety and Homeland Security Bureau, Federal Communications Commission Open Meeting, September 26, 2017, *FCC Response to Hurricanes Harvey, Irma, and Maria* at 3-4 (Sept. 26, 2017). "As of September 25, in Puerto Rico, 91.2 percent of cell sites were out of service. Thirty-four of 78 counties had 100 percent of their cell sites out of service, and the remainder had cell site outages exceeding 75 percent. Due to the island-wide power outages, some large communications providers were unable to provide status information, either because their assessments were delayed, or because of their limited ability to communicate over the Internet. In the U.S. Virgin Islands, as of September 25, 60.4 percent of cell sites were out of service. This included 76.2 percent of cell sites being out of service in St. Croix." *Id.* at 4.

⁹ *Id.* at 2.

¹⁰ Email from Andres Nieves Martinez, Senior Associate EHSS, Industrial Emergency Response Team, Amgen Manufacturing, Ltd. to Michael J. Wilhelm, Acting Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, FCC (September 27, 2017).

¹¹ *See* 47 CFR §§ 90.20(d)(28), 90.35(b)(3).

on a co-primary basis with Amgen, and both public safety users and Amgen must follow a listen-before-transmit protocol.¹² We note that Amgen is licensed for multiple channels other than VTAC11 and we encourage Amgen, to the extent consistent with its needs, to use these other channels in lieu of VTAC11 for the duration of this waiver.

6. This waiver extends for a period of sixty calendar days from the date of this Order unless further extended. Public safety operations under this waiver are confined to mobile and portable units; public safety entities are not permitted to operate base stations on the interoperability channels discussed in this Order.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303, and Section 1.3 of the Commission's Rules, 47 CFR § 1.3, that the limitation on public safety use of VHF frequencies 151.1375 MHz and 154.4525 MHz in the Commonwealth of Puerto Rico and the United States Virgin Islands, IS WAIVED to the extent described herein.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Acting Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹² This does not alter Amgen's rights under its current license. Amgen's authorization is an FB2 category license, which requires licensees to share licensed frequencies and to observe the listen-before-transmit protocol to avoid interference.