

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

In the Matter of	)	
	)	
Revision of the Commission's Rules to	)	CC Docket No. 94-102
Ensure Compatibility with Enhanced 911	)	
Emergency Calling Systems	)	
	)	
Request for Waiver	)	

To: The Commission

**REQUEST FOR WAIVER**

VoiceStream Wireless Corporation (“VoiceStream”),<sup>1</sup> by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission’s Rules,<sup>2</sup> hereby requests a limited waiver of the Commission’s *Fourth Report and Order* in the captioned proceeding and Section 20.18(c) of the rules, establishing June 30, 2002 as the deadline by which digital wireless systems must be capable of transmitting 911 calls from Text Telephone Devices (“TTY”).<sup>3</sup> The waiver request is limited to four markets in south central Pennsylvania (the “PCS One markets”) that VoiceStream acquired on April 1, 2002 pursuant to a transfer of control of D&E/Omnipoint Wireless Joint Venture, L.P. (d/b/a PCS One) from

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<sup>1</sup> VoiceStream, combined with Powertel, Inc., is the sixth largest national wireless provider in the U.S. with licenses covering approximately 96 percent of the U.S. population and currently serving over seven million customers. VoiceStream and Powertel are wholly owned subsidiaries of Deutsche Telekom, AG and are part of its T-Mobile wireless division. Both VoiceStream and Powertel are, however, operated together and are referred to in these comments as “VoiceStream.”

<sup>2</sup> 47 C.F.R. §§ 1.3, 1.925.

<sup>3</sup> See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Report and Order, 15 FCC Rcd 25216 (2000); 47 C.F.R. §20.18(c).

D&E Wireless, Inc. (“D&E”) to VoiceStream.<sup>4</sup> At the present time, VoiceStream is working diligently with its network vendors in anticipation of meeting the June 30, 2002 TTY deadline with respect to the remainder of its national network. However, VoiceStream requires a maximum of 75 additional days, until September 15, 2002, to integrate, test and deploy TTY technology in the PCS One markets.

As demonstrated herein, a waiver is warranted in light of VoiceStream’s recent acquisition of PCS One, the limited duration and geographic scope of the requested relief that VoiceStream seeks, and VoiceStream’s ongoing demonstrated diligence to achieve TTY compliance.

## **I. INTRODUCTION AND BACKGROUND**

VoiceStream significantly contributed to the development of solutions that will enable TTY users to make 911 calls on digital wireless networks by participating in the TTY Forum. As a member of the TTY Forum, a group consisting of wireless carriers, wireless equipment manufacturers, manufacturers of TTY devices, public safety organizations, and consumer organizations representing individuals who are deaf or hard of hearing, VoiceStream has worked cooperatively to achieve technical solutions to TTY compatibility.

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<sup>4</sup> See FCC Public Notice, *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action*, Report No. 1163 (Apr. 24, 2002) (announcing that the transfers of control of D&E /Omnipoint Wireless Joint Venture, L.P. and its wholly owned subsidiary Omnipoint Philadelphia E. Lancaster E License, LLC (collectively, “PCS One”) from D&E Wireless to VoiceStream Wireless Corporation were consummated); *see also* ULS File Nos. 0000652750, 0000652917, 0000832244, 0000832250 (transfer of control applications and consummation notifications).

VoiceStream was instrumental in developing TTY solutions for the Global System for Mobile communications (“GSM”) standard, in particular. GSM uses Cellular Text Telephony Modem (“CTM”) as a method of transmitting Baudot. CTM, which is optimized for speech and has frequency components at 400 Hz and 1000 Hz, is incompatible with Baudot, which has frequency components at 1.4 to 1.8 KHz. VoiceStream worked with the global GSM community to reach a consensus on a common signaling mechanism called “Bearer Capability Signaling,” which can successfully convert a CTM signal into Baudot. Since reaching an agreement with the GSM community to use Bearer Capability Signaling, VoiceStream and its network equipment vendors, Nokia, Ericsson, and Nortel, have tested and verified the performance of this GSM-specific implementation.

VoiceStream also has worked aggressively to meet the June 30 deployment deadline. VoiceStream met the Commission’s December 31, 2001 deadline for obtaining the equipment and upgrades necessary to enable its systems to transmit 911 calls from TTY devices. By that deadline, VoiceStream had issued purchase orders with Ericsson, Nokia, and Nortel for over \$5.5 million to cover the necessary hardware and software upgrades and initial deployment costs. VoiceStream also had obtained firm technical proposals from all three vendors. Moreover, VoiceStream had begun to test and verify loads for the Nortel and Ericsson implementations in its laboratory in Snoqualmie, Washington. VoiceStream began to test and verify the Nokia software by April, 2002.

By mid-April, VoiceStream finished its laboratory testing of the full end-to-end functionality of the Ericsson software and hardware needed to support TTY, including regression tests of basic GSM features such as call completion and GPRS call

completion. VoiceStream started deployment of the Ericsson TTY solution in the Washington, DC market area on March 27, 2002. VoiceStream continues to work diligently with Nortel and Nokia in anticipation of the June 30 deadline.

With the Commission's consent, on April 1, 2002, VoiceStream acquired control of PCS One from D&E.<sup>5</sup> Prior to the acquisition, PCS One was a joint venture partnership between D&E and VoiceStream, independently managed and operated by D&E, in which VoiceStream was a passive partner. PCS One held seven licenses to provide service in four south central Pennsylvania Basic Trading Areas ("BTAs").<sup>6</sup> Soon after it acquired control of PCS One, VoiceStream began to upgrade the PCS One network, which currently cannot support a number of VoiceStream functionalities. In particular, VoiceStream immediately took steps to upgrade the software and hardware required to transmit TTY calls in these four markets. Despite its best efforts, however, VoiceStream will not be able to complete these upgrades by the June 30 deadline.

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<sup>5</sup> See FCC Public Notice, *Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action*, Report No. 1108 (Feb. 20, 2002) (announcing FCC consent to the transfer of control).

<sup>6</sup> VoiceStream acquired control of the following seven licenses in Pennsylvania: KNLF911, Harrisburg, PA (BTA181); WPOJ792, Harrisburg, PA (BTA181); KNLG721, York-Hanover, PA (BTA483); WPOJ847, York-Hanover, PA (BTA847); WPOJ794, Lancaster, PA (BTA240); KNLF983, Lancaster, PA (BTA240); and KNLF719, Reading, PA (BTA370).

## **II. GOOD CAUSE EXISTS FOR WAIVER OF THE JUNE 30, 2002 DEADLINE**

VoiceStream requests a waiver of the June 30, 2002 TTY compliance deadline with respect to the four markets it acquired from PCS One. The Commission may grant an extension or waiver of a compliance deadline for good cause shown.<sup>7</sup> Good cause is shown and waiver of a rule is appropriate if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>8</sup> Similarly, under the Commission’s rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup>

To determine whether circumstances warrant a deviation from the general rule, the Commission has considered a number of factors, including the impact of a recent acquisition of licenses on the licensee’s ability to meet a regulatory requirement, the nature and scope of the relief sought, and the licensee’s diligence in attempting to meet the deadline. Specifically, in finding good cause to grant recent waivers of the construction deadline for two PCS licensees, the Commission gave weight to the licensees’ recent acquisition of the licenses subject to the deadline.<sup>10</sup> The Commission

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<sup>7</sup> See 47 C.F.R. § 1.3.

<sup>8</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>9</sup> See 47 C.F.R. § 1.925(b)(3).

<sup>10</sup> See *Monet Mobile Networks, Inc. Request for Waiver and Extension of the Broadband PCS Construction Requirements*, 2002 FCC LEXIS 1702, DA 02-820 (Apr. 9, 2002) (“*Monet*”) (finding that an extension of the PCS construction deadline was

also has granted waivers that are limited in duration and geographic scope.<sup>11</sup>

Furthermore, a licensee's diligence in trying to meet a Commission requirement has supported a finding of good cause for a waiver.<sup>12</sup> Each of these factors is present and supports a grant of VoiceStream's request.

Even before the PCS One transaction closed in April, VoiceStream's engineers began work to integrate PCS One's 210 cell sites into VoiceStream's network, making TTY compliance a top priority. Because the PCS One system has operated using

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warranted where, *inter alia*, Monet acquired the licenses though assignment less than 18 months prior to the construction deadline); *see also Leap Wireless International, Inc. Request for Waiver and Extension of Broadband PCS Construction Requirements*, 16 FCC Rcd 19573 (2001) ("*Leap Wireless*") (finding that an extension of PCS construction deadlines was warranted where, *inter alia*, Leap purchased licenses only 7-15 months prior to the construction deadlines).

<sup>11</sup> *See Interactive Video and Data Service Licenses; Requests by Lottery Winners to Extend Construction Deadline*, 11 FCC Rcd 9537, 9540 (1996) (Commission upheld Wireless Telecommunications Bureau's waiver of the one-year construction requirement for six Interactive Video and Data Service licensees, finding that "in light of the uncertainty described, the newness of the service, and the limited nature of the waiver, the Bureau's decision to waive compliance with the one-year construction requirement ... served the public interest and did not undermine that rule's underlying policies"); *Request of Wirelessco, L.P., Phillieco, L.P., and Sprint Corporation for Limited Waiver of Section 24.204 of the Commission's Rules*, 10 FCC Rcd 11111, 11114 (1995) (allowing Sprint an additional year to divest spectrum in the Detroit, Dallas, Des Moines, Iowa, and Philadelphia Major Trading Areas to come into compliance with CMRS spectrum cap, because "[w]e believe that ... the limited relief being sought warrants a waiver of the deadline").

<sup>12</sup> *See Monet*, 2002 FCC LEXIS 1702, at ¶6 ("Monet's diligence, combined with the other factors described herein, supports a limited waiver to allow Monet an additional eight months to construct the data system using HDR technology"); *Leap Wireless*, 16 FCC Rcd at ¶13 ("We ... find that an extension is supported by the fact that Leap has demonstrated diligence in the acquisition and construction of [its] licenses"); *see also Application of Counterpoint Communications, Inc. and Tribune Television Company; For an Extension of Time to Comply with Section 73.3555(d) of the Commission's Rules with the Acquisition of the Licensee of Station WTXS(TV), Waterbury, Connecticut*, 17 FCC Rcd 3243 (2002) (in granting extension of time to comply with multiple-ownership rules, Commission gave favorable consideration to the fact that the licensee had demonstrated that it has exercised its best efforts to achieve compliance with the rules).

outdated hardware and GSM 10 software, it had to be upgraded to GSM 13 software in order to support TTY transmissions. VoiceStream promptly obtained pricing estimates from its vendors and placed purchase orders for the appropriate software and hardware. VoiceStream estimates that the installation, testing, and deployment of TTY technology will take eight to ten weeks beyond the June 30 deadline to complete. The entire process is not expected to extend beyond mid-September.

VoiceStream is the largest GSM service provider in North America, bringing service to customers in 37 states. VoiceStream has invested over \$5.5 million to make the necessary equipment upgrades and to conduct extensive laboratory and field-testing to ensure TTY compatibility of its nearly nationwide network. Moreover, VoiceStream has been and continues to be active in developing technological solutions to TTY compliance with other members of the industry, the GSM community and its own vendors. In light of VoiceStream's demonstrated commitment to TTY and its ongoing diligence to achieve compliance by June 30, a limited waiver is warranted under the circumstances.

WHEREFORE, VoiceStream respectfully requests a waiver of Section 20.18(c) of the rules until September 15, 2002 with respect to the PCS One markets.

Respectfully submitted,

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May 30, 2002

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