

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

In the Matter of
Wireless Telecommunications Bureau Seeks
Comment on the National Football League's
Second Request to Extend Waiver of Section
96.39(c)(2) of the Commission's Rules
WT Docket No. 21-111

ORDER

Adopted: August 16, 2023

Released: August 16, 2023

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau) conditionally grants the National Football League's request' (NFL or Petitioner) for a second extension of the conditional waiver granted by the Bureau in an Order issued on July 9, 2021.2 In the NFL Waiver Order, the Bureau granted Petitioner a conditional waiver of section 96.39(c)(2) of the Commission's rules,3 governing the Citizens Broadband Radio Service.4 In September 2022, the Bureau granted the NFL an extension of this relief for one NFL season.5 On May 31, 2023, the NFL filed a second extension request, this time seeking a two-year extension, subject to the same conditions that were included in the Waiver Extension Order.6 For the reasons set forth below, we grant the Second Waiver Extension Request subject to the limitations and conditions described herein.

II. BACKGROUND

2. On July 9, 2021, the Bureau granted the NFL a conditional waiver of section 96.39(c)(2) so that it could operate its SAS-authorized coach-to-coach communications system during football games without an Internet connection to an SAS, in the narrow circumstance in which Internet service becomes unavailable during or immediately prior to a scheduled game.7 The waiver expired on February 13, 2022, upon the conclusion of the 2021-22 NFL season,8 and the NFL petitioned for a three-year extension of the

1 See Request of the National Football League for Extension of CBRS Waiver, WT Docket No. 21-111 (filed May 31, 2023), https://www.fcc.gov/ecfs/document/1060138518494/1 (Second 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, 36 FCC Rcd at 10491-92, para. 7.

5 The National Football League Request to Extend Waiver of Section 96.39(c) of the Commission's Rules, WT Docket No. 21-111, Order, 2022 WL 4118669 (WTB 2022) (Waiver Extension Order).

6 Second Waiver Extension Request at 1.

7 See generally NFL Waiver Order.

8 NFL Waiver Order, 36 FCC Rcd at 10491, para. 6.

conditional waiver on May 5, 2022.<sup>9</sup> The Bureau granted the requested extension on September 7, 2022, subject to the same conditions as the *NFL Waiver Order*, but again for a term of one season, expiring February 12, 2023.<sup>10</sup> In the instant case, the NFL has petitioned for a two-year extension of the waiver.<sup>11</sup>

3. The NFL claims that the same conditions necessitating the *NFL Waiver Order* and *Waiver Extension Order* remain present today, and therefore it requires a second extension of the conditional waiver relief granted therein.<sup>12</sup> The NFL also claims that it is still exploring a permanent technological solution alongside its vendor, and that more time is needed for it to complete its due diligence.<sup>13</sup>

4. The Bureau sought comment on the Second Waiver Extension Request on July 5, 2023.<sup>14</sup> It received one comment from NCTA – The Internet & Television Association (NCTA) and one reply comment from the NFL. NCTA did not oppose the Second Waiver Extension Request, but questioned whether another extension was necessary given that the NFL has yet to make use of its waiver relief.<sup>15</sup> NCTA also argued that, if granted, any extension should only be valid through the 2024 season because the Citizens Broadband Radio Service landscape could be different in 2026.<sup>16</sup> NCTA also asserted that any further extensions should require the NFL to comply with all of the conditions included in the *NFL Waiver Order* and should also require the NFL to: (1) file reports describing the specific measures it has taken at each site to avoid interruptions in SAS connectivity and detail any remaining impediments to achieving compliance with the Commission’s rules, and (2) file a report detailing with specificity the steps it has taken thus far to bring its coach-to-coach system into compliance with the Citizens Broadband Radio Service rules and how it will do so before the 2024 Super Bowl.<sup>17</sup> The NFL submitted a reply comment in which it disagreed with NCTA’s view that the waiver extension should be limited to one year, claiming that a one-year waiver period would tax Commission resources, and that a two-year waiver would allow it to manage short-term communications needs while actively testing other technologies.<sup>18</sup> Finally, the NFL submitted an engineering analysis that it alleges demonstrates that the attenuation of RF signal propagation from NFL stadium structures precludes detection of Citizens Broadband Radio Service signals, including in areas immediately outside the stadiums or in the adjacent parking lots.<sup>19</sup>

---

<sup>9</sup> Request of the National Football League for Extension of Waiver Grant, WT Docket No. 21-111 (filed May 5, 2022), <https://www.fcc.gov/ecfs/document/10505300303761/1> (*NFL Waiver Extension Request*).

<sup>10</sup> See *Waiver Extension Order*, 36 FCC Rcd at 10491, para. 6.

<sup>11</sup> See *Second Waiver Extension Request*.

<sup>12</sup> *Second Waiver Extension Request* at 2. Specifically, the NFL asserts that there still remains the possibility that a complete regional Internet outage during or immediately prior to a football game could sever the connection between its coach-to-coach communications system and its SAS. *Second Waiver Extension Request* at 2. The NFL claims that the obligation to discontinue operation within 60 seconds of a loss of Internet connectivity would necessitate the discontinuance of operation during a football game or immediately prior. *Second Waiver Extension Request* at 7.

<sup>13</sup> *Second Waiver Extension Request* at 5.

<sup>14</sup> *Wireless Telecommunications Bureau Seeks Comment on the National Football League’s Second Request to Extend Waiver of Section 96.39(c)(2) of the Commission’s Rules*, WT Docket No. 21-111, Public Notice, 2023 WL 4404451 (WTB 2023).

<sup>15</sup> NCTA – The Internet & Television Association Comments at 1 (NCTA Comments).

<sup>16</sup> NCTA Comments at 6-7 (citing *Second Waiver Extension Request* at 6).

<sup>17</sup> NCTA Comments at 2.

<sup>18</sup> National Football League Reply Comments at 5 (NFL Reply).

<sup>19</sup> NFL Reply, Attach. A.

### III. DISCUSSION

5. Section 1.925(b)(3) of the Commission’s rules states that the Commission may grant 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>20</sup> Here, we find that Petitioner’s showing, when paired with the conditions imposed below, meets the requirements of the first waiver standard of section 1.925. We conclude that the record demonstrates that strict application of section 96.39(c)(2) to the instant facts would not serve the rule’s underlying purpose or the public interest. Accordingly, we grant Petitioner a conditional waiver of section 96.39(c)(2) of the Commission’s rules for the 2023-24 NFL season.

6. Section 96.39(c)(2) specifies that a Citizens Broadband Radio Service Device (CBSD) “must cease transmission, move to another frequency range, or change its power level within 60 seconds as instructed by an SAS.”<sup>21</sup> The purpose of the rule is to enable the SAS to perform effective propagation and interference mitigation analyses on CBSDs, thereby ensuring the effective coexistence of all tiers of Citizens Broadband Radio Service users.<sup>22</sup> In both the *NFL Waiver Order* and the *Waiver Extension Order*, we concluded that the strict application of section 96.39(c)(2) to the facts presented by the NFL would serve neither the rule’s underlying purpose nor the public interest.<sup>23</sup> However, in the *Waiver Extension Order*, we found that the 2022-23 season should be sufficient time for Petitioner to determine if a tertiary level of ISP redundancy was necessary for its long-term plans.<sup>24</sup> We also cautioned that the burden would rest on Petitioner to provide substantial additional support for a further extension of the relief provided therein.<sup>25</sup>

7. Here, Petitioner reiterates many of its claims about its coach-to-coach communications system,<sup>26</sup> but also states that it has spent the past several months conducting due diligence into implementing a technological solution beyond its current ISP redundancy in each NFL stadium.<sup>27</sup> Petitioner states that it is still in the process of determining whether this solution would be sufficient to

---

<sup>20</sup> 47 CFR § 1.925(b)(3).

<sup>21</sup> 47 CFR § 96.39(c)(2).

<sup>22</sup> See *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 Red 3959, 4032, para. 233 (2015).

<sup>23</sup> In the *NFL Waiver Order*, we found that the operational parameters and technical conditions associated with the NFL’s system, paired with the conditions we imposed, would minimize the likelihood that Petitioner’s operations cause harmful interference to other Citizens Broadband Radio Service users. *NFL Waiver Order*, 36 FCC Rcd at 10492, para. 8. In the *NFL Extension Order*, we found that Petitioner had demonstrated that its operational parameters, in concert with conditions imposed by the *NFL Waiver Order*, had sufficiently ensured compliance with all applicable service rules, minimized the potential for harmful interference, and precluded the need to operate pursuant to the waiver. *Waiver Extension Order* at 4.

<sup>24</sup> *Waiver Extension Order* at 6.

<sup>25</sup> *Waiver Extension Order* at 6.

<sup>26</sup> Petitioner reiterated that its waiver request is extremely limited in temporal and geographic scope. *Second Waiver Extension Request* at 3. Petitioner claimed it is unlikely to have to operate pursuant to the waiver, and submitted an engineering analysis purporting to demonstrate a low probability of interference outside stadiums. *Second Waiver Extension Request* at 5; NFL Reply, Attach. A.

<sup>27</sup> *Second Waiver Extension Request* at 5 (“Over the past several months, however, the NFL has worked diligently... with Verizon to install a local version of the CBRS database at each NFL stadium...it is a complex and untested solution that has not been proven in an NFL stadium environment.”).

preserve connectivity to an SAS as a backup to a hardwired Internet connection.<sup>28</sup> No party challenged any of these claims in the record and, according to annual reports submitted by Petitioner, the NFL has never had to operate pursuant to its waiver authority.<sup>29</sup>

8. In the absence of any opposition in the record, and given the circumstances discussed herein, we find that Petitioner's showing meets the requirements of the first waiver standard set forth in section 1.925 of the Commission's rules, subject to the conditions set forth below. Specifically, we find that a limited extension of the conditional waiver to allow the NFL to complete due diligence on a rules-compliant technical solution for its coach-to-coach communications system is in the public interest. 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 a localized Internet outage in an NFL stadium during an NFL football game throughout the 2023-24 NFL season. This conditional 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. We will require Petitioner to comply with the same conditions we imposed in the NFL Waiver Order and Waiver Extension Order,<sup>30</sup> in addition to the following modified version of the conditions proposed by NCTA:<sup>31</sup>

- Within 30 days after Super Bowl LVIII, Petitioner must submit a full report to include the same required contents as the reports required in the *NFL Waiver Order* and *Waiver Extension Order*,<sup>32</sup> and also detailing:

---

<sup>28</sup> NFL Reply at 4.

<sup>29</sup> See Letter from Gerard J. Waldron, Counsel to the National Football League, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-111, at 2 (filed Mar. 14, 2023) (indicating no outages occurred during the 2022-23 season); Letter from Gerard J. Waldron, Counsel to the National Football League, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-111, at 2 (filed Mar. 11, 2022) (indicating one outage occurred during the 2021-22 season, but that its redundant Internet connection precluded operation pursuant to the waiver).

<sup>30</sup> The conditions are: (1) Petitioner must utilize at least two independent, unaffiliated Internet Service Providers with separate physical connections at each NFL stadium throughout the season; (2) Petitioner must have a valid and active authorization from an SAS for its operations at the time of the outage; (3) 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; (4) 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 conditional waiver; (5) Operations pursuant to this conditional waiver are limited to the 3650-3700 MHz band segment; (6) This conditional 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; and (7) Within 24 hours of any operations pursuant to the conditional 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. *Waiver Extension Order* at 4-5; *NFL Waiver Order*, 36 FCC Rcd at 10491, para. 6.

<sup>31</sup> NCTA Comments at 2, 6.

<sup>32</sup> The NFL was required to submit a report after Super Bowl LVI and Super Bowl LVII detailing (1) all Internet Service Providers used for CBSD connectivity at each NFL stadium; (2) 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 conditional waiver); (3) details about any games in which Petitioner operated its coach-to-coach communications system pursuant to this conditional waiver, including the specific dates and times of any such operations; and (4) 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

(continued....)

- specific measures Petitioner has taken during the waiver period to bring its coach-to-coach system into compliance with the Citizens Broadband Radio Service service rules;
  - specific measures Petitioner has taken at each NFL stadium to avoid interruptions in SAS connectivity;
  - details regarding any remaining impediments to achieving compliance with the Commission's rules.
- The conditional waiver is limited to the duration of the 2023-2024 NFL season and expires the day after Super Bowl LVIII (currently scheduled for February 11, 2024).

9. 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 full two-year period requested by the NFL. As previously stated, we granted Petitioner a conditional waiver for just one season in the *Waiver Extension Order* so that it could determine if a tertiary level of ISP redundancy was necessary for the long-term operation of its coach-to-coach communications system.<sup>33</sup> Petitioner now states it is still in the process of conducting due diligence on a possible long-term technological solution, and that it is already “several months” into that process.<sup>34</sup> While we agree that the public interest would be served by providing the NFL with a limited extension to complete its due diligence on a rules-compliant technical solution, we find nothing in the record to indicate that such diligence need last beyond the 2023-24 NFL season.<sup>35</sup> We also agree with NCTA that a conditional waiver limited to the 2023-24 NFL season is more appropriate due to the evolving Citizens Broadband Radio Service landscape.<sup>36</sup> Finally, we are wary of granting longer extensions that, when combined with previous waiver grants, may appear to operate as *de facto* exemptions to the Citizens Broadband Radio Service rules.<sup>37</sup> To that end, we remind the NFL that, consistent with our guidance in the *Waiver Extension Order*, the burden rests on Petitioner to provide substantial additional support for any further extensions of the waiver that it may request, particularly where the underlying circumstances have not changed significantly.<sup>38</sup>

---

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). *Waiver Extension Order* at 5; *NFL Waiver Order*, 36 FCC Rcd at 10491, para. 6.

<sup>33</sup> *Waiver Extension Order* at 6.

<sup>34</sup> *Second Waiver Extension Request* at 5; NFL Reply

<sup>35</sup> The burden to support a waiver is on 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*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). See also *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 205 (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); *Rio Grande Radio Fellowship Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968) (the Commission need not grant a waiver of its rules unless an application sets out adequate reasons why the rules should be waived).

<sup>36</sup> See NCTA Comments at 7.

<sup>37</sup> See NCTA Comments at 5.

<sup>38</sup> See *Waiver Extension Order* at 6, note 40 (citing *WAIT Radio*, 418 F.2d at 1157; *Family Stations, Inc. v. DirectTV, Inc.*, CSR-5772-M, Order on Reconsideration, 19 FCC Rcd 14777, 14780, para 7 (MB 2004); *Section 68.4(A) of the Commission's rules governing Hearing Aid-Compatible Telephones*, WT Docket 01-309, Memorandum Opinion & Order, 22 FCC Rcd 7171, 7176, para 9 (2007)). We note that, in the *Second Waiver Extension Request*, the NFL asserts that there is a fundamental difference between “making use of the waiver” and

(continued....)

10. For the reasons above, 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 and subject to the conditions described herein.

#### IV. ORDERING CLAUSES

11. 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 NFL 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.

12. 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  
Chief  
Wireless Telecommunications Bureau

---

“actually *utilizing the waiver*” and claims that simply having the waiver in hand has allowed the NFL and its equipment partners to prepare for a “worst-case scenario.” Indeed, the NFL goes so far as to analogize the purpose of the waiver to “auto insurance,” which it hopes to never actually utilize. *See Second Waiver Extension Request* at 5-6 (emphasis in original). Nothing in this Order should be read as an endorsement of the NFL's “auto insurance” argument, and any further requests for extension will remain subject to close scrutiny, consistent with the Commission's rules and precedents.