

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Cellular Priority Access for National )  
Security and Emergency Preparedness )  
Telecommunications )

WT Docket No. 96-86

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COMMENTS OF GTE MOBILNET

GTE Mobilnet ("GTEM") hereby submits its comments in response to the National Communications System's ("NCS") *Petition for Rulemaking ("Petition")* filed on October 19, 1995. In the *Petition*, the NCS urges the Federal Communications Commission ("FCC" or "Commission") to adopt rules to govern priority access to cellular spectrum for National Security/Emergency Preparedness ("NS/EP") responsiveness. In particular, the *Petition* seeks establishment of the Cellular Priority Access Service ("CPAS"), whereby priority access would be given to certain users of cellular systems during times of emergency.

GTEM has a long history of supporting the development of improved emergency cellular calling capabilities. GTEM has been an active participant in the development of CPAS, participating in the on-going development of both the network standards and air interface to support CPAS. Moreover, GTEM plans to provide CPAS as soon as the service can be effectively and reliably implemented. Accordingly, GTEM generally supports the establishment of CPAS. GTEM requests, however, that the CPAS proposed rules be amended to

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apply to all providers of two-way commercial mobile radio services ("CMRS") except air-ground service; that the FCC affirm that entities providing CPAS in accordance with FCC rules be absolved of liability associated with denial of access to other users; and that a funding mechanism be considered for CPAS when more is learned about the costs of implementation.

### I. BACKGROUND

During recent disasters, cellular networks have consistently demonstrated high reliability. In many cases, cellular networks have stayed on-line while others have failed. Thus, cellular networks have become, in some instances, the system of choice for many emergency responders. Unfortunately, during disasters cellular channels at times have become severely overloaded, hampering emergency relief providers' ability to assist in disaster recovery. Emergency service providers' reliance on cellular networks have caused the NCS to draft rules for CPAS.

CPAS, as proposed, would permit authorized NS/EP users to obtain access to cellular radio channels during emergencies ahead of non-NS/EP users.<sup>1</sup> The service would not be mandatory for cellular licensees, however, any licensee electing to provide CPAS would be obligated to do so in accordance with the CPAS rules. CPAS would be available at all times and accessible by dialing a feature code. The CPAS would establish a uniform system of priority

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<sup>1</sup> NS/EP users would not be able to interrupt calls in progress. Rather such users would be placed at the head of the queue for the next available channel.

access levels for federal, state, and local emergency service provider agencies. The highest priority level, priority 1, would be reserved for federal, state, and local executive policy personnel; priority levels 2 and 3 would be assigned to various first responders; priority level 4 would be assigned to stabilization functions such as public utilities; while priority level 5 would apply to disaster recovery agencies such as the Red Cross.

## II. DISCUSSION

As noted above, GTEM is a participant in the development of a CPAS capability and generally supports adoption of the proposed CPAS rules. There are, however, a handful of issues that need to be addressed in the context of adopting the NCS *Petition*. As an initial matter, GTEM notes that this proceeding is being considered in the same docket as the Commission's Public Safety *Notice of Proposed Rulemaking ("NPRM")*<sup>2</sup>. While the issues raised in each pleading are important, GTEM urges the Commission to keep each item separate so that deliberation on the *NPRM* – which is likely to take considerable time – does not delay action on the NCS *Petition*.

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<sup>2</sup> The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Notice of Proposed Rulemaking*, WT Docket No. 96-86, FCC 96-155 (released April 10, 1996).

A. The CPAS Rules Should Apply to all Two-Way Commercial Mobile Radio Services ("CMRS") Except Air-Ground

As drafted, the priority access rules would apply only to FCC-licensed cellular carriers. GTEM believes that any wireless priority access rules adopted should apply to all FCC-licensed two-way CMRS providers, except air-ground service.<sup>3</sup> Although most two-way CMRS traffic today is cellular, already other two-way services such as broadband personal communications services ("PCS") and enhanced specialized mobile radio services ("ESMR") are entering the market. These services, like cellular, may be useful to emergency services providers during disasters. There is no valid reason why providers of these services, to the extent they have the capability and choose to provide priority access service, should not be subject to the same set of regulations as cellular providers.<sup>4</sup>

As the Commission is aware, Congress adopted a model of regulatory parity for all commercial mobile radio services in the Omnibus Budget Reconciliation Act of 1993.<sup>5</sup> In implementing that piece of legislation, the FCC

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<sup>3</sup> Air-ground service should be excluded because, unlike other two-way services, air-ground service is not likely to be subscribed to by NS/EP personnel.

<sup>4</sup> GTEM recognizes that development of a CPAS capability for other two-way CMRS may not be as advanced as the cellular capability. However, because providing CPAS would be optional under the rules, the fact that providers of such services are not yet able to provide priority access is not a reason to exclude those services from the proposed rules.

<sup>5</sup> Pub.L.No. 103-66, 107 Stat. 312 (1993) (codified in principal part at 47 U.S.C. § 332).

classified all potentially substitutable commercial mobile radio services as CMRS and, in keeping with the statutory mandate, has embarked upon a mission to ensure that the regulations applicable to each service are similar.<sup>6</sup> GTEM believes that, in keeping with its statutory mandate, any CPAS rules adopted should apply to all two-way CMRS. Accordingly, should the Commission adopt the proposed CPAS rules, the rules should be amended to replace the word "cellular," wherever it appears, with the phrase "two-way CMRS except air-ground."

**B. The Commission Should Affirmatively State that Carriers Are Absolved of Any Liability Arising From Providing CPAS**

The NCS notes in the *Petition*, that cellular service providers are concerned that they might be found liable for injuries resulting from providing some customers priority access during times of emergency. The NCS states, however, that the Commission adequately addressed this issue in the context of its order regarding the Telecommunications Services Priority System. There, the Commission stated its belief that compliance with the TSP rules should absolve carriers of potential liability under the Communications Act.<sup>7</sup> The NCS

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<sup>6</sup> See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411 (1994).

<sup>7</sup> *Petition* at 10, *citing*, National Security Emergency Preparedness Telecommunications Service Priority System, Gen. Docket No. 87-505, 3 FCC Rcd 6650, 6658 (1988).

apparently believes that the same rationale would hold true in the context of CPAS.

While GTEM certainly agrees with NCS that compliance with any FCC-adopted CPAS rules should absolve carriers of any liability stemming from the carrier's providing CPAS. GTEM would like the Commission to address the liability issue in the context of any CPAS order. GTEM believes that the Commission should make an affirmative finding in any such order that compliance with such rules is an absolute defense to any liability question arising from providing CPAS.

C. A Funding Mechanism for Network Upgrades Should be Considered at a Later Date

Section 3(d)(8) of the proposed rules would require that service users "pay service providers as billed for CPAS." Notwithstanding this language, GTEM is concerned that the costs of CPAS are likely to be significant. Accordingly, when more is learned of the costs of implementation, the Commission may wish to consider working with the NCS and state and local agencies to devise a means of funding CPAS implementation in order to insure that CMRS providers make the investment necessary to provide CPAS.

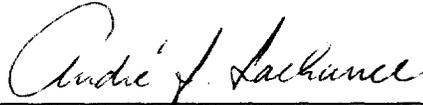
III. CONCLUSION

GTEM has a long history of supporting the development of improved emergency cellular calling capabilities. Accordingly, GTEM generally supports the establishment of CPAS. GTEM urges the Commission to keep consideration of this item separate from the *Public Safety Notice of Proposed Rulemaking* so

that deliberation on the *NPRM* – which is likely to take considerable time – does not delay action on the *NCS Petition*. GTEM also requests: (1) that the CPAS proposed rules be amended to apply to all providers of two-way commercial mobile radio services (“CMRS”) except air-ground service; (2) that the FCC affirm that entities providing CPAS in accordance with FCC rules be absolved of liability associated with denial of access to other users; and (3) that a funding mechanism be considered for CPAS when more is learned about the costs of implementation.

Respectfully submitted,

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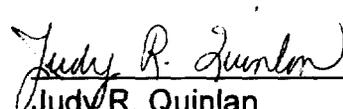
June 17, 1996

ITS ATTORNEY

## Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE Mobilnet" have been mailed by first class United States mail, postage prepaid, on the 17th day of June, 1996 to the party listed below:

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