

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

In the Matter of)
)
Petition for Waiver of Section 64.402 of the)
Commission's Rules)

PETITION FOR WAIVER

Pursuant to Sections 1.3 and 1.925 of the Federal Communications Commission's rules, Verizon Wireless requests that the Commission promptly grant a waiver of Section 64.402 of the Commission's rules in order to allow it to implement Wireless Priority Service ("WPS") in the manner agreed to with the Department of Homeland Security.

I. BACKGROUND

On July 13, 2000, the Commission released its Second Report and Order in WT Docket No. 96-86, authorizing Commercial Mobile Radio Services ("CMRS") providers to offer priority access service ("PAS").¹ In that order, the Commission determined "that it is in the public

¹ 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 Order"). Priority access service provided by wireless carriers is now commonly referred to as wireless priority service.

interest to permit CMRS systems to provide PAS.”² Under the terms of the PAS Order and the rules adopted therein, CMRS providers that elect to offer WPS are required to do so in accordance with the policies and procedures set forth in Appendix B to Part 64 of the FCC’s rules.³

Verizon Wireless has been working with the National Communications System (“NCS”), part of the Department of Homeland Security (“DHS”), and its service integrator, Computer Science Corporation (“CSC”), to develop a CDMA WPS capability, and the parties have now agreed on a WPS capability that will meet DHS’ needs for providing priority access to National Security and Emergency Preparedness (“NSEP”) users. The network equipment and software currently used to provide CDMA wireless services, however, are not capable at this time of delivering WPS with one of the features required under the FCC’s rules, the feature requiring service providers to distinguish among users in different priority groups.⁴ Due to the complexity of the software development needed to provide WPS on CDMA networks and the budgetary constraints that exist, the NCS, CSC, the equipment vendors and Verizon Wireless have therefore agreed that CDMA WPS deployment should occur in two phases. In Phase I, all call attempts by priority users will be placed in the same queue awaiting the next available WPS channel, thus different priority levels will not be recognized. All of the other FCC-mandated

² *Id.*, at 16728 (para. 15).

³ *See* 47 C.F.R. § 64.402 and Part 64, Appendix B.

⁴ These features generally include: (1) providing priority access to the next available radio channel to designated priority users during times of emergency; (2) recognize five different user priority levels; (3) providing the ability to access the service by dialing a feature code; and (4) insuring that a reasonable amount of CMRS spectrum remains available at all times for public use. *See* 47 C.F.R. Appendix B.

WPS requirements will be provided in the Phase I capability. In Phase II, priority levels will be recognized in accordance with 47 C.F.R. Appendix B. Work is currently underway to deploy Phase II WPS with the target deployment date being early 2007.

II. REQUEST FOR WAIVER

Section 64.402 of the Commission's Rules states that CMRS providers that elect to provide WPS "shall provide [WPS] in accordance with the policies and procedures set forth in Appendix B to this part."⁵ Appendix B provides for five different priority levels to be assigned to NSEP leadership positions.⁶ Because the Phase I CDMA WPS capability will not be able to distinguish among users assigned different priority levels, Verizon Wireless must obtain a waiver of Section 64.402 to provide Phase I service. The Commission should keep in mind that the specific requirements in Appendix B, such as the distinct priority levels, were adopted directly from the NCS' proposal for WPS rules. Given that NCS wants to procure WPS from Verizon Wireless without the priority level feature that it itself had asked be included in the rule, the Commission should find that a waiver is warranted.

Verizon Wireless requests that the Commission grant Verizon Wireless a waiver of Section 64.402 of the Commission's rules so that it can provide Phase I CDMA WPS. The waiver requested would take effect upon implementation of the Phase I CDMA capability and remain in effect until Phase II service, which will recognize the five priority levels, is implemented by Verizon Wireless.

⁵ 47 C.F.R. § 64.402.

⁶ 47 C.F.R. Part 64, Appendix B, Section 5.

The waiver should extend to Verizon Wireless the same liability protection set forth in paragraphs 22-24 of the PAS Order. The same reasons the Commission cited in granting liability protection to WPS providers in the PAS Order are equally applicable to Phase I CDMA WPS. Specifically, the Commission should state that “providing Phase I CDMA WPS to authorized National Security and Emergency Preparedness (“NSEP”) users pursuant to contract with CSC, another service integrator under contract to the NCS or DHS, or otherwise approved by the NCS or DHS will be *prima facie* lawful under the Communications Act and will not constitute unreasonable discrimination or an unreasonable act or practice.”

III. LEGAL ANALYSIS

Section 1.925 of the Commission’s rules requires that entities requesting a waiver demonstrate (1) that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case; and (2) that a grant of the waiver would be in the public interest. Alternatively, entities may demonstrate that due to unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest. The instant waiver request meets each of these criteria.

A. **The underlying purpose of Section 64.402 would not be served by application of the rule in this case.**

The underlying purpose of Section 64.402 would not be served by applying the rule in this case. In adopting the PAS Order, the Commission stated that the purpose of the rule was “to help meet the national security and emergency preparedness (NSEP) needs of the Nation.” At this time, a WPS capability is only available for carriers deploying GSM technology. Only GSM providers are currently providing WPS to NSEP users. Based on year-end 2004 subscriber data reported by the top five CMRS providers, approximately forty-five percent of the United States wireless subscribers are served by carriers using CDMA technology. Verizon Wireless, the

nation's second largest wireless service provider with over 45 million subscribers, uses CDMA technology.

Verizon Wireless is the carrier of choice for many government users. Deployment of WPS over CDMA networks will enable those users to have better access to NSEP users during times of emergency. However, the only solution that enables WPS over CDMA networks at this time cannot distinguish among the five user priority levels. Accordingly, a waiver of the priority level requirement is necessary to deploy a CDMA WPS capability by early 2006. Strict adherence to the priority level requirement will only serve to further delay deployment of a CDMA WPS capability. Given that the waiver will allow the government to deploy a CDMA WPS capability much more quickly and that NCS wants to implement CDMA WPS with the priority level limitation, a waiver is warranted.

B. Granting the waiver would serve the public interest.

WPS service is essential to NSEP users during times of emergency when wireless networks can become congested. In the PAS Order, the FCC found that federal, state and local public safety organizations rely on CMRS provider networks in times of emergencies for their CMRS needs. The FCC found, therefore, that "NSEP personnel need the ability to receive priority access when using commercial wireless services during emergencies."⁷

In 2002, the Commission found that a similar waiver request submitted by VoiceStream (now T-Mobile) was in the public interest. In that case, VoiceStream requested a waiver of the WPS requirement that users be able to activate WPS on a per call basis by dialing a feature code. In granting the waiver, the Commission found that the need to make WPS service available to

⁷ PAS Order, 15 FCC Rcd at 16725-26 (para. 11).

NSEP users made strict adherence to its rules unduly burdensome and contrary to the public interest.⁸ Verizon Wireless believes that a similar finding is warranted in this proceeding.

Recognizing that many NSEP users are Verizon Wireless subscribers, the NCS has made obtaining a WPS capability from Verizon Wireless a priority. Granting the waiver will therefore serve the public interest by enabling Verizon Wireless to provide WPS to NSEP users more quickly, thus improving the ability of NSEP users that are Verizon Wireless subscribers to complete essential wireless calls in a time of emergency.

In order to protect the public interest, the FCC's WPS rules require service providers to "[i]nsure that at all times a reasonable amount of CMRS spectrum is made available for public use."⁹ Verizon Wireless has taken great care in designing its potential WPS offering to insure minimal impact on non-emergency callers. Because the waiver only pertains to the respective priority levels of government users, grant of the waiver will not impact the amount of spectrum available for public use.

The WPS software Verizon Wireless will deploy will establish a WPS queue within each cell sector in the Verizon Wireless network to allocate open communication channels to authorized WPS subscribers according to a priority order. No specific channel or block of channels is reserved for WPS use. Instead, the call processing procedures of the Verizon Wireless network will allocate a maximum 25 percent of the radio channels that become available to the queue of WPS subscribers, while maintaining 75 percent of the radio channels

⁸ VoiceStream Wireless Corporation Petition for Waiver of Section 64.402 of the Commission's Rules, *Memorandum Opinion and Order*, 17 FCC Rcd 6134, 6140 (para. 17) WT Docket No. 01-333 (2002).

⁹ 47 C.F.R. Part 64, Appendix B, Section 3(e)(8).

for non-NSEP use. By reserving capacity for non-NSEP use, Verizon Wireless will insure that adequate radio capacity is provided to the public during times of increased NSEP calling volumes.

Verizon Wireless will implement this channel reservation scheme by using the “Hard Public Use by Departure Allocation” (“H-PURDA”) or an equivalent algorithm within the network-switching infrastructure. The development of H-PURDA and similar algorithms was commissioned and studied by the DHS through CSC.¹⁰ These algorithms have been scientifically proven and confirmed by CSC to VZW to offer the following benefits: (1) queuing for radio resources while also ensuring reasonable capacity for public use calls even when NS/EP calling is excessive; and (2) equivalent overall throughput of non-NSEP calls during congested times when there are NS/EP calls. Indeed, the CSC Algorithm Study demonstrates that during times of emergency when NSEP traffic volumes may spike at one particular location, use of the algorithms studied ensures a relatively high call completion probability for NSEP users while only reducing call completion probability for the general (non-NSEP) public by less than two percent.¹¹

By deploying WPS using an algorithm that reserves most network capacity for public use, Verizon Wireless will satisfy the FCC rule requirement to insure adequate CMRS capacity for public use and thereby protect the public interest.

¹⁰ Wireless Priority Service for National Security/Emergency Preparedness: Algorithms for Public Use Reservation and Network Performance (“CSC Algorithm Study”), prepared by Nyquetek Inc. for DynCorp, August 30, 2002. DynCorp is the predecessor in interest to CSC. The CSC Algorithm Study is attached to this Petition as Appendix A.

¹¹ CSC Algorithm Study at 17-19.

IV. THE FCC SHOULD ALLOW EX PARTE CONTACTS ON A PERMIT BUT DISCLOSE BASIS

Section 1.1208 of the Commission rules provides that waiver proceedings, such as this, are deemed restricted proceedings for ex parte contacts purposes, meaning that ex parte contacts with the Commission are prohibited if any other entity makes a filing in the proceeding.¹² The Commission, however, has the discretion to modify the normal ex parte rules by order, letter or public notice, where the public interest so requires.¹³

Verizon Wireless respectfully requests that the Commission rule that ex parte contacts be permitted in this proceeding on a permit but disclose basis. In this proceeding, the Commission will be determining the terms by which Verizon Wireless will provide WPS service to the federal government. Permitting ex parte communications (subject to rules requiring that a letter be filed summarizing those communications) will facilitate communication among Verizon Wireless, NCS, CSC and the FCC which will in turn help to expedite action on this request.

¹² 47 C.F.R. § 1.1208 and Note 1.

¹³ 47 C.F.R. § 1.1200(a).

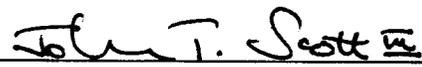
V. CONCLUSION

Verizon Wireless respectfully requests that the FCC grant a waiver of Section 64.402 of the Commission's rules in order to allow it to implement Phase I Wireless Priority Service ("WPS") without the ability to distinguish among the five priority levels required in the FCC's rules. The federal government has requested Phase I WPS from Verizon Wireless without the priority levels initially, in order to meet its need for a CDMA WPS service. As discussed above, adherence to the FCC rule in this case will frustrate the purpose of the rule and granting the waiver will serve the public interest.

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Respectfully submitted,

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APPENDIX A