

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

In the Matter of)	
)	WT Docket No. 01-320
Verizon Wireless Petition for Waiver of)	
Section 64.402 of the Commission's Rules)	

**COMMENTS OF
VOICESTREAM WIRELESS CORPORATION**

VoiceStream Wireless Corporation (“VoiceStream”) submits these comments regarding Verizon Wireless’ Petition for Waiver of Section 64.402 of the Commission’s Rules,¹ filed on November 2, 2001. Section 64.402 of the Rules sets forth the requirements for commercial mobile radio service (“CMRS”) operators choosing to provide Priority Access Service (“PAS”). VoiceStream supports the ability of CMRS operators like Verizon Wireless to obtain expeditious waivers of the Commission’s requirements under the present circumstances to respond to urgent government needs.² In fact, in the coming days VoiceStream will be filing its own waiver of the rules governing PAS.

**I. Under the Present Circumstances, VoiceStream Supports the Ability of
CMRS Operators to Obtain Expeditious Waivers of the PAS Rules.**

In response to recent terrorist events, the White House – through the Office of the Manager of the National Communications System (“NCS”) – issued an urgent appeal to CMRS operators for proposals to implement expeditiously a wireless emergency telephone service. Specifically, NCS, working with its service integrator, DynCorp, requested proposals from industry

¹ 47 U.S.C. §64.202; *see also* Part 64, Appendix B.

² The Secretary of Defense filed a statement in support of Verizon Wireless’ Petition for Waiver, also on November 2, 2001

regarding a two-stage PAS implementation -- (a) providing an “Immediate” PAS for National Security and Emergency Preparedness (NS/EP) personnel in the Washington DC area by December 10, 2001 (with implementation in New York City and Salt Lake City UT to follow rapidly on the heels of deployment in Washington DC) and (b) providing “Near-Term” PAS to NS/EP personnel by the end of 2002 that would serve as the foundation for a national end-to-end service.

DynCorp and NCS apparently have selected Verizon Wireless as an Immediate PAS provider for the Washington DC, New York City, and Salt Lake City areas on October 26, 2001.³ Verizon Wireless states that, under its technical solution for these three markets -- “Emergency Services Capability” or “ESC”, “within one hour of being notified of an emergency by OMNCS, Verizon Wireless will convert one carrier in each cell site from non-emergency to emergency use only,” which should increase the chances of NS/EP users with programmed handsets being able to access a radio channel. Verizon Wireless also plans to test an alternative technical solution (“Access Channel Persistence” or “ACP”) for potential deployment in its Nortel equipment markets, which would create two classes of users on the network and would work to expedite access messages from priority users over access messages from non-priority users, thus increasing the chances that calls from priority users will be successfully originated.⁴

Verizon Wireless states that neither of these solutions will meet all the requirements for PAS contained in the Commission’s Rules. It states that its technical solutions will not, for example, be capable of recognizing and differentiating among users assigned different priority levels, be available at all times by dialing a feature code, and will not place unsuccessful calls in a queue for the next available channel. Therefore, Verizon Wireless requests a waiver of Section

³ “Verizon to Grant Officials Wireless Priority” Washington Post, Saturday, November 3, 2001, page E1.

⁴ Verizon Wireless Petition for Waiver at 3-4.

64.202 in order to allow it to provide Immediate PAS to NCS. It asks that any waiver grant provide it liability protection from the nondiscrimination and unreasonable preference provisions of Section 202(a) the Communications Act,⁵ and also requests that the Commission provide it flexibility to implement different technical solutions from the two described above, so long as approved by NCS.⁶

VoiceStream Wireless supports the ability of CMRS operators to obtain waivers of the Commission's PAS rules in the present circumstances. As Verizon Wireless indicates, the technology does not exist at present for CMRS operators to satisfy all of the Commission's requirements. As the Commission recognized in the PAS Second Report & Order, the PAS rules were established because "NSEP personnel need the ability to receive priority access when using commercial wireless systems during emergencies."⁷ The fundamental purposes of the PAS rules would thus be subverted, and the public interest would be ill-served, if operators could not offer priority access to the federal government because they could not adhere strictly to all of the technical provisions contained in those rules. Verizon Wireless apparently has worked with the federal government to identify possible solutions to critical NS/EP needs, and the federal government has in turn notified the Commission that it supports Verizon Wireless' request for waiver. The Commission should grant the request expeditiously, including importantly, the requested liability protections, so that these obstacles to the immediate provisioning of vital telecommunications services to the federal government can be eliminated.

⁵ 47 U.S.C. § 202(a).

⁶ Verizon Wireless Petition for Waiver at 4-5.

⁷ The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, Second Report and Order, WT Docket No. 96-86, FCC 00-242, 15 FCC Rcd 16720 (2000) ("PAS Second R&O") at ¶ 11.

VoiceStream further notes that it is more important than ever at the present time to maintain the voluntary provisioning of priority access by CMRS operators that wish to provide such service to the government. In the PAS Second R&O, the Commission concluded that, “the best course is to allow CMRS carriers to offer PAS if, in their business judgment, the benefits justify whatever additional cost they might incur.”⁸ As Verizon Wireless has detailed to the Commission (and as VoiceStream will elaborate upon below), various CMRS operators are working with the federal government to gauge the extent of its needs, and the technical and financial abilities of these CMRS operators to respond to those governmental needs. This is precisely the type of market-driven process required at the present time. The Commission should not take any actions, here or elsewhere, that would hamper the ability of members of the CMRS industry to offer services that meet the specific, identified needs of NS/EP personnel by promulgating specific technical solutions and administrative requirements with which all participating CMRS operators must comply.

VoiceStream further wishes to emphasize that the Commission was correct in concluding that NCS should have responsibility for the day-to-day management and administration of PAS at the federal level and at the state and local level through its “authorizing agents,” with the Commission exercising oversight responsibilities.⁹ In order for wireless priority access to function effectively in areas that often straddle various governmental jurisdictions, it is imperative that there be a central point of contact for NS/EP users. In VoiceStream’s view, NCS’ reliance on State and Federal “authorizing agents” to authenticate and evaluate applications by NS/EP users seeking priority access and to recommend appropriate priority levels to NCS is sound. The Commission should not take any action to disturb this mechanism, at least, at the present time.

⁸ PAS Second R&O at ¶ 17.

II. In the Coming Days, VoiceStream Will Submit its Own Petition for Waiver of the PAS Rules, and VoiceStream Will Request the Commission to Move Expediently on That Request.

VoiceStream participated in the process by which Verizon Wireless was selected to provide an Immediate PAS solution for NCS and NS/EP personnel. VoiceStream provided detailed information to NCS and DynCorp regarding the PAS capabilities currently available using GSM technology for Washington DC and New York City, on both the immediate (60 day) and Near Term (by the end of 2002) basis requested by the government.

In consultation with its vendors, VoiceStream had determined that it can *immediately* deploy a *more full featured* priority access capability in Washington D.C. and New York City than was originally proposed for the Immediate service. This more full featured priority access, called Enhanced Multi-Level Precedence and Preemption (eMLPP), provides queuing of the priority call for the next available resource when radio or network resources are not available. eMLPP offers seven different levels of precedence (the two highest levels are reserved for network internal use) for call set-up and for call continuity in case of handover. VoiceStream will offer eMLPP on a subscription basis and, once initiated at subscriber account activation, eMLPP service will not require intervention by VoiceStream in the event of emergency (i.e., the service will be “always on”). eMLPP capabilities will also be available when roaming if supported by the visited GSM network.

Users with handsets equipped with the appropriate eMLPP signaling capabilities will be able to select the desired precedence level on a per call basis. Such handsets, however, are not commercially available at the present time (although VoiceStream anticipates that eMLPP capable phones will soon be available from Sony/Ericsson). Until eMLPP-capable handsets, or other mechanisms currently being investigated by VoiceStream for allowing users to select priority

⁹ *Id.* at ¶ 35.

levels, on a per call basis, are commercially available, all calls from NS/EP users will use the maximum authorized precedence level stored on the user's Subscriber Identity Module (SIM) card at the time of account activation.

VoiceStream would like to begin marketing eMLPP service to NS/EP users who have expressed an interest in its capabilities for Washington DC, New York City, and other cities deemed necessary for the public's safety and security. However, as described above, VoiceStream currently will not be able to allow users to select call precedence at call invocation, as required under the Commission's Rules.¹⁰ Thus, VoiceStream will shortly be seeking a limited waiver of these Rules, to allow it to begin voluntarily offering priority services immediately. This limited waiver would be needed only until eMLPP-capable handsets or alternate mechanisms for allowing a choice of priority levels on a per-call basis are commercially available. VoiceStream anticipates obtaining the support of OMNCS for this limited waiver petition.

III. CONCLUSION

VoiceStream supports the efforts of CMRS operators like Verizon Wireless to gain limited relief from the Commission's Rules governing PAS. Far from frustrating the purposes of those Rules, expeditious grant of waiver requests such as this will further the objectives of the Rules and the public interest in supporting the efforts of CMRS operators to meet the identified telecommunications needs of NS/EP users in these urgent times. In fact, in the coming days VoiceStream will also be petitioning for limited relief of the Commission's PAS rules so that it may also voluntarily offer priority services to NS/EP users, and it anticipates that the Commission will give its upcoming waiver petition expeditious treatment as well.

¹⁰ See 47 C.F.R. Part 64 App. B, ¶ 2(c).

Respectfully submitted

VoiceStream Wireless Corporation

By: /s/ Brian O'Connor
Brian T. O'Connor, Vice President
Legislative and Regulatory Affairs

Gary Jones, Director
Standards Policy

Robert Calaff, Corporate Counsel
Governmental and Regulatory Affairs

401 9th Street, N.W., Suite 550
Washington, D.C. 20004
202-654-5900

November 20, 2001