

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

In the Matter of )
)
The National Football League Request to Extend ) WT Docket No. 21-111
Waiver of Section 96.39(c) of the Commission's )
Rules )

ORDER

Adopted: September 7, 2022

Released: September 7, 2022

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau ("Bureau") conditionally grants the National Football League's ("NFL's" or "Petitioner's") request for an extension of the conditional waiver granted by the Bureau in an Order issued on July 9, 2021. In the NFL Waiver Order, the Bureau had granted Petitioner a conditional waiver of section 96.39(c)(2) of the Commission's rules, which allowed the NFL to continue operating its coach-to-coach communications systems in the limited circumstance of a localized internet outage in NFL stadiums, during NFL football games but after the authority to operate within the stadium had been obtained from a Spectrum Access System (SAS). The waiver period was limited to the 2021-2022 season and expired on February 13, 2022, after the conclusion of Super Bowl LVI. On May 5, 2022 the NFL filed a request to extend the waiver period through the end of the 2025 Super Bowl. For the reasons set forth below, we grant the NFL Waiver Extension Request subject to the conditions described herein.

II. BACKGROUND

2. In its request, the NFL asserts that an extension of the 2021 conditional waiver is needed to address the possibility that multiple, simultaneous Internet failures during or immediately prior to the commencement of a football game could sever the connection between its coach-to-coach communications system and its SAS. The NFL reports that it did not have to operate pursuant to its waiver authority during the 2021-2022 season and that there was only one game wherein even one of its

1 Request of The National Football League for Extension of Waiver Grant, WT Docket No. 21-111 (filed May 5, 2022), https://files.fcc.gov/ecfs/download/abf2d9c8-f474-4e9e-96ab-76b9b0d2d641?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b (NFL Waiver Extension Request).

2 The National Football League Request for Waiver of Section 96.39(c) of the Commission's Rules, WT Docket No. 21-111, Order, 36 FCC Rcd 10489 (WTB 2021) (NFL Waiver Order).

3 47 CFR § 96.39(c)(2).

4 NFL Waiver Order at 1.

5 Id. at 3.

6 NFL Waiver Extension Request at 1.

7 See NFL Waiver Extension Request at 2. The NFL acknowledges that it was able to operate its coach-to-coach communications system without resorting to the authority conferred by the conditional waiver during the 2021-2022 NFL season. See NFL Waiver Extension Request at 4.

Internet connections was severed.<sup>8</sup> Nevertheless, the NFL argues that the limited experience of the 2021-2022 season was not sufficient to support long term planning for its Citizens Broadband Radio Service deployment and that a longer waiver period will allow it to assess whether a tertiary level of ISP redundancy is required to support its coach-to-coach communications system.<sup>9</sup> The NFL, therefore, requests a three-year extension of its conditional waiver through the end of the 2025 Super Bowl.

3. On June 30, 2022, the Bureau released a public notice seeking comment on the NFL's Waiver Extension Request.<sup>10</sup> The Bureau received one comment and one reply comment, neither of which opposed grant of the NFL Waiver Extension Request. In its comments, NCTA – The Internet & Television Association (NCTA) suggests that any extended relief to the NFL should continue to be narrowly tailored to the NFL's unique and specific circumstances to avoid creating a *de facto* exemption from the SAS connectivity requirements for Citizens Broadband Radio Service operations at special events, including sporting events.<sup>11</sup> NCTA also recommends that the Bureau grant a more limited one-year waiver expiring after the 2023 Super Bowl because an extension through 2025 is tantamount to granting the NFL a decade to transition its system to become compliant with part 96 rules.<sup>12</sup> NFL filed reply comments in which it asserts that a three-year period would allow it to explore using different technologies and relieve Commission staff from the burden of having to devote resources to analyzing identical facts and arguments multiple times in a short window.<sup>13</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>14</sup>

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<sup>8</sup> Letter from Gerard J. Waldron, Counsel to the NFL, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-111 (filed Mar. 11, 2022) (*NFL Report*). Pursuant to the conditions set forth in the *NFL Waiver Order*, the NFL filed an end-of-the-season report on March 11, 2022, which indicated that at each NFL stadium it used a Lumen hardwired internet connection and Verizon LTE service as a backup internet connection with a Cisco Meraki switching system to provide automatic rollover from the Lumen connection to Verizon LTE in the event of a hardwired Lumen connection failure. While operation pursuant to the waiver was never required at any time during the 2021-2022 season, the NFL reported a single incident on November 18, 2021, in Atlanta, Georgia when a fiber cut took down the Lumen ISP connection but the Verizon LTE was automatically switched in so there was never any loss of communication with the SAS. Noting that there were no games in which the NFL operated the Citizens Broadband Radio Service coach-to-coach communications system pursuant to the granted waiver, Petitioner stated that the level of ISP redundancy implemented in each stadium is sufficient to make it "highly improbable" that the Citizens Broadband Radio Service system will be operated pursuant to the waiver so "pending further experience, it has not been deemed necessary to implement any tertiary backup ISP system in any stadium." See *NFL Report* at 2. However, the NFL goes on to suggest that an extension of the granted waiver would "reveal any weaknesses in the ISP redundancy or the switching mechanism" and help determine if there is a need for "additional layers of redundancy" even though "there is not currently any evidence of that additional need." *Id.*

<sup>9</sup> See *NFL Waiver Extension Request* at 5-6.

<sup>10</sup> *Wireless Telecommunications Bureau Seeks Comment on the National Football League's Request to Extend Waiver of Section 96.39(c)(2) of the Commission's Rules*, DA 22-683 (WTB June 30, 2022). Comments were due July 11, 2022, and reply comments were due July 18, 2022.

<sup>11</sup> NCTA Comments at 1.

<sup>12</sup> NCTA Comments at 1, 4-5.

<sup>13</sup> NFL Reply Comments at 3.

<sup>14</sup> 47 CFR § 1.925(b)(3).

5. The rule in question here, 47 CFR § 96.39(c), requires that a Citizens Broadband Radio Service Device (CBSD) be registered with and authorized by an SAS prior to its initial service transmission.<sup>15</sup> The rule also requires CBSDs to provide the SAS with specific operational information and provide any updates to the SAS within 60 seconds of any change to that information.<sup>16</sup> Under such circumstances, section 96.39(c)(2) would then require a CBSD to “receive and comply with any incoming commands from its associated SAS about any changes to power limits and frequency assignments”<sup>17</sup> and to “cease transmission, move to another frequency range, or change its power level within 60 seconds as instructed by an SAS.”<sup>18</sup> In the *2015 Report and Order*, the Commission stated that the purposes of the rule are to ensure operations in the band are properly authorized, to prevent interference, and to provide for the effective coexistence of all tiers of users operating in the band.<sup>19</sup>

6. In the NFL Waiver Order, we concluded that neither the underlying purpose of the rule nor the public interest would be served by strict application of the requirements of the rule.<sup>20</sup> Specifically, the NFL Waiver Order found that Petitioner’s showing, as conditioned, met the requirements of the first waiver standard set forth in section 1.925.<sup>21</sup> We stated that the operational parameters and technical conditions associated with the NFL’s system, in concert with the conditions we imposed, will minimize the chances that Petitioner’s operations will cause harmful interference to other systems operating in the band and thereby ensure that the underlying purpose of the rule is served and that the grant of the waiver is in the public interest.<sup>22</sup> In doing so, we noted that the extremely limited nature of the waiver, the short duration of its applicability, and Petitioner’s ongoing compliance with all other Commission rules justified granting the requested conditional waiver of section 96.39(c)(2) of the Commission’s rules.<sup>23</sup> We stated that a conditional waiver allows Petitioner to operate its coach-to-coach communications systems without connectivity to an SAS in the event of a localized Internet outage in an NFL stadium during an NFL football game<sup>24</sup> and that the waiver applies only to the Citizens Broadband Radio Service system used for coach-to-coach communications during, and up to two hours immediately prior to an NFL football game, in the event of a complete Internet outage that prevents the CBSDs that comprise this system from contacting an SAS.<sup>25</sup> Finally, we required Petitioner to comply with a specific list of conditions to operate its coach-to-coach communications system pursuant to this waiver.<sup>26</sup>

7. In the instant case, Petitioner filed a request on May 5, 2022, to support an extension of the authority granted by the NFL Waiver Order. In its request, the NFL indicated that operation pursuant to its waiver was never required at any time during the 2021-2022 NFL season and that the level of ISP redundancy implemented proved sufficient to avoid operation of the Citizens Broadband Radio Service

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<sup>15</sup> 47 CFR § 96.39(c).

<sup>16</sup> *Id.*

<sup>17</sup> 47 CFR § 96.39(c)(2).

<sup>18</sup> *Id.*

<sup>19</sup> 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, 4032, para. 233 (2015) (*2015 Report and Order*).

<sup>20</sup> *NFL Waiver Order* at 4.

<sup>21</sup> *NFL Waiver Order* at 2.

<sup>22</sup> *NFL Waiver Order* at 2-4.

<sup>23</sup> *NFL Waiver Order* at 4.

<sup>24</sup> *NFL Waiver Order* at 2.

<sup>25</sup> *NFL Waiver Order* at 3.

<sup>26</sup> *NFL Waiver Order* at 3.

system pursuant to the waiver during the single reported incident of ISP outage.<sup>27</sup> Nevertheless, the NFL stated that continuation of the waiver, on the same terms and conditions as set forth in the NFL Waiver Order, is “necessary for precisely the same reason that prompted the original waiver request.”<sup>28</sup> In addition, the NFL asserts that the one-year waiver period is insufficient to support long term planning for its Citizens Broadband Radio Service deployment and that a three-year period would allow it to assess the need for a tertiary level of ISP redundancy and for the Commission to consider a broader solution.<sup>29</sup> The NFL Waiver Extension Request also reiterates the points made in its original waiver request regarding the scope of the waiver being limited to only NFL football games at 30 stadiums in 23 States during the 2022-2023 season, the Citizens Broadband Radio Service system only being utilized between August and February during the playing of 272 regular and 63 pre- and post-season games, adding up to approximately 66 hours for any particular stadium in a one-year period.<sup>30</sup> The NFL asserts that the waiver extension can be granted with the same conditions adopted by the NFL Waiver Order because the factors justifying the original grant remain present.<sup>31</sup>

8. In the absence of any opposition in the record, and the fact that Petitioner has demonstrated that its operational parameters, in concert with conditions imposed by the NFL Waiver Order, and built-in ISP redundancy have thus far ensured compliance with all applicable service rules, minimized the potential for harmful interference, and precluded the need to operate pursuant to the waiver, we find that Petitioner’s showing, subject to conditions imposed herein, meets the requirements of the first waiver standard set forth in section 1.925 of the Commission’s rules. Accordingly, we grant a conditional waiver of section 96.39(c)(2) of the Commission’s rules to allow Petitioner to operate its coach-to-coach communications systems without connectivity to an SAS in the event of localized Internet outage in an NFL stadium during an NFL football game throughout the 2022-2023 NFL season. This waiver applies only to the Citizens Broadband Radio Service system used for coach-to-coach communications during, and up to two hours immediately prior to an NFL football game, in the event of a complete Internet outage that prevents the CBSDs that comprise this system from contacting an SAS. Consistent with the NFL Waiver Order, we will require Petitioner to comply with the following conditions to operate its coach-to-coach communications system pursuant to this waiver:<sup>32</sup>

- Petitioner must utilize at least two independent, unaffiliated Internet Service Providers with separate physical connections at each NFL stadium throughout the season;
- Petitioner must have a valid and active authorization from an SAS for its operations at the time of the outage;
- Petitioner must provide the Bureau with a point of contact that will be available to receive and immediately address interference reports from federal incumbent users during NFL games;

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<sup>27</sup> *NFL Waiver Extension Request* at 4-5.

<sup>28</sup> *NFL Waiver Extension Request* at 5, citing para. 6 of its original waiver request.

<sup>29</sup> *NFL Waiver Extension Request* at 5-6. In its reply comments, the NFL expands on this in stating that a three-year period enables the NFL to plan for the short-term as it continues to explore different technology solutions and affords the Commission an opportunity to manage resources as a longer period avoids burdening Commission staff with having to process “identical requests multiple times in a short window.” NFL Reply Comments at 3.

<sup>30</sup> *NFL Waiver Extension Request* at 6.

<sup>31</sup> Consistent with its original waiver request, the NFL pointed out that its operations are unlikely to cause interference to other Citizens Broadband Radio Service users because its system will only operate at low power, inside NFL stadiums with “uniquely high levels of building attenuation,” for a limited amount of time. *NFL Waiver Extension Request* at 6-7, citing para. 8 of the *NFL Waiver Order*.

<sup>32</sup> The NFL, and its serving SAS, must comply with all applicable rules governing Citizens Broadband Radio Service operations, including incumbent protection, except as specifically waived herein.

- Petitioner must immediately shut down operations if any authorized Incumbent Access or Priority Access tier user reports harmful interference to their operations in the band while the NFL is operating pursuant to this waiver;
- Operations pursuant to this waiver are limited to the 3650-3700 MHz band segment;
- This waiver is limited to localized Internet outages affecting Internet connectivity to equipment within the stadium and does not apply to outages affecting the SAS itself;
- Within 24 hours of any operations pursuant to the waiver, Petitioner must submit a report to the Bureau detailing the circumstances of the outage, including the Internet providers affected, gameday downtime for each provider, and any mitigation efforts undertaken by Petitioner or other associated entities with responsibility for gameday operations or communications (e.g., NFL teams, stadium crews, spectrum managers, etc.) to re-establish connectivity or establish an alternate means of communicating with the SAS.
- Within 30 days of Super Bowl LVII, Petitioner must submit a full report detailing:
  - all Internet Service Providers used for CBSD connectivity at each NFL stadium;
  - gameday downtime for each provider including specific dates and times of any and all outages (including those that do not result in operations pursuant to this waiver);
  - details about any games in which Petitioner operated its coach-to-coach communications system pursuant to this waiver, including the specific dates and times of any such operations;
  - any mitigation efforts undertaken by Petitioner or other associated entities with responsibility for gameday operations or communications (e.g., NFL teams, stadium crews, spectrum managers, etc.) to re-establish connectivity or establish an alternate means of communicating with the SAS in the event of any Internet outage during an NFL game (including those that do not result in operations pursuant to this waiver).
- The waiver is limited to the duration of the 2022-2023 NFL season and expires after Super Bowl LVII (currently scheduled for February 12, 2023).

9. We find that, as before, these conditions will minimize the risk that Petitioner's operations will cause harmful interference to other Citizens Broadband Radio Service operators or meaningfully impede the SAS's ability to coordinate operations in the band and, as such, strictly applying the requirements of section 96.39(c)(2) would not serve the purpose of the rule. As we noted in the NFL Waiver Order, the underlying purpose of the rule is to ensure operations in the band are properly authorized, prevent interference to other authorized users, and ensure effective coexistence of all tiers of users in the band.<sup>33</sup> We believe that the operational parameters in combination with the conditions imposed herein will minimize the chances that Petitioner's operations will cause harmful interference thus ensuring that the underlying purpose of the rule is served and that the grant of the waiver is in the public interest. We find that due to the extremely limited nature of the waiver, the short length of its applicability, and Petitioner's ongoing compliance with all applicable Commission rules, there are unique circumstances in favor of granting the requested conditional waiver and that doing so would advance the public interest.

10. While we find that a grant of a conditional waiver would be consistent with the underlying purpose of the rule and serve the public interest, we decline to grant the waiver for the requested three-year period. We will instead restrict it to a period of one NFL season as Petitioner has not

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<sup>33</sup> *NFL Waiver Order* at 4.

demonstrated a need for a longer waiver period.<sup>34</sup> Although Petitioner asserts that the three-year period would permit it to explore different technologies, assess whether a tertiary level of ISP redundancy is needed, and relieve Commission staff from having to review multiple requests in a short window,<sup>35</sup> it also concedes that the level of ISP redundancy implemented in each stadium is sufficient to make it “highly improbable” that its Citizens Broadband Radio Service system would be operated pursuant to the waiver and that “pending further experience, it has not been deemed necessary to implement any tertiary backup ISP system in any stadium.”<sup>36</sup> Despite stating that “there is not currently any evidence of that additional need,” the NFL suggests that an extension of the granted waiver would “reveal any weaknesses in the ISP redundancy or the switching mechanism” and help determine if there is a need for “additional layers of redundancy.”<sup>37</sup> Given that the NFL reported only one isolated incident at one of its games during the 2021-2022 season, and considering the fact that a typical NFL season involves 272 regular season games and 63 pre- and post-season games,<sup>38</sup> and the NFL Report confirms that the existing level of ISP redundancy was sufficient to address that solitary event, preventing any loss of communication with the SAS and avoiding the need to operate pursuant to the waiver,<sup>39</sup> we find that an additional season should be sufficient for Petitioner to determine if circumstances warrant an additional level of ISP redundancy or if new technologies will become available.

11. We note Petitioner’s system has not been needed to operate pursuant to the waiver previously granted because its level of ISP redundancy has been sufficient to prevent an outage that would negatively impact connectivity between its otherwise rules-compliant Part 96 system and the SAS. Nonetheless, the Bureau is granting an additional conditional waiver for the 2022-2023 NFL season to allow Petitioner to determine if a tertiary level of ISP redundancy is a necessary contingency for long-term planning purposes. Going forward, the burden rests on Petitioner to provide substantial additional support for a further extension of the waiver, particularly where the underlying circumstances have not changed significantly.<sup>40</sup> While Petitioner has the right to pursue appropriate administrative measures now and in the future, the Commission must avoid granting exceptions that are not narrowly tailored or

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<sup>34</sup> The burden to support a waiver is on the petitioner and it must state with clarity the facts and circumstances which warrant such action and provide substantial support for a waiver. See *WAIT Radio v. FCC*, 135 U.S.App.D.C. 317, 321, 418 F.2d 1153, 1157 (1969). See also *Rio Grande Radio Fellowship Inc. v. FCC*, 132 U.S.App.D.C. 128, 130, 406 F.2d 664, 666 (1968) (the Commission need not grant a waiver of its Rules unless an application sets out adequate reasons why the Rules should be waived); *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 205, 76 S.Ct. 763, 771, 100 L.Ed. 1081 (1956). (applicant must set out adequate reasons justifying why the Rules should be waived or amended); *Indus. Broad. Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970) (applicant bears heavy burden to demonstrate that his arguments for waiver are substantially different from those that have been carefully considered in rulemaking proceeding).

<sup>35</sup> See *NFL Waiver Extension Request* at 5-6, NFL Reply Comments at 3, and *NFL Report* at 2.

<sup>36</sup> See *NFL Report* at 2.

<sup>37</sup> *Id.*

<sup>38</sup> See *NFL Waiver Extension Request* at 6.

<sup>39</sup> See *NFL Report* at 2.

<sup>40</sup> See *WAIT Radio v. FCC*, 135 U.S.App.D.C. at 321, 418 F.2d at 1157 (an applicant for waiver faces a high hurdle and must plead with particularity the facts and circumstances which warrant such action); see also *Family Stations, Inc. v. DirectTV, Inc.*, CSR-5772-M, Order on Reconsideration, 19 FCC Rcd 14777, 14780, at para 7 (MB 2004) (besides facing the high hurdle of pleading with particularity facts and circumstances warranting a waiver, an applicant for waiver must also articulate a specific public interest benefit that justifies its request); *Section 68.4(A) of the Commission’s rules governing Hearing Aid-Compatible Telephones*, WT Docket 01-309, Memorandum Opinion and Order, 22 FCC Rcd. 7171, 7176, at para 9 (2007) (if our hard look at a waiver request reveals only inadequate, conflicting, and inconsistent information, then our inquiry need go no further because the petitioner has failed in its obligation to plead with particularity the facts and circumstances warranting its requested relief).

temporary in nature lest they effectively swallow the rule in question nor can it do so in perpetuity if granting multiple waivers will eviscerate the rule itself.<sup>41</sup>

12. Therefore, we find it is in the public interest to conditionally grant Petitioner's request for a waiver of section 96.39(c)(2), on a time-limited basis for the 2022-2023 NFL season and subject to the conditions described herein.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the request filed by the National Football League for waiver of section 96.39(c)(2) of the Commission's rules, 47 CFR § 96.39(c)(2), is GRANTED to the extent described, and with the conditions specified, herein.

14. 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

Joel Taubenblatt  
Acting Chief  
Wireless Telecommunications Bureau

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<sup>41</sup> See *WAIT Radio v. FCC*, 135 U.S.App.D.C. at 323, 418 F.2d at 1159.