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

In the Matter of	)	
	)	
Priority Access Service	)	WT Docket No. 01-333
	)	
Petition for Waiver of Section 64.402 of the Commission's Rules	)	

VOICESTREAM REPLY COMMENTS IN SUPPORT OF ITS EXPEDITED PETITION FOR A TEMPORARY WAIVER

VoiceStream Wireless Corporation ("VoiceStream") submits this reply in support of its November 28, 2001 request for a temporary waiver of FCC Rule 64.402 to enable it to provide immediately to the National Communications System a priority access service.[1] Although these reply comments are not due until December 26, 2001, VoiceStream is submitting this reply early in the hope it will help facilitate the Commission's ability to act on this request expeditiously.

Several parties have supported VoiceStream's waiver request, including the Secretary of the Defense as the Executive Agent of the National Communications System.[2] To VoiceStream's knowledge, no one has opposed the request for a temporary rule waiver.

It is important to emphasize that the rule waiver VoiceStream seeks would be in effect for a brief period of time only. The Manager of the National Communications System ("NCS") wishes to activate as soon as possible a priority access service in Washington, D.C. and New York City, as well as in Salt Lake City during the Winter Olympics. VoiceStream intends to use in Washington, D.C. and New York City a technology – Enhanced Multi-Level Precedence and

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[1] *See Public Notice,* "Wireless Telecommunications Bureau Seeks Comment on a Petition for Waiver of the Commission's Part 64 Priority Access Service Rules," DA 01-2883 (Dec. 11, 2001).

[2] *See* Secretary of Defense Comments in Support of Petition for Waiver, Docket No. 01-333 (Dec. 6, 2001) CTIA Comments, Docket NO. 01-333 (Dec. 18, 2001); General Dynamics Decision Systems, Docket No. 01-333 (Dec. 18, 2001).

Preemption ("eMLPP") – that complies fully with existing priority access rules. However, the handsets needed to use the eMLPP system will likely not be available for several months. Accordingly, to meet the NCS' need for immediate service, VoiceStream must implement for a brief period an alternative priority access system – a system that would not fully comply with Commission rules.[3] VoiceStream also must use an alternative system for use during the Olympics.[4]

There is a second important component to the relief VoiceStream seeks: during the brief period that the rule waiver will be in effect, VoiceStream would be eligible for the same liability protection that it will be afforded once its eMLPP system becomes operational.[5] The Secretary of Defense specifically supports this request,[6] and the Commission has recognized that without some protection from liability, it is "unlikely that carriers will offer PAS."[7]

Commission rules specify that a rule waiver is appropriate for "good cause."[8] The Commission has already determined that priority access service "can provide significant benefits for public safety":

> [G]iven the need for a PAS system in order to ensure that NSEP personnel will be able to access the wireless system in emergency situations, and the demand for

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[3] As the NCS accurately states, during the period of the waiver – that is, "until the eMLPP handsets are available" – "all call attempts, not just NS/EP call attempts, from subscribed and authorized users will use the priority level assigned." Secretary of Defense Comments in Support of Petition for Waiver at 2-3.

[4] The Commission ordinarily does not involve itself in the technical details of how services are provisioned, and VoiceStream submits that in this particular instance, the public interest and national security would not be served by divulging such details in the public record. VoiceStream therefore urges the Commission not to impose any restrictions on the manner that it provisions priority access service during the interim period.

[5] The liability protections are discussed in *Priority Access Service Order,* Docket No. 96-86, 15 FCC Rcd 16720, 16727-28 ¶¶ 14-15 (July 13, 2000).

[6] *See* Secretary of Defense Comments in Support of Petition for Waiver at 4.

[7] *See Priority Access Service Order,* 15 FCC Rcd at 26730 ¶ 22.

[8] *See* 47 C.F.R. § 1.3.

> priority access by NSEP personnel, we find that it is in the public interest to permit CMRS systems to provide PAS.[9]

If its request is denied, VoiceStream will be precluded from providing priority access service at the Winter Olympics and its ability to begin providing priority access services in Washington, D.C. and New York City will be delayed. VoiceStream submits that neither the public interest nor the national security would be served by such an outcome.

For all the foregoing reasons, VoiceStream respectfully requests that the Commission (1) grant it a temporary waiver of FCC Rule 64.402 (and the corresponding Appendix B) and (2) provide to it the same liability protection that that it will receive once its priority access service complies with all Commission rules. The sooner the Commission acts on this request, the sooner VoiceStream can begin activating the priority access service that the National Communications System desires.

Respectfully submitted,

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[9] *See Priority Access Service Order,* 15 FCC Rcd at 16730-31 ¶¶ 22-24.