

STATEMENT OF COMMISSIONER
MICHAEL J. COPPS
Agreeing in Part and Dissenting in Part

RE: VoiceStream Wireless Corporation – Petition for Waiver of Section 64.402 of the Commission’s Rules.

The very first line of the Communications Act explains the Commission’s public safety responsibility. It states that the Commission was created:

“[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, *for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communication . . .*”¹

We therefore have the responsibility to make our communications system an effective tool in times of national emergency. The attacks that occurred on September 11 highlighted both the immediacy of the need for such preparation, and the utility of effective communications networks. I believe that our government and our communications industries acted admirably, and even heroically, during and after the attack. They allowed us to fight the fear of terror with the power of communications, and they should be commended.

Establishing a well-conceived priority access service (“PAS”) promotes public safety. I therefore support the Commission’s granting of a temporary waiver to VoiceStream of portions of our previously established PAS rules. This waiver will allow the National Communications System (“NCS”) and VoiceStream to put a working PAS in place while a fully compliant system is constructed.

Protecting the public safety, however, extends beyond establishing priority use of our networks for high government officials and public safety personnel. We also have the responsibility to protect all our citizens’ use of the wireless network. In emergencies the wireless calls of regular Americans are critical. People from all walks of life provide information about attacks or disasters to the government and must be able to call 911 or other emergency responders to protect their families and fellow citizens before government officials arrive. Furthermore, we should never discount the importance of keeping the channels of communication open to all of our citizens insofar as it is possible to do so. All of us should understand the implications of a PAS. We should know whether our carrier’s PAS will reduce our ability to complete calls in an emergency. The Commission therefore should have required VoiceStream to disclose to its customers the effect the PAS will have on the ability of those Americans *not* on a PAS list to make calls

¹ 47 U.S.C. § 151 (italics added).

during an emergency. This waiver does not do so. Therefore, I dissent to this portion of the item.

A Temporary Waiver Will Protect Public Safety

Sometimes meeting our responsibility to make our networks effective tools for promoting the national defense and public safety requires extraordinary actions. One such action is the creation of wireless PAS. The NCS requested in 1995 that the Commission implement wireless PAS. NCS explained that persons involved in national defense and public safety must be sure that they can make wireless telephone calls without fear that congestion of the network would make completing such calls difficult. The Commission initiated a rulemaking and released a Report and Order in 2000 creating rules for a wireless PAS system.²

I believe that the Commission has a special responsibility to protect public safety, and I support the creation of wireless PAS. A well-functioning PAS can make the wireless system a powerful tool in the hands of senior government officials and emergency responders. The ubiquity and ease-of-use of the wireless system is a great asset, and we should put it to work for the American people in emergencies. In such emergencies, above-average use of the system overloads the network, rendering it less useful for everyone. For these situations, the government could assign a portion of its spectrum for an emergency network that does not piggyback on the public network. If it does not, we must try to devise a system where critical government users can depend on the public network for near-certain call completion. If we cannot do this we will not be able to rely on the public wireless network for this task.

As described in today's Order, the VoiceStream PAS promises to make their network available to government users at all times. For this reason, I commend VoiceStream for being the first carrier to implement a PAS. I believe that it is important that VoiceStream meet our full PAS rules as soon as possible. Because of the special circumstances created by the attacks of September 11th, however, I support a temporary waiver of our rules to ensure that a system can be put in place as soon as possible, while a completely compliant solution is in the works. I also support a more universal examination of PAS by the Commission to begin as soon as possible, in light of the new public safety environment.

We Should Have Provided All the Facts to the American People

It is legitimate to create a PAS that recognizes that some communications between high government officials and emergency responders must get through even if it means reducing the ability of the rest of us to complete calls. However, as we move ahead with such a system, we must ensure that all Americans fully understand the implications of the new system.

² *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Through the Year 2010, Second Report and Order*, 15 FCC Rcd 16720 (2000) ("PAS 2d. R&O").

I would therefore require any carrier that implements a PAS to inform its customers of the creation of the system and the impact on its customers' ability to complete calls in an emergency. With this information our citizens can decide which carrier they are most comfortable with, and how much to rely on their wireless phone in an emergency. Our reliance on market forces to regulate carrier behavior in the largely unregulated wireless marketplace depends on consumers' ability to make informed decisions about their carrier. We must not "hide the ball" when it comes to PAS. Consumer anger will be overwhelming if the first time consumers learn that a PAS has reduced their chance of completing a call is in the aftermath of an emergency. Our citizens deserve to be fully informed ahead of time.

In other areas we do not require carriers to disclose every action that has an impact on their service. But PAS is obviously a special circumstance. First, we are dealing with critical public safety situations here, and with potentially life-threatening national emergencies where people will depend on their wireless phone as a lifeline. When dealing with PAS we address far, far more important circumstances than we do when we decide not to require the disclosure of other everyday carrier decisions that affect service. Second, I believe that there is no way that even a diligent consumer can understand the implications of PAS on their service without carrier disclosure. Without a requirement to disclose the impact of PAS, carriers have the perverse incentive to avoid determining the exact implications of PAS, to downplay the impact of PAS, or to hide the existence of PAS from consumers. This does not promote public safety.

Finally, some argue that PAS will have little, if any, impact on consumers' use of their systems, and that informing consumers will only scare them into avoiding carriers with a PAS. They argue that consumers already have little chance of completing a call in an emergency, and that PAS will reduce this chance by only a small amount. If that is the case, then disclosing the impact of PAS to consumers should not dissuade consumers from signing up with a carrier. If PAS is not a threat, then why not inform customers? If, on the other hand, PAS turns out to seriously undermine customer use of the network in an emergency, and this causes customers to avoid particular carriers, why would we want to protect carriers from this appropriate market response? Carriers faced with customers who are informed about PAS will have an incentive to design a PAS that achieves maximum utility for both the government and consumers – the efficient outcome.

Furthermore, it is important to note that today's Order leaves unresolved the question of how much service degradation can be caused by PAS before our rules are violated. While a carrier may claim to keep consumer impact to an additional 1 or 2 percent reduction in call completion, our Order does not indicate whether a carrier would violate our rules if this reduction turns out to be 10 or 20 percent. Such a clarification is much needed. In the *PAS R&O* we noted the importance of a PAS resulting in "only a minimal effect on the general wireless user."³ Today's Order reiterates that our rule that "[s]ervice providers who offer any form of priority access service shall . . . [i]nsure that at

³ *PAS 2d. R&O* at ¶ 32.

all times a reasonable amount of CMRS spectrum is made available for public use.”⁴ I believe that this rule means that if a carrier effectively denies its customers access to wireless service that it has violated our PAS rules and is no longer protected from liability under Section 202(a). An upcoming PAS review by the Commission should clarify how our existing rules operate.

Conclusion

Protecting the public safety is a primary responsibility of the Commission. I believe that establishing a well-conceived PAS promotes the public safety, so I agree with our decision to grant a temporary waiver of our rules so that a PAS can be put in place while a fully compliant system is constructed.

I also believe, however, that protecting the public safety extends to giving all Americans the information we need to protect ourselves. The Commission should have required VoiceStream to disclose to its customers the fact that it is instituting a PAS and to disclose the effect of the PAS on consumers’ ability to make calls during an emergency. It is this lack of basic disclosure that forces my dissent to this portion of the waiver.

⁴ 47 C.F.R. § 64.402, Appendix B.