

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Petition for Waiver of Section 20.18(g)(1)(iv) of )  
the Commission’s Rules )  
 )

ORDER

Adopted: January 26, 2010

Released: January 26, 2010

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. Verizon Wireless Corporation (Verizon)<sup>1</sup> seeks a limited waiver of Section 20.18(g)(1)(iv) of the Commission’s rules<sup>2</sup> in order to allow it to activate a limited number of non-location-capable handsets developed at the request of a federal government agency with important national security responsibilities (Agency).<sup>3</sup> For the reasons discussed herein, we grant Verizon’s request.

II. BACKGROUND

2. Section 20.18(g) provides in relevant part: “Licensees subject to this section who employ a handset-based location technology ...: (1) ... shall: ... (iv) Ensure that 100 percent of all new digital handsets activated are location-capable no later than December 31, 2002, and thereafter.” According to Verizon, the Agency requested that Verizon activate and provide service to digital wireless handsets that the Agency specifically has designed to omit location capabilities.<sup>4</sup>

3. Verizon states that the Agency intends that only its employees and other government users working with the Agency will use these handsets, solely in connection with the performance of their official duties.<sup>5</sup> According to Verizon, the presence of GPS capabilities in such handsets could potentially compromise national security and put the lives of the users of these handsets in danger.<sup>6</sup> Verizon states that it will activate fewer than 50,000 of these handsets.<sup>7</sup> Because these handsets fall

<sup>1</sup> Petition for Waiver filed by Verizon Wireless Corporation, January 15, 2008 (Verizon Petition).

<sup>2</sup> 47 C.F.R. § 20.18(g)(1)(iv).

<sup>3</sup> We do not identify the Agency in this order because of the sensitive nature of its activities and because the specific identity of the Agency is not material to our findings in this Order.

<sup>4</sup> Verizon Petition at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4.

under section 20.18(g)(1)(iv) of our rules, Verizon seeks a waiver of this provision for these particular handsets.<sup>8</sup>

### III. DISCUSSION

4. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>9</sup> We conclude that Verizon's petition should be granted because it has demonstrated unique and unusual factual circumstances such that application of the rule would be contrary to the public interest.

5. Verizon seeks waiver of the Commission's handset location capability requirement only in connection with a limited number of phones to be used exclusively by the Agency's employees and other government users who are tasked with national security responsibilities. Moreover, Verizon states that these employees and users are aware that their mobile devices will lack location capabilities. Requiring location capability could, in fact, compromise their ability to achieve the Agency's mission, and even endanger their lives as well as the lives of members of the general public they are attempting to assist. Given these considerations, we conclude that it would be contrary to the public interest to require location capability in the handsets at issue, and that grant of Verizon's waiver request will effectively promote the protection of life and property.<sup>10</sup> We note that Verizon has made clear that handsets made available to the general public will not be affected by grant of this waiver, nor will Verizon fail to meet any Commission compliance benchmarks for location capability overall.<sup>11</sup> We also direct Verizon to instruct the Agency to surrender handsets to Verizon at the end of the use period and to take any other steps necessary to ensure that the handsets will not be made available to any person other than Agency personnel and other authorized government users.

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<sup>8</sup> Verizon notes that it does not also seek waiver of rules section 20.18(g)(1)(v), which requires Verizon Wireless to achieve 95 percent penetration of location-capable handsets among its subscribers by December 31, 2005. According to Verizon, its current location-capable handset penetration rate is over 96 percent and the addition of fewer than 50,000 non-compliant handsets "would plainly not cause this percentage to dip below the 95 percent benchmark." *Id.* at 2-3, footnote 3.

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

<sup>10</sup> See e.g. Motorola Inc., Application for Consent to Partition and Disaggregate Licenses and Requests for Waiver of Part 80 Rules to Permit Use of Maritime Frequencies for Private Land Mobile Radio Communications, File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759, 0002633764, 0002633769, 0002635143, *Order*, 22 FCC Rcd. 579, 583 ¶ 7 (2007) ("these actions have furthered the public interest by increasing . . . the effectiveness of the applicants' public safety and homeland security communications systems"); Applications of State of Alaska, Request for Waiver of Sections 2.102(c), 2.103(a) 90.20, and 90.173(c) of the Commission's Rules, File Nos. 0001036496, 0001036497, 0001039631, *Memorandum Opinion and Order*, 18 FCC Rcd. 16315, 16327 ¶ 19 (2003) ("We further find that Alaska has demonstrated that the improved efficiencies in public safety communications associated with the proposed system will allow Alaska to perform its critical public safety responsibilities, such as protection of life and property, more effectively and efficiently, thereby serving the public interest").

<sup>11</sup> Verizon Petition at 3-4.

**IV. ORDERING CLAUSES**

6. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Waiver Petition filed by Verizon Wireless IS GRANTED as noted herein.

7. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)  
Chief, Public Safety and Homeland Security Bureau