

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

In the Matter of	)	
	)	
Petition of T-Mobile USA, Inc. for	)	File No. _____
Clarification or, in the Alternative, Waiver	)	
of Wireless Priority Service Rules	)	
	)	

**PETITION OF T-MOBILE USA, INC. FOR EXPEDITED WAIVER**

T-Mobile USA, Inc.,<sup>1</sup> pursuant to Sections 1.3 and 1.925 of the Commission’s Rules,<sup>2</sup> respectfully requests the Commission grant an expedited waiver of Section 64.402 of the Commission’s rules in order to allow it to provide priority access service over LTE by the third quarter of 2018. T-Mobile is in the process of deploying wireless priority service (“WPS”) over its LTE network, but doing so in the timeframe required by its agreement with the Office of Emergency Communications (“OEC”), a division of the Department of Homeland Security (“DHS”), will require WPS be available at all times to registered users, rather than activated on a per-call basis, as described in Appendix B to Part 64 of the Commission’s Rules.<sup>3</sup> Because T-Mobile is able to deploy WPS over LTE while also preserving sufficient capacity for non-priority users, grant of a waiver would be in the public interest. Accordingly, T-Mobile asks the Commission to grant it a waiver of the per-call activation requirement for WPS over LTE until two years after OEC provides funding for the necessary network development, but in no event

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<sup>1</sup> T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly traded corporation.

<sup>2</sup> 47 C.F.R. §§ 1.3, 1.925.

<sup>3</sup> *Id.* pt. 64, app. B (“Appendix B”).

for more than five years, unless the Commission amends its WPS rules prior to the expiration of the waiver to expressly allow for “always on” WPS. T-Mobile requests expedited review of its petition to accommodate OEC’s planned deployment timeframe.

## **I. BACKGROUND**

The WPS program is a federal program, implemented in 2000, that authorizes commercial mobile radio service (“CMRS”) providers to prioritize calls from enrolled national security and emergency preparedness (“NSEP”) users on a WPS-enabled device over calls made by the general public. WPS calls do not preempt calls in progress or deny the general public’s use of the wireless network; rather, WPS calls are given priority in the call queue for the next available channel. The WPS program was specifically implemented to improve connection capabilities for emergency calls during periods of wireless traffic congestion. WPS is voluntary for CMRS providers, in that providers may elect to deploy priority access capabilities.<sup>4</sup> Entities that wish to obtain priority status under WPS must enroll with OEC. Although OEC administers

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<sup>4</sup> *Id.* § 64.402.

WPS,<sup>5</sup> the Commission has also adopted regulations that govern the provision of WPS.<sup>6</sup> The FCC adopted the program in 2000,<sup>7</sup> and the rules are codified at Appendix B.

In a section captioned “Background,” Appendix B describes WPS as “provid[ing] the means for NSEP users to obtain priority access to available radio channels when necessary to initiate emergency calls.”<sup>8</sup> It goes on to state that “[a]uthorized users would activate the feature on a per call basis by dialing a feature code such as \*XX.”<sup>9</sup> The code used by WPS providers today is \*272, and any authorized WPS user must dial \*272 in order to activate WPS for any given call.

Subsequent sections of Appendix B set forth the respective substantive obligations of the Commission, the EOP (or OEC), authorizing agents, service users, or service providers. But those sections make no other reference to implementation of WPS on a per-call basis. Appendix B also indicates that OEC may issue rules and procedures consistent with the Commission’s

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<sup>5</sup> The regulations governing WPS indicate that the Executive Office of the President (“EOP”), via its sub-agency, the National Communications System (“NCS”), administers day-to-day operations of WPS. *See* Appendix B; *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, Second Report and Order, 15 FCC Rcd. 16720, 16735 ¶ 33 (2000) (“WPS Order”). However, NCS was merged into DHS after DHS’ creation in 2002, and then eliminated under President Obama’s Executive Order 13618, with most of NCS’ functions being subsumed by OEC. Accordingly, OEC is the entity that administers WPS today.

<sup>6</sup> *See* Appendix B. WPS was formerly called “Priority Access Service” or PAS, and the FCC’s implementing order and regulations all refer to PAS, rather than WPS. *See Wireless Telecommunications Bureau Seeks Comment on Verizon Wireless Petition for Waiver of Part 64 Priority Access Service Rule*, 20 FCC Rcd. 10685, 10685 n.4 (2005) (noting that PAS and WPS are equivalent terms).

<sup>7</sup> *See WPS Order*.

<sup>8</sup> Appendix B § 2(c).

<sup>9</sup> *Id.*

rules on the operation, administration, and use of WPS.<sup>10</sup> However, OEC does not appear to have issued any codified rules itself, though it has provided some online guidance for qualifying and obtaining WPS.

T-Mobile is currently implementing WPS on its LTE network pursuant to a contract with OEC. OEC has requested that T-Mobile expedite its deployment of WPS over LTE, with the service beginning to roll out in the second quarter of 2018 and full nationwide implementation completed by the third quarter of 2018. Because LTE networks are substantially different from GSM networks, T-Mobile will be unable to deploy WPS over LTE with per-call activation in this timeframe. The work required to implement per-call activation, moreover, will require substantial resources—of both time and money. T-Mobile therefore requests that the Commission grant it a waiver of the per-call activation requirement until two years after OEC is able to provide funding for the necessary development, or for no longer than five years after the date of grant.

## **II. GRANT OF A WAIVER IS IN THE PUBLIC INTEREST**

The Commission may waive specific requirements of its rules where granting a waiver would be in the public interest and the underlying purpose of the rule would not be served or would be frustrated by application to the instant case.<sup>11</sup> In addition, a rule may be waived in view of unique or unusual factual circumstances, if application of the rule would be inequitable, unduly burdensome or contrary to public interest, or if the applicant has no reasonable alternative.<sup>12</sup>

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<sup>10</sup> See Appendix B.

<sup>11</sup> See 47 C.F.R. 1.925 § (b)(3)(i); *see also id.* § 1.3 (rule may be waived for good cause shown).

<sup>12</sup> *Id.* § 1.925(b)(ii).

When the Commission adopted its WPS rules, its focus was handling capacity in a way that facilitated smooth communications for national security and emergency personnel while maintaining capacity for regular subscribers. Appendix B describes a presumption for such access—that it would be triggered by dialing a feature code, in order to meet the dual goals of enabling priority access without affecting service available to non-priority users. But the reference to per-call activation is in a section of Appendix B captioned “Background”—not in those sections setting forth the substantive obligations of NSEP entities and WPS providers. And, indeed, no substantive provisions of the Commission’s rules—or any other operative guidelines or regulations—establish an obligation to provide WPS only on a per-call basis.

At the time the WPS rules were adopted, the potential of WPS to negatively affect non-priority customers was a concern,<sup>13</sup> and legacy networks designed for voice-only calling did not have the capacity to allow priority users to have “always on” priority without affecting the ability of non-priority customers to make and receive calls, particularly during times of network congestion. Defining WPS in 2000 as a service activated by dialing a feature code on a per-call basis ensured that priority access would only be granted when needed.

Today’s LTE networks, however, carry voice as data, and therefore can accommodate “always on” priority use without limiting non-priority users’ access to wireless services. During periods of network congestion, WPS over LTE will function similarly to WPS over 2G and 3G networks in that the calls from priority users will jump to the front of the queue for resource prioritization without preempting users already on calls. But during normal operations,

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<sup>13</sup> *WPS Order* at 16727 ¶ 14 (“The ability of CMRS systems to offer PAS should not significantly disadvantage non-NSEP users.”). *See also id.* at 16735 ¶ 32 (limiting priority users to those in leadership positions in order to “cause only a minimal effect on the general wireless user”).

T-Mobile's LTE network has sufficient capacity that, though calls from priority users would still jump to the front of the queue, non-priority users would experience no discernable change in service.

Because the capacity concerns that underlay the original presumption of per-call activated WPS are significantly reduced, providing "always on" WPS as a solution to enable WPS over LTE would be entirely consistent with the public interest and the underlying purposes of the WPS rules. At the same time, prohibiting T-Mobile from deploying WPS on its LTE networks before it can enable WPS on a per-call basis would not be in the public interest. The development time required to deploy per-call activated WPS over LTE will be substantially longer than that needed to deploy "always on" WPS, and OEC currently has no funding to support that work. Even if funding were available now, T-Mobile would be unable to provide per-call WPS to authorized users over its LTE network as development and implementation of such a service will take approximately 2 years. Thus, if T-Mobile is not allowed to deploy "always on" LTE WPS, some WPS users would not have access to WPS during times of emergency if those users were in an area served only by T-Mobile's LTE network.

The Commission has granted similar requests for waivers in the past. T-Mobile sought and received a substantially similar waiver in 2001,<sup>14</sup> when it first began deploying WPS on its GSM network. At the time, T-Mobile explained to the Commission that it would not be able to initially provide WPS on a per-call basis, though it would be able to offer WPS on an "always on" basis for any registered users.<sup>15</sup> The Commission agreed that a "waiver of the requirement

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<sup>14</sup> *VoiceStream Wireless Corporation Petition for Waiver of Section 64.402 of the Commission's Rules*, Memorandum Opinion and Order, 17 FCC Rcd. 6134 (2002) ("*VoiceStream Waiver Order*"). T-Mobile was formerly known as VoiceStream.

<sup>15</sup> *Petition for Partial Waiver of VoiceStream Wireless Corporation*, WT Docket No. 96-86 (filed Nov. 28, 2001).

that each NESP subscriber invoke or activate PAS on a per call basis would be consistent with the underlying purposes of the Commission's PAS Rules and would be in the public interest.”<sup>16</sup>

The same rationales support grant of a waiver today, and without the countervailing concern expressed by then-Commissioner Martin, that non-priority customers might experience a decrease in availability.<sup>17</sup> Today's digital networks have much more capacity, ensuring that, even if the Commission permits T-Mobile to deploy “always on” WPS, T-Mobile's non-priority customers will not be disadvantaged.

### **III. CONCLUSION**

T-Mobile respectfully requests that the Commission expeditiously grant it a waiver of the WPS rules and permit it to offer “always on” WPS over LTE. T-Mobile requests a waiver until two years after it receives funding from OEC to deploy per-call activated WPS over LTE, but in no event for more than five years. Permitting T-Mobile to enable “always on” WPS over LTE is consistent with the purpose of the WPS program; denying T-Mobile's request for a waiver, on the other hand, would be contrary to the public interest, given the importance of WPS to public safety, the time needed to implement that feature, and the current lack of funding for the network development required.

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<sup>16</sup> *VoiceStream Waiver Order* at 6139 ¶ 13.

<sup>17</sup> Separate Statement of Commissioner Kevin J. Martin, *VoiceStream Waiver Order* at 6146.

Respectfully submitted,



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