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DA No. 05-1650

June 17, 2005

Wireless Telecommunications Bureau Seeks Comment on Verizon Wireless Petition for Waiver of Part 64 Priority Access Service Rule

WT Docket No. 05-212

Comment Date: June 24, 2005

In 2000, the Commission authorized Commercial Mobile Radio Service (CMRS) providers to offer priority access service (PAS) in accordance with the policies and procedures (uniform protocols) set forth in Appendix B to Part 64 of the Commission's Rules.¹ These uniform protocols require CMRS providers that elect to offer PAS to make available five priority levels² for National Security and Emergency Preparedness (NSEP) users.³ However, in a request for waiver of these protocols, Verizon Wireless asserts that the network equipment and software currently used with Code Division Multiple Access (CDMA) wireless systems are not currently capable of delivering PAS⁴ with the five priorities required under the Commission's rules.⁵

In the *PAS R&O*, the Commission concluded that the National Communications System (NCS)⁶ would have responsibility for the day-to-day administration of PAS, with oversight responsibilities residing

¹ Development of the Operational Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Second Report and Order*, WT Docket 96-86, 15 FCC Rcd 16720 (*PAS R&O*).

² *Id.* at 16722 ¶ 4; 47 C.F.R. § 64.402 Appendix B. The five PAS priority levels in order of priority are 1) Executive Leadership and Policy Makers; 2) Disaster Response/Military Command and Control; 3) Public Health, Safety and Law Enforcement Command; 4) Public Services/Utilities and Public Welfare; and 5) Disaster Recovery. 47 C.F.R. § 64.402 Appendix B, Section 5.

³ NSEP users are key personnel and those individuals in national security and emergency response leadership positions. 47 C.F.R. § 64.402 Appendix B, Section 5. PAS is not intended for use by all emergency service personnel. *Id.*

⁴ In its waiver request, Verizon Wireless asserts that PAS is now commonly referred to as wireless priority service (WPS). Petition for Waiver of Section 64.402 of the Commission's Rules filed by Verizon Wireless on May 13, 2005 at 1 (Waiver Request). Herein, we retain the terminology "priority access service" (PAS), but with the understanding that PAS and WPS, as used by Verizon Wireless are equivalent terms.

⁵ *Id.* at 2.

⁶ The NCS is an interagency organization that combines the communications assets of twenty-three Federal departments and agencies to address NS/EP telecommunications related issues. Statement in Support of Petition for Waiver filed by U.S. Department of Homeland Security on June 13, 2005 (NCS Statement of Support). NCS

with the Commission.⁷ Verizon Wireless states that it has been working with the NCS to provide a PAS capability that will meet the Department of Homeland Security's needs for providing priority access to NSEP users.⁸ In order to provide PAS capability promptly, Verizon Wireless on May 13, 2005, requested a waiver of Section 64.402 of the Commission's Rules⁹ to allow it to develop CDMA PAS capability in two phases: It proposes that the first phase PAS implementation would have a single priority level for all NSEP users,¹⁰ and that the second phase would provide the required five PAS priority levels.¹¹ Verizon Wireless believes it can deploy the second phase by early 2007.¹² Both the NCS and the Department of Defense (DoD) have filed statements in support of the Verizon Wireless waiver request.¹³

Section 1.925 of the Commission's Rules¹⁴ provides that a waiver of the Commission's Rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or in the applicant has no reasonable alternative.

Requests for waiver of the Commission's Rules are subject, unless otherwise provided, to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules.¹⁵ However, because Verizon Wireless' request implicates important public safety and Homeland Security considerations, we believe it would be in the public interest to treat the waiver request as a permit-but-disclose proceeding as allowed by the Commission's *ex parte* rules.¹⁶ Therefore, *ex parte* presentations

provides guidance and assistance to the President, the National Security Council, the Homeland Security Council, the Director of the Office of Science and Technology Policy, and the Director of the Office of Management and Budget concerning the coordination of, planning for, and provision of NS/EP telecommunications for the Federal government under all circumstances, including crisis or emergency, attack, recovery, and reconstitution. *Id.* at 1-2.

⁷ *PAS R&O*, 15 FCC Rcd 16722 ¶ 4.

⁸ See Waiver Request at 2. Verizon Wireless further asserts that NCS, Computer Science Corporation (NCS's service integrator), Verizon Wireless and equipment vendors have agreed that CDMA PAS deployment should occur in two phases. *Id.*; see also NCS Statement of Support at 6 (permitting the two-phased deployment would substantially accelerate the availability of PAS for key emergency responders in heavily-populated northeastern portion of the United States).

⁹ 47 C.F.R. § 64.402.

¹⁰ See Waiver at 2-3.

¹¹ See *id.* at 3.

¹² See *id.*

¹³ NCS Statement of Support; Statement in Support of Petition for Waiver filed by U.S. Department of Defense on June 13, 2005 (DoD Statement of Support). The DoD was the Executive Agent for the NCS before the creation of the DHS and adoption of Executive Order No. 13286 of February 26, 2003, § 46(b), 68 Fed. Reg. 10619, 10627 (designated the Secretary of Homeland Security as Executive Agent of the NCS. NCS Statement of Support at n.1. See also Executive Order No. 12472 of April 3, 1984, *Assignment of National Security and Emergency Preparedness Telecommunications Functions*, 49 Fed. Reg. 13471 (1984).

¹⁴ See 47 C.F.R. § 1.925.

¹⁵ See 47 C.F.R. § 1.1208.

¹⁶ See 47 C.F.R. §§ 1.1200(a), 1.1206. We note that Verizon Wireless requested treatment of this proceeding as Permit-but-Disclose. See Waiver Request at 8.

that are made with respect to the issues involved in the subject waiver request will be permissible but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules.¹⁷

Interested parties may file comments on the waiver request on or before June 24, 2005. Verizon Wireless may submit a reply comment on or before June 31, 2005. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹⁸

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

The full text of the waiver request, comments and all *ex parte* presentations will be available for inspection and duplication during regular business hours in the FCC Reference Information Center of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its web site, <http://www.bcpweb.com>, by email at fcc@bcpweb.com, by phone at (202) 488-5300 or (800) 378-3160,

¹⁷ See 47 C.F.R. § 1.1206(b).

¹⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver petition, contact Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center (202) 418-1355. Additionally, a copy of the Verizon Wireless waiver request, NCS statement and DoD statement can be found on the Wireless Telecommunications Bureau web page at <http://wireless.fcc.gov/> in the Wireless Headlines section under the heading "6/17/2005 PUBLIC NOTICE (DA 05-1650)."

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

For further information, contact Ramona Melson, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418-0680.

By the Acting Chief, Wireless Telecommunications Bureau.

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IMPACT (Verizon Wireless PAS PN 15621v1)

R. Melson