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

In the Matter of:	)	
	)	01-333
VoiceStream Petition for Waiver	)	WT Docket ~~96-86~~
of Section 64.402 of the	)	
Commission's Rules	)	

Statement in Support of Petition for Waiver

The Secretary of Defense, Executive Agent of the National Communications System, through duly authorized counsel, hereby files this statement in support of the captioned petition for waiver.[1]

VoiceStream Wireless Corporation (VoiceStream) requests a waiver of applicable Commission Rules and Regulations to permit it to provide wireless priority access service (PAS) voluntarily to authorized federal, state and local governments on an expedited basis. The Commission recognized the need for PAS in its Report and

[1] Executive Order 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions", April 3, 1984 (49 Fed. Reg. 13472), established the National Communications System. It consists of an administrative structure involving the executive agent, the Committee of Principals, the manager, and the telecommunication assets of the 22 Federal organizations represented on the Committee of Principals. Section 1(e) of EO 12472 designates the Secretary of Defense as the Executive Agent of the NCS.

Order adopting PAS rules.[2] The horrific and unconscionable acts of September 11, 2001 reaffirmed the Commission's finding. As in previous emergencies, NS/EP responders attempted to use wireless communications yet could not due to system congestion.

In New York and Washington, two of three cities selected by the NCS for immediate implementation of PAS, VoiceStream states it is able to immediately offer a priority access capability called Enhanced Multi-Level Precedence and Preemption (eMLPP). Its capabilities track those set forth in the Commission's PAS Order. VoiceStream states eMLPP requires no special activation (it is always "on"), and provides five levels of NS/EP priority. When the VoiceStream wireless network is congested in cities where eMLPP is available, an NS/EP user's call attempt is placed in a queue for the next available resource based on the priority level assigned.

VoiceStream states the waiver request is necessary based on the current non-availability of handsets to allow full implementation of eMLPP. Until the eMLPP handsets are available, **all** call attempts, not just NS/EP call attempts, from subscribed and authorized users will use the priority

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[2] Establishment of Rules and Requirements for Priority Access Service, WT Docket No. 96-86, 15 FCC Rcd. 16720 (2000). (The "PAS Order")

level assigned.[3] This does not comply with PAS rules that anticipate that priority access service would be activated on a per call basis by dialing a feature code.

The NCS is prepared to administer PAS in accordance with the FCC rules and regulations. The PAS rules track very closely with those of the Commission's Telecommunications Services Priority system, also administered by the NCS. Handbooks and instructional material developed for TSP are being used as guides for development of wireless priority processes and procedures to ensure only qualified NS/EP users are assigned priorities. While at this time there are no specially designated "authorizing agents" to request priorities as contemplated by the rules, the NCS is working to identify them. The rules also allow the NCS to assign priorities directly upon requests from service users. The NCS has contacted Federal, state and local organizations with NS/EP responsibilities in those cities where immediate PAS is contemplated and is receiving requests for PAS service.

In the PAS Order, the Commission addressed the issue of service provider liability. It concluded that providing priority access to authorized NS/EP uses in accordance with

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[3] As a practical matter, this would likely have no effect on non-NS/EP users. When there is no network congestion, the priority creates no real advantage.

the PAS rules would be *prima facie* lawful and not unreasonable discrimination or an unreasonable preference under Section 202(a) of the Communications Act of 1934, as amended. VoiceStream requests its operations under terms of the waiver should be afforded the same protection, and the Secretary of Defense supports that request.

Wherefore, in view of the foregoing, the Secretary of Defense as Executive Agent of the National Communications System urges the Commission to grant the waiver sought by VoiceStream and to specifically include the same limitations on service provider liability as contained in the PAS Report and Order.

Respectfully submitted,

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