

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
National Football League Request for Partial	)	WT Docket No. 21-111
Waiver of Section 96.39(c)(2) of the Commission’s	)	
Rules to Permit the Certification and Operation of	)	
A Citizen’s Broadband Radio Service System in	)	
Stadiums During NFL Football Games	)	
	)	

**COMMENTS OF THE OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA,  
CHARTER COMMUNICATIONS, INC., AND  
DISH NETWORK CORPORATION**

The Open Technology Institute at New America (“OTI”), Charter Communications, Inc. (“Charter”), and DISH Network Corporation (“DISH”) hereby provide their comments on the National Football League’s (“NFL”) Request for Partial Waiver (“Petition”) of Section 96.39(c)(2) of the Commission’s rules.<sup>1</sup> While OTI, Charter, and DISH do not oppose the NFL’s Petition, we respectfully ask the Wireless Telecommunications Bureau (“Bureau”) to explicitly limit any grant of the NFL’s request to the facts presented. By taking this careful approach, the Bureau will ensure that its actions do not open the door to a flood of waiver requests that would undermine the Commission’s carefully constructed framework for operations in the Citizens Broadband Radio Service (“CBRS”) band.

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<sup>1</sup> See *Wireless Telecommunications Bureau Seeks Comment on the National Football League’s Request for Waiver of Section 96.39(c)(2) of the Commission’s Rules for the Citizens Broadband Radio Service in the 3.5 GHz Band*, Public Notice, WT Docket No. 21-111, DA 21-369 (rel. Mar. 29, 2021); Request for Partial Waiver of the National Football League at 1, WT Docket No. 21-111 (Jan. 31, 2021) (“NFL Petition”).

The NFL’s Petition identifies the potential difficulties that could result when there is a loss of internet connectivity between the NFL’s CBRS network and the Spectrum Access System (“SAS”). As the NFL explains, when this loss of connectivity occurs, the Commission’s rules require associated Citizen Broadband Service Devices (“CBSDs”) to cease operation.<sup>2</sup> If this disruption occurs during or right before the start of a football game, it would immediately disrupt coach-to-coach communications.<sup>3</sup> The NFL also notes that grant of the waiver is unlikely to harm other CBRS operators because the NFL would have received prior to kickoff a grant from the SAS to operate its network at that time and location, and prior to the outage would not have received any instructions from the SAS to change its operating parameters or frequency; the low power of the NFL’s CBRS network; and the fact the network would be operating for a limited duration in a small fixed number of stadiums that provide further interference protection because they are large concrete structures with high walls.<sup>4</sup>

While the factual circumstances the NFL describes in its Petition appear sufficient to avoid harmful interference to other CBRS operators, we ask the Bureau to proceed cautiously in its consideration of this request. The grant of the NFL’s waiver could open the door to numerous other waivers from CBRS operators who could likewise argue that they face the risk that their internet connection could go down and sever their communication to the SAS. It is therefore imperative that grant of the NFL’s waiver request should be expressly conditioned on the specific facts presented by the NFL—the small number of geographic areas that would be impacted, the short duration of the waiver given the length of the NFL’s games and season, and the removed

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<sup>2</sup> 47 C.F.R. § 96.39(c)(2).

<sup>3</sup> See NFL Petition at 7-8.

<sup>4</sup> See *id.* at 4.

location and physical characteristics of the sites where the waivers would be applicable. The Bureau should also clearly indicate that any future waivers seeking an exemption from the CBRS rules are not guaranteed and will be considered in accordance with the Commission's rules.<sup>5</sup>

Taking this prudent approach will ensure that CBRS operators continue to design and operate their networks in a manner that ensures that they are both durable and maintain a robust connection to the SAS. It will also encourage spectrum stability, maintain confidence among CBRS stakeholders, and clearly communicate that the Bureau will continue to enforce its rules fairly.

Respectfully submitted,

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April 8, 2021

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<sup>5</sup> Waiver of an agency's general rule may be an appropriate "safety valve procedure," (*WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)) but that is the case "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Ne. Cellular Tel. Co. L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). *See also* 47 C.F.R. § 1.3; 47 C.F.R. § 1.925(b)(3) ("The Commission may grant a request for waiver if it is shown that: (i) The 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) In view of the 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.").