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

In the Matter of	)	
	)	
Review of Rules and Requirements	)	PS Docket No. 20-187
For Priority Services	)	
	)	
National Security Emergency Preparedness	)	
Telecommunications Service Priority System	)	
	)	
NTIA Petition for Rulemaking to Revise the Rules	)	
for Wireless Priority Service	)	
	)	
NTIA Petition for Rulemaking to Revise the Rules	)	
for the Telecommunications Service Priority	)	
System	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 16, 2020 **Released: July 17, 2020**

By the Commission: Chairman Pai and Commissioners O'Rielly, Carr, and Rosenworcel issuing separate statements.

Comment Date: (30 days after publication in the Federal Register)
Reply Comment Date: (60 days after publication in the Federal Register)

TABLE OF CONTENTS

I. INTRODUCTION

1. For years, National Security and Emergency Preparedness (NSEP) personnel[1] have had access to priority services programs that leverage access to commercial communications infrastructure to support national command, control, and communications by providing prioritized connectivity during national emergencies.[2] This prioritized connectivity may consist of prioritized provisioning and restoration of wired communications circuits or prioritized communications for wireline or wireless calls. These programs are used to "maintain a state of readiness [and] to respond to and manage any event or crisis… [that] degrades or threatens the NSEP posture of the United States."[3] The Department of Homeland Security (DHS) manages these programs through contractual agreements with telecommunications providers, service providers, and other contractors.[4] However, the Commission also has had a long-standing regulatory role with respect to certain elements of these programs.

2. The Commission's rules for the current priority services programs date back to the establishment of the Telecommunications Service Priority (TSP) System in 1988[5] and the creation of the Priority Access Service (PAS), more commonly referred to as Wireless Priority Service (WPS), in 2000.[6] The Commission adopted these rules for common carriers in large part based on a concern that, without them, the non-discrimination requirement of section 202 of the Communications Act would prevent (or at least deter) common carriers from voluntarily offering priority treatment.[7] These rules, which were developed when communications networks were primarily based on circuit-switched technologies, have

[1] "NSEP personnel" generally refers to individuals who are responsible for maintaining a state of readiness or responding to and managing any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. *See* 47 CFR pt. 64, Appx. A § 3(f); *id.* Appx. B § 2(d)(4)(e).

[2] The current priority services programs were established pursuant to Executive Order 12472, issued in 1984, which called for development of priority service programs to facilitate communications among top national leaders, policy makers, military forces, disaster response/public health officials, public utility services, and first responders. *See* Exec. Order No. 12472, 3 CFR 193 (1985). In 2012, Executive Order 12472 was revoked and replaced by Executive Order 13618. Exec. Order No. 13618 § 7(b), 3 CFR 273 (2013), Assignment of National Security and Emergency Preparedness Communications Functions (July 6, 2012) (Executive Order 13618). In general, Executive Order 13618 preserved the existing NSEP communications systems. *See* Shawn Reese, Cong. Research Serv., National Security and Emergency Preparedness Communications: A Summary of Executive Order 13618 at ii (2012). However, Executive Order 13618 "change[d] federal [NSEP] communications functions by dissolving the National Communications System, establishing an executive committee to oversee federal [NSEP] communications functions, establishing a programs office within the Department of Homeland Security to assist the executive committee, and assigning specific responsibilities to federal government entities." *Id.*

[3] 47 CFR pt. 64, Appx. A § 3(f).

[4] *See generally* Cybersecurity and Infrastructure Security Agency, Government Emergency Telecommunications Service (GETS), https://www.cisa.gov/government-emergency-telecommunications-service-gets (last visited May 28, 2020).

[5] *See National Security Emergency Preparedness Telecommunications Service Priority System*, Gen. Docket No. 87-505, Report and Order, 3 FCC Rcd 6650, 6672-81 (1988) (*TSP Order*).

[6] *See Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Agency Communication Requirements through the Year 2010*, WT Docket No. 96-86, Second Report and Order, 15 FCC Rcd 16720 (2000) (*PAS Order*). Government, industry, and users commonly refer to Priority Access Service (PAS) as Wireless Priority Service (WPS). To promote clarity and consistency, we refer to the program as WPS in this Notice of Proposed Rulemaking.

[7] *TSP Order*, 3 FCC Rcd at 6658, para. 45 ("The essential purpose of TSP is to provide standards that permit carriers responding to NSEP provisioning and restoration priority requests to act lawfully and avoid violation of the proscription of 47 U.S.C. § 202 that makes it unlawful for any common carrier to engage in any unreasonable preference in connection with the provision of communications services.").

not been updated to address the advanced capabilities of Internet Protocol (IP)-based communications supporting data as well as voice services, or to enhance the ability of users at different priority levels to share network capacity and resources. While the concerns that motivated the FCC's decision to adopt priority services rules for common carrier offerings do not apply to the contractual arrangements for non-common-carriage services, some have argued that our rules need to be updated to include IP-based communications, and the National Telecommunications and Information Administration (NTIA) filed petitions asking the Commission to initiate a rulemaking to consider updates to the existing rules.

3. We initiate this proceeding to determine whether we should update and streamline the Commission's priority services rules in light of the increase in IP-based technologies since we last examined those rules. As a part of our review, we seek comment on proposals submitted by NTIA to update the rules for both TSP and WPS. By considering both programs in a consolidated proceeding, we seek to promote efficiency and facilitate a holistic approach that addresses priority services on a platform-neutral basis.

II. BACKGROUND

4. There are three priority services programs that support prioritized connectivity for NSEP users of telecommunications services.[8] At present, the Emergency Communications Division[9] of the Cybersecurity and Infrastructure Security Agency, within DHS, manages these programs through contractual "carrier service agreements" with telecommunications providers.[10] However, as described below, some elements of these programs are also governed by the Commission's rules.

5. *Telecommunications Service Priority (TSP) System*. In 1987, the National Communications System – then an interagency group of federal departments and agencies[11] – petitioned the Commission to adopt restoration priority rules.[12] The Commission responded by creating the TSP System,[13] which authorizes the "assignment and approval of priorities for provisioning and restoration of common-carrier provided telecommunication services" and "services which are provided by government

[8] The Commission adopted different definitions of "service user" for each priority services program. For the Telecommunications Service Priority system, "service user refers to any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned pursuant to section 8 or 9 of this appendix." 47 CFR pt. 64, Appx. A § 3(t). For the Wireless Priority Service, "service user means an individual or organization (including a service provider) to whom or which a priority access assignment has been made." Id. Appx. B § 2(d)(3).

[9] *See* Cybersecurity and Infrastructure Security Agency Act of 2018, Pub. L. No. 115-278, § 2204(g)(6)(A), 132 Stat. 4168, 4179 (2018) (renaming the Office of Emergency Communications as the Emergency Communications Division).

[10] Department of Homeland Security, National Security and Emergency Preparedness Priority Telecommunications Services at 8 (2019), https://govtribe.com/file/government-file/70rnpp19r00000004-pts-overview-final-2-dot-15-dot-19-dot-pdf.

[11] Executive Order 12472 § 1(a).

[12] *National Security Emergency Preparedness Telecommunications Service Priority System*, Gen. Docket No. 87-505, Notice of Proposed Rule Making, 2 FCC Rcd 7124, 7124, para. 1 (1987).

[13] *TSP Order*, 3 FCC Rcd at 6672-81. Precursors of the existing TSP rules date to the Kennedy administration, although the rules did not have that name and were different in structure and scope. *See* Presidential Memorandum of August 21, 1963, 28 Fed. Reg. 9413, 9413 (Aug. 28, 1963); *A Priority System for the Use and Restoration of Leased Intercity Private Line Services*, Order, 6 FCC 2d 344, 346, para. 5 (1967).

and/or non-common carriers and are interconnected to common carrier services."[14] The Commission's TSP rules require service providers[15] to prioritize the provisioning and restoration of wired communications facilities to "ensure effective NSEP telecommunication services."[16] The TSP System "allows the assignment of priority levels to any NSEP service"[17] across three time periods, or stress conditions: (1) Peacetime/Crisis/Mobilizations; (2) Attack/War; and (3) Post-Attack/Recovery.[18] There are over 2,000 organizations enrolled in TSP (*e.g.*, military bases, federal agencies, hospitals) covering approximately 300,000 active circuits.[19] Costs associated with TSP are governed by tariff or contract and may include a one-time setup fee and monthly charges, in addition to the actual charges by the service provider related to the provisioning or restoration.[20]

6. The Commission designed the mandatory TSP program to provide "a means by which carriers may provide priority provisioning or restoration service to a user without violating the unreasonable preference prohibition of Title II of the Communications Act."[21] The Commission made clear that "[p]rivate services, i.e., services not offered by a common carrier, would not be subject to allegations of unreasonable preferences under Title II of the Communications Act and therefore would not require the protection of TSP. Indeed, the scope of TSP is predicated on the need for a standardized system of issuing priorities to common carriers."[22] The Commission's TSP rules have not been substantively updated since they were initially adopted in 1988.[23]

[14] 47 CFR pt. 64, Appx. A § 1(b) (stating that "[u]nder section 706 of the Communications Act, this authority may be superseded, and expanded to include non-common carrier telecommunications services, by the war emergency powers of the President of the United States"); 47 CFR pt. 64, Appx. A § 4(a)(2). The TSP rules define "telecommunication services" as "the transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof." *Id.* § 3(w).

[15] The TSP rules define "service vendor" as "any person, association, partnership, corporation, organization or other entity (including common carriers and government organizations) that offers to supply any telecommunications equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers." 47 CFR pt. 64, Appx. A § 3(u). "Service vendors" appears to be a legacy term that does not have any statutory or regulatory significance. Thus, to reflect the current naming convention, we propose to replace "vendors" with "providers" in Appendix A to part 64 of the Commission's rules, and we refer to entities that provide TSP services as "providers" in this *Notice*.

[16] *See* 47 CFR pt. 64, Appx. A § 5. The TSP rules define "NSEP telecommunications services" or "NSEP services" as "telecommunications services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States." *Id.* § 3(f).

[17] *See* 47 CFR pt. 64, Appx. A § 3(i) ("*Priority level* means the level that may be assigned to an NSEP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunication services.") (emphasis added)).

[18] *See* 47 CFR pt. 64, Appx. A § 5.

[19] Department of Homeland Security, Congressional Budget Justification FY 2016 at 2749 (2015).

[20] Cybersecurity and Infrastructure Security Agency, *Telecommunications Service Priority (TSP)*, www.cisa.gov/telecommunications-service-priority-tsp (last visited Mar. 3, 2020).

[21] *TSP Order*, 3 FCC Rcd at 6669-70, para. 117.

[22] *TSP Order*, 3 FCC Rcd at 6670, para. 117.

[23] *TSP Order*, 3 FCC Rcd 6650.

7. *Wireless Priority Service (WPS).* In 1995, the National Communications System petitioned the Commission to implement what it termed "Cellular Priority Access Service."[24] The Commission responded by adopting rules creating a program to provide prioritized voice calling for subscribers using Commercial Mobile Radio Service (CMRS) networks.[25] The Commission's WPS rules permit, but do not require, CMRS providers to offer mobile wireless priority services.[26] If a carrier elects to offer WPS, it must comply with the Commission's WPS rules, which include providing priority service based on five priority levels for NSEP users.[27] The five priority levels, which are generally ordered from highest to lowest, 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.[28] WPS is provided on an individual-device basis, with users initiating wireless priority calls by entering a specified feature code for each call in order to activate priority treatment for that call.[29] WPS users are responsible for commercial wireless subscription and equipment costs.

8. Like the TSP program, one of the driving forces behind the FCC's decision to codify WPS rules was a concern that, in the absence of such rules, a CMRS provider's decision to give NSEP users priority treatment might be considered a violation of the Act's non-discrimination provisions.[30] Indeed, the Commission noted that compliance with the WPS rules would constitute prima facie evidence that such priority treatment was lawful under the Communications Act.[31] The Commission's WPS rules have not been updated since they were initially adopted in 2000.[32]

9. *Government Emergency Telecommunications Service (GETS).* In 1993, the Commission received a request from the National Communications System requesting prioritization for wireline services.[33] The Commission responded to the request in 1995, noting that tariffs had since been filed and a new nationwide telephone area code had been established for the Government Emergency Telecommunications Service (GETS) program for wireline services.[34] GETS provides government officials, first responders, and NSEP personnel with "priority access and prioritized processing in the local and long distance segments of the landline networks, greatly increasing the probability of call

[24] Petition for Rulemaking of the National Communications System, Cellular Priority Access for National Security and Emergency Preparedness Telecommunications (Oct. 19, 1995), https://ecfsapi.fcc.gov/file/1514910001.pdf.

[25] *PAS Order*, 15 FCC Rcd at 16721-22, 16747-52, paras. 2-4, Appx. C.

[26] *See* 47 CFR § 64.402 ("[CMRS] providers that elect to provide priority access service to [NSEP] personnel shall provide priority access service in accordance with the policies and procedures set forth in Appendix B to this part."); *see also* 47 CFR pt. 64, Appx. B § 2(b).

[27] *See* 47 CFR pt. 64, Appx. B § 5.

[28] *Id*.

[29] *See* 47 CFR pt. 64, Appx. B § 2(c).

[30] *PAS Order*, 15 FCC Rcd at 16731, para. 22 ("Providing NSEP users with priority access during emergencies might be considered a violation of these provisions").

[31] *PAS Order*, 15 FCC Rcd at 16731, para. 24.

[32] *PAS Order*, 15 FCC Rcd 16720.

[33] *See* Letter from Carl Wayne Smith, Chief, Regulatory Counsel, Telecommunications, Dep't of Defense, Office of the Manager of the National Communications System, to LaVera F. Marshall, Acting Secretary, Federal Communications Commission (Nov. 29, 1993). *See also Providing Call-By-Call Priorities Over the Public Switched Network*, Public Notice, 10 FCC Rcd 1208, 1208 (Common Carrier Bur. 1994).

[34] *See* Letter from James R. Keegan, Common Carrier Bureau, Federal Communications Commission to Carl Wayne Smith, Chief, Regulatory Counsel, Telecommunications, Department of Defense, Office of the Manager of the National Communications System (Aug. 30, 1995).

completion."[35] Eligible users receive access cards and Personal Identification Numbers, which are used to initiate priority wireline calls.[36] GETS currently operates via contractual arrangements between DHS and service providers.[37] GETS is the only priority services program not included in the Commission's rules and participation is voluntary.

10. *Federal Agency Administration/Oversight of Priority Services Programs*. While the National Communications System originated the petitions that resulted in the creation of the priority services programs, Executive Order 13618 subsequently dissolved the National Communications System and transferred most of its functions to DHS, which now serves as the Executive Office of the President (EOP) designee for NSEP priority communications.[38] DHS is responsible for overseeing the "development, testing, implementation, and sustainment of NSEP communications," including the priority services programs.[39] DHS also maintains an industry-government Joint Program Office that assists in the initiation, coordination, restoration, and reconstitution of NSEP communications and infrastructure.[40] DHS qualifies new users to participate in these programs and issues GETS cards and TSP authorization codes.[41] DHS also manages WPS through contract and reimbursement mechanisms.[42]

11. In addition to DHS, other federal departments and agencies are responsible for certain administration and oversight functions related to the priority services programs. EOP is responsible for "policy coordination, guidance, dispute resolution, and periodic in-progress reviews of NSEP telecommunications functions."[43] The FCC, through the Public Safety and Homeland Security Bureau, works with DHS to ensure the priority services programs operate effectively and efficiently. The Commission supports DHS in the "operation and restoration of critical communications systems and

[35] Cybersecurity and Infrastructure Security Agency, *About GETS*, https://www.cisa.gov/about-gets (last visited Mar. 3, 2020).

[36] Federal Communications Commission, *Government Emergency Telecommunications Service*, https://www.fcc.gov/general/government-emergency-telecommunications-service (last visited Mar. 17, 2020).

[37] Department of Homeland Security, National Security and Emergency Preparedness Priority Telecommunications Services at 8 (2019), https://govtribe.com/file/government-file/70rnpp19r00000004-pts-overview-final-2-dot-15-dot-19-dot-pdf.

[38] Congressional Research Service, National Security and Emergency Preparedness Communications: A Summary of Executive Order 13618 at 2 (2012), https://fas.org/sgp/crs/natsec/R42740.pdf.

[39] Executive Order 13618 charges the Secretary of Homeland Security with oversight of the "development, testing, implementation, and sustainment of NS/EP communications, including: communications that support Continuity of Government; Federal, State, local, territorial, and tribal emergency preparedness and response communications; non-military executive branch communications systems; critical infrastructure protection networks; and non-military communications networks, particularly with respect to prioritization and restoration." *See* Executive Order 13618 § 5.2(a).

[40] Executive Order 13618 § 4.

[41] Cybersecurity and Infrastructure Security Agency, *Requesting GETS and WPS*, https://www.cisa.gov/requesting-gets-and-wps (last visited May 28, 2020) ("Once approved, you will receive website login information (by email) and a GETS card (by U.S. Mail) within 10 business days."); Cybersecurity and Infrastructure Security Agency, *Requesting TSP*, https://www.cisa.gov/requesting-tsp (last visited May 28, 2020) ("The Cybersecurity and Infrastructure Security Agency will provide a TSP Authorization Code for each service or circuit you need to install, which you will give to your service provider.").

[42] *See* Ross Wilkers, *DHS Awards Emergency Comms Services Contract* (Aug. 29, 2019), https://gcn.com/articles/2019/08/29/dhs-emergency-communications.aspx.

[43] Congressional Research Service, National Security and Emergency Preparedness Communications: A Summary of Executive Order 13618 at 5 (2012), https://fas.org/sgp/crs/natsec/R42740.pdf.

services" by providing information on communications infrastructure, service outages, and restoration.[44] The NSEP Communications Executive Committee "advises and makes policy recommendations to the President" for strategic planning, funding requirements, and communications systems requirements.[45] The Office of Science and Technology Policy advises the President on "prioritization of the radio spectrum and wired communications that support NSEP functions" and issues an annual memorandum highlighting national priorities for NSEP analyses, studies, research, and development.[46]

12. *NTIA Petitions for Rulemaking.* NTIA filed two petitions for rulemaking on behalf of DHS, requesting that the FCC update its TSP and WPS rules to reflect the current operations of those programs, incorporate the current Executive Branch governance structure for those programs, and address changes in technology and evolving user needs for those programs. The first petition, filed in July 2018, sought a Commission rulemaking to update the WPS rules.[47] The second petition, filed in July 2019, sought to update the TSP rules, and updated NTIA's July 2018 WPS petition to reflect revisions to technical standards and the provisions of the Cybersecurity and Infrastructure Security Agency Act of 2018.[48] The Bureau sought comment on both petitions via public notice.[49]

13. The Commission received several comments in response to the public notices.[50] Commenters generally support NTIA's proposal to update the TSP rules to reflect the current communications marketplace, and support NSEP users having next-generation communications technology.[51] However, most commenters express concerns with NTIA's proposal to collect data on a provider's performance during a disaster and with the proposed rule changes regarding provisioning and restoration timeframes.[52] Likewise, commenters generally support NTIA's proposals to update the WPS rules, but argue the Commission should employ a light touch in developing any new WPS rules and refrain from imposing overly burdensome or prescriptive rules that would limit flexibility and innovation currently inherent in providers' ability to work with the NSEP users and provide services on a contractual basis.[53]

---

[44] Congressional Research Service, National Security and Emergency Preparedness Communications: A Summary of Executive Order 13618 at 5 (2012), https://fas.org/sgp/crs/natsec/R42740.pdf.

[45] *Id*.

[46] *Id*.

[47] *Petition of National Telecommunications and Information Administration for Revision of Rules and Requirements for Wireless Priority Service*, WT Docket No. 96-86 (filed July 9, 2018), https://www.fcc.gov/ecfs/filing/1070951773719 (WPS Petition).

[48] *Petition of National Telecommunications and Information Administration for Revision of Rules and Requirements for Telecommunications Service Priority*, WT Docket No. 96-86 (filed July 17, 2019), https://www.fcc.gov/ecfs/filing/10717271312819 (TSP Petition).

[49] *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking Filed by the National Telecommunications and Information Administration to Revise the Rules for Wireless Priority Service*, WT Docket No. 96-86, Public Notice, 33 FCC Rcd 8131, 8131 (PSHSB 2018) (*PAS Public Notice*); *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking Filed by the National Telecommunications and Information Administration to Revise the Rules for the Telecommunications Service Priority (TSP) System*, WT Docket No. 96-86, Public Notice, 34 FCC Rcd 6420, 6420 (PSHSB 2019) (*TSP Public Notice*).

[50] AT&T, TechFreedom, T-Mobile, and Verizon filed comments (or reply comments) in response to the *TSP Public Notice*. AT&T, NCTA - The Internet & Television Association, The Alliance For Telecommunications Industry Solutions, USTelecom, and Verizon filed comments (and/or reply comments) in response to the *WPS Public Notice*.

[51] TechFreedom Comments at 2.

[52] AT&T Comments at 3.

[53] Verizon Comments at 1-2.

III. DISCUSSION

14. Consumers are increasingly moving away from traditional telephone services using copper wire transmissions and traditional time-division multiplexing technology and towards next-generation technologies using a variety of transmission means, including fiber and wireless spectrum-based services.[54] USTelecom asserts the "vast majority" of U.S. consumers have moved from legacy landlines to wireless or IP-based alternatives, as evidenced by the fact that since the year 2000 the number of landlines has fallen by 157 million.[55] This trend is likely to continue, as USTelecom estimates that, by the end of 2020, 79% of voice connections will be wireless and just 5% will be provided through legacy landlines.[56] In addition, USTelecom presents evidence that "the widespread deployment of wired and wireless IP-based networks" has fostered greater reliance on voice alternatives such as text, email, video chat, and social networking applications.[57] The Commission has actively supported the transition from legacy to next-generation networks because of the extraordinary benefits of advanced communications services,[58] and it has taken measures to reduce regulatory barriers to this transition.[59]

15. While the transition from traditional network technology to IP-based technologies promises greater innovation, including for priority services programs, it may pose transitional challenges for NSEP communications that historically have relied on functionality found in legacy technologies.[60] As carriers replace their legacy systems with new technologies and platforms, some of the legacy features in priority services programs that were designed to be used on legacy systems will be more difficult and costly to maintain and ultimately could be rendered inoperable. The Government Accountability Office has observed that it is a "challenge . . . that IP networks may not support existing telecommunications 'priority' services, which allow key government and public safety officials to communicate during times

[54] *See, e.g.*, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, para. 2 (2018).

[55] Mike Saperstein, U.S. Telecom Industry Metrics and Trends 2020: Update, at 33 https://www.ustelecom.org/research/ustelecom-industry-metrics-and-trends-2020-update/.

[56] *Id*. The other voice connections will be provided by Incumbent Local Exchange Carrier (incumbent LEC) Voice Over IP (VoIP) services (3%) or non-incumbent LEC services (14%). *Id.* at 37.

[57] Petition for Declaratory Ruling of the United States Telecom Association, WC Docket No. 13-3, GN Docket No. 13-5, at 41-42 (filed Dec. 19, 2012).

[58] *See, e.g., Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11129, paras. 1-2 (2017) (noting the "new and better" and "innovative" service offerings available over next-generation networks).

[59] *See, e.g.*, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 et al., Report and Order on Remand and Memorandum Opinion and Order, 34 FCC Rcd 5767 (2019); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Memorandum Opinion and Order, 34 FCC Rcd 6503 (2019); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 5660 (2018); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom In re: FCC 11-161,* 753 F.3d 1015 (10th Cir. 2014); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers et al.*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC 16978 (2003) (subsequent history omitted).

[60] The primary challenge in migrating from legacy time-division multiplexing technology to next-generation IP-based technology is that the systems use different signaling protocols to establish/maintain voice calls (i.e., the systems do not speak the same language).

of crisis."[61] We also need to consider the means to modernize access tools for NSEP personnel to reflect today's more technologically advanced emergency response regimes. Availability of priority services only on those traditional voice networks may hamper the ability of NSEP personnel to effectively use cutting edge emergency response tools that rely on IP-supported data network availability. Nonetheless, we recognize that providers have significant if not complete flexibility to provide prioritization similar to that under the TSP and WPS rules on a contractual basis.

16. As we determined when we initially adopted the TSP and WPS rules in 1988 and 2000, respectively, the benefits provided by these priority services exceed the costs incurred by service providers.[62] The NTIA petitions assert that there may be some benefits, if we were to expand the scope of TSP and WPS to include IP-based technologies. One reason is that, given the nation's increase in population over the past 20 years, we expect that the benefit from such programs has grown along with the population itself. Simply stated, there now are more lives to be saved and more infrastructure and homes to be protected. Another reason is that technological advances over the past 20 years have greatly reduced the costs and complexity of coding specific services, messages, and calls for priority treatment.

17. We expect that if we adopt the proposed rules, consistent with our 1988 and 2000 decisions, the benefits of extending these programs to include IP-based services would likely exceed the costs incurred by service providers. However, NTIA concedes that "some non-common carriers (e.g., some providers of broadband Internet access service) have chosen to contract, on a voluntary basis, with DHS to provide prioritized provisioning and restoration services and the government welcomes and appreciates the willingness of those companies to offer TSP voluntarily."[63] Nothing in our current rules prohibits or impedes providers of next-generation services from entering into voluntary agreements with DHS that achieve what would be contemplated under these rule changes.

18. We initiate this proceeding to update and streamline our priority services rules to remove outdated or other requirements that may cause confusion for NSEP personnel and providers and otherwise impede the use of IP-based technologies to support the provision of priority services for voice, data, and video communications.

A. Proposed Changes to Priority Services Rules

19. As part of our proposal to streamline and update our priority services rules, we propose certain specific rule changes that would apply to both TSP and WPS. These proposals are intended to reduce regulatory burdens and make our rules flexible enough to respond to changing administrative requirements or technological advances that affect the priority services programs.

20. *Program Administration*. The Commission's priority services rules have not been substantively updated since they were initially adopted. As a result, some of the authorities, organizations, and requirements specified in the Commission's rules are no longer accurate. Thus, we propose to amend the Commission's rules to reflect the actual, current functions and responsibilities for the priority services program, as specified in Executive Order 13618. Specifically, we propose to add the following language to Part 64, Appendix A and Appendix B:

> The FCC will: Perform such functions as are required by law and Executive Order 13618, including: (a) with respect to all entities licensed or regulated by the FCC: the extension, discontinuance, or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices, and classifications; the construction, authorization, activation, deactivation, or closing of radio stations, services, and facilities; the assignment of radio frequencies to licensees; the investigation of violations of

[61] *See* Government Accountability Office, Internet Protocol Transition: FCC Should Strengthen Its Data Collection Efforts to Assess the Transition's Effects (2015), http://gao.gov/products/GAO-16-167.

[62] *TSP Order*, 3 FCC Rcd 6654, para. 25; *PAS Order*, 15 FCC Rcd 16727, para. 14.

[63] TSP Petition at 6-7.

> pertinent law; and the assessment of communications service provider emergency needs and resources; and (b) support the continuous operation and restoration of critical communications systems and services by assisting the Secretary of Homeland Security with infrastructure damage assessment and restoration, and by providing the Secretary of Homeland Security with information collected by the FCC on communications infrastructure, service outages, and restoration, as appropriate.

21. We further propose to eliminate the provisions of Part 64, Appendix A and Appendix B that describe the responsibilities of the Executive Office of the President because Executive Order 13618 transferred most of its functions to other federal agencies. We seek comment on these proposals.

22. *Program Requirements*. As a result of the changes in the priority services programs that have occurred since the rules were initially adopted, some provisions of the rules are outdated and unnecessary. These provisions are no longer relevant and, therefore, we propose to remove such references from our rules. Specifically, we propose to remove sections 2(a)(1), 2(a)(2), 2(b), 2(c), 2(d) of Part 64, Appendix A, which outline requirements governing the migration of circuits from the legacy Restoration Priority program and mandating the continuation of certain Commission orders pending the implementation of the TSP program. We also propose to remove section 10 of Appendix A, which specifies procedures for the resubmission of circuits that were assigned restoration priorities before the Commission adopted the TSP rules. We seek comment on these proposals. We also seek comment on whether any other provisions are outdated or unnecessary and should be removed from our rules.

23. *Terminology*. The telecommunications industry has drastically changed since the priority services rules were first established. However, the Commission's rules have not been updated to reflect the evolution from circuit-switched technology to IP-based technology.[64] NTIA asks the Commission to include definitions to account for new services, such as private NSEP services that consist of non-common carrier services, and non-traditional services, such as broadband Internet access and digital video.[65] Further, NTIA asks the Commission to revise the rules not only to include current service offerings, but also other technologies that may someday qualify for priority treatment.[66] Commenters generally agree that NSEP users need next-generation communications on a priority basis, but emphasize that "a contractual solution is preferable to a regulatory one."[67] Commenters also support the flexible approach to including new services and technologies within the scope of the priority services rules that is currently available by contractual arrangements, and caution that a regulatory approach should only be implemented through the notice-and-comment rulemaking process.[68]

24. We propose to amend Part 64, Appendix A and Appendix B to include definitions to account for new services and technologies. Specifically, we propose to add the phrase "Internet Protocol-based services" to expand the scope of the priority services programs to include data, video, and IP-based voice services. We also propose to amend the definition of "National Security Emergency Preparedness (NSEP) services" to mean:

> Telecommunications services or Internet Protocol-based services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories, Emergency NSEP and Essential

[64] *See, e.g.*, TSP Petition at 12 (citing references to "private line circuits" and "subscriber loops" which, while still in use, are rapidly being replaced by newer technologies and capabilities).

[65] TSP Petition at 12.

[66] *Id.*

[67] *See, e.g.*, AT&T WPS Comments at 4-5.

[68] *See, e.g.*, AT&T TSP Comments at 4-5.

NSEP, and are assigned priority levels pursuant to section 8 of this appendix.

We further propose to replace certain references to "telecommunications services" with "NSEP services" which, under our proposal, would encompass both telecommunications services and all IP-based services. We seek comment on these proposals and, alternatively, whether a GETS model would be a better approach.

B. Proposed Changes to Telecommunications Service Priority Rules

25. This section describes proposed changes to various provisions of the Commission's TSP rules in part 64, Appendix A. The proposed rule changes described below are informed by our careful review of NTIA's *TSP Petition* and the public comments submitted in response to the *TSP Public Notice*.

26. *Scope of the Rules*. The Commission's TSP rules have not been substantively updated since they were initially adopted in 1988.[69] As originally drafted, the rules were intended as a regulatory carveout to allow common carriers to provide telecommunications services, which would ordinarily be subject to the non-discrimination requirements of Section 202, on a prioritized basis. As such, the rules have made no mention of the wide array of innovative information service offerings that are currently available to NSEP personnel. We propose to maintain the current requirement that common carriers must offer prioritized restoration and provisioning of circuit-switched voice communication services.

27. We propose additionally to codify the ability of service providers, on a voluntary basis, to offer prioritized provisioning and restoration of data,[70] video, and IP-based voice services. Therefore, we propose to update our rules to authorize priority treatment of all voice, data, and video services provided by service providers for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with Appendix A.[71]

28. We seek comment on these proposals. Alternately, we note that the current TSP rules already allow the TSP System rules to apply to "other services" including "Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level."[72] Should service providers that elect to offer prioritized provisioning and restoration of data, video, and IP-based voice service be required to comply with the Commission's TSP rules or, alternatively, should such priority services operate via contractual arrangements between DHS and service providers?

29. *Invocation of NSEP Treatment*. Currently, to invoke priority treatment for NSEP communications, an authorized federal official within, or acting on behalf of, the service user's organization must inform TSP service providers and the EOP that NSEP treatment is being invoked.[73] The Commission's rules require the "invocation official" to be a senior government official, such as the head or director of a federal agency.[74] However, DHS has determined that requiring senior officials to request TSP participation has produced "unnecessary delays in the approval process given the demands

[69] *TSP Order*, 3 FCC Rcd 6650.

[70] For purposes of the *Notice*, we include text messaging within the context of the "data" category to authorize prioritization.

[71] *See* 47 CFR pt. 64, Appx. A § 1(a).

[72] 47 CFR pt. 64, Appx. A § 4(c).

[73] 47 CFR pt. 64, Appx. A § 9(c).

[74] *Id*. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of a military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental regulations or procedures issued by the Executive Office of the President. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member), Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental regulations or procedures issued by the Executive Office of the President.

placed on senior officials and their often limited availability."[75] In addition, DHS claims the current requirements are untenable because senior officials typically do not interact with service providers and often lack direct knowledge of the purpose and need for the NSEP service.[76]

30. NTIA asserts that, although the need still exists for an authorized individual from the requesting service user organization to assume responsibility for validating that the requested service satisfies the TSP program's NSEP criteria, this validation does not need to be performed by a specified senior official from the organization.[77] As such, NTIA asks the Commission to update its TSP rules to redefine "invocation official" as an individual who (1) understands how the requested service ties to the organization's NSEP mission, and (2) is authorized to approve the expenditure of funds necessary for the requested service.[78] NCTA supports this proposal.[79]

31. We propose to modify the Commission's rules to allow DHS to accept invocation by a federal employee within, or acting on behalf of, the service user's organization who can attest to the need for TSP and authorize payment to the service provider. Further, we propose to eliminate the requirement that the invocation official be designated in writing. Both of these proposals reflect changes that DHS has already made, such as lessening the seniority requirement to allow an individual who is able to attest to the need for priority treatment and to obligate funds on behalf of the organization to serve as the "invocation official."[80] We seek comment on these proposals.

32. *Oversight and Industry Engagement*. Under the Commission's current TSP rules, the FCC and EOP each have oversight responsibilities for the TSP System. The rules stipulate that the FCC will "provide regulatory oversight of implementation of the NSEP TSP System"[81] and "enforce NSEP TSP System rules and regulations."[82] On the other hand, the rules stipulate that EOP will test and evaluate the TSP System,[83] conduct audits,[84] and establish a TSP System Oversight Committee to "identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence."[85]

33. EOP established a TSP System Oversight Committee (Oversight Committee) in accordance with the Commission's rules.[86] However, DHS has since "developed and refined processes and procedures that, in its view, obviate the need for a mandatory oversight committee."[87] In recent years, DHS has increasingly relied upon the members of the Communications Information Sharing and

[75] TSP Petition at 10.

[76] *Id*.

[77] *Id*.

[78] *Id*. at 10-11. The office within DHS that administers the TSP program believes this validation is best performed by an individual with operational responsibilities for telecommunications procurement and/or management within the organization. *Id*.

[79] NCTA Comments at 2.

[80] *Id*.

[81] 47 CFR pt. 64, Appx. A § 6(a)(1).

[82] 47 CFR pt. 64, Appx. A § 6(a)(2).

[83] 47 CFR pt. 64, Appx. A § 6(b)(2)(f).

[84] 47 CFR pt. 64, Appx. A § 6(b)(2)(g).

[85] 47 CFR pt. 64, Appx. A § 6(b)(2)(j).

[86] *See* 47 CFR pt. 64, Appx. A § 6(b)(2)(j).

[87] TSP Petition at 8.

Analysis Center [88] to "exchange information and gain advice" on issues involving the TSP program.[89] DHS believes the Communications Information Sharing and Analysis Center is a more valuable resource than the Oversight Committee because the office within DHS that administers TSP "directly leverages the expertise of members of the Communications Information Sharing and Analysis Center to address operational concerns in real time," instead of waiting for a scheduled Oversight Committee meeting.[90] NTIA asks the Commission to eliminate the requirement for an Oversight Committee,[91] replace the quarterly reporting obligation with an annual report to the Commission,[92] and authorize DHS to consult with the Communications Information Sharing and Analysis Center.[93]

34. Similarly, the Commission originally intended for the Oversight Committee to provide oversight of WPS by reviewing any systemic problems with the program and recommending corrective actions.[94] However, DHS believes the GETS/WPS User Council (User Council) should carry out this function because it "better serves the needs and interests of the WPS community."[95] The User Council includes WPS points of contact from federal, state, local, and Tribal government, industry, and other NSEP organizations, and a representative from each of the WPS (and GETS) service providers.[96] DHS leverages the User Council to "seek and receive advice" on WPS program needs.[97] NTIA asks the Commission to replace references to the Oversight Committee with references to the GETS/WPS User Council.[98]

35. AT&T agrees that the Commission should make administrative changes to the TSP rules to reflect existing practices and oversight responsibilities.[99] However, NCTA disagrees with NTIA's

[88] TSP Petition at 8 n.12 ("The Communications [Information Sharing and Analysis Center] is the operational arm of the communications sector. Also known as the DHS National Coordinating Center, the [Communications Information Sharing and Analysis Center]'s goal is to avert or mitigate impacts upon telecommunications infrastructure so that communication networks remain operational. The Communications [Information Sharing and Analysis Center] operates twenty-four hours, seven days a week and is an operational component within the National Cybersecurity and Communications Integration Center.").

[89] *Id*.

[90] TSP Petition at 9; *see id.* at 8 ("When TSP went into effect, the Oversight Committee met on a semi-annual basis to discuss TSP issues, challenges and other substantive matters, greatly assisting federal oversight activities. In recent years, however, the Oversight Committee meetings slowly transitioned to simple status reporting, with little substantive discussion or assistance needed by the government or industry members of the Committee.").

[91] *Id*. at 8-9.

[92] *Id*. at 13. Section 6(b)(2)(k) requires EOP to "[r]eport at least quarterly to the FCC and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System." 47 CFR pt. 64, Appx. A § 6(b)(2)(k). These reports must include (1) "[n]umbers of requests processed for the various priority actions, and the priority levels assigned"; (2) [r]elative percentages of services assigned to each priority level under each NSEP category and subcategory"; (3) "[a]ny apparent serious misassignment or abuse of priority level assignments"; and (4) "[a]ny existing or developing problems." *Id.*

[93] *Id*. at 9.

[94] 47 CFR pt. 64, Appx. B § 3(b)(8), (f).

[95] WPS Petition at 17-18.

[96] *Id*. at 18.

[97] *Id*.

[98] *Id*.

[99] AT&T Comments at 5.

proposal to eliminate the Oversight Committee for the TSP program.[100] While AT&T defers to NTIA/DHS on the entity that should provide oversight of the TSP program, AT&T and Verizon stress that some authority must remain in place to preserve opportunities for meaningful collaboration between industry stakeholders and program administrators and to ensure the program is administered in accordance with the appropriate rules and regulations.[101] No commenters addressed NTIA's proposal to replace the Oversight Committee for WPS with the GETS/WPS User Council. We propose to eliminate the reference to the Oversight Committee within the priority services rules, and instead recognize the flexibility that DHS requires to engage the appropriate segments of industry and oversee the program effectively so long as some measure of oversight remains. We seek comment on this proposal, and we seek further comment on NTIA's requested rule changes.

C. Proposed Changes to Wireless Priority Service Rules

36. This section describes proposed changes to various provisions of the Commission's WPS rules in part 64, Appendix B. The proposed rule changes described below are informed by our careful review of NTIA's *WPS Petition* and the public comments submitted in response to the *Public Notices*.

37. *Priority Levels*. The Commission's WPS rules include five priority levels, which are used "as a basis for all [WPS] assignments."[102] The rules indicate that Priority Level 1 communications, which are reserved for the President of the United States and other executive leadership and policy makers,[103] occupy the highest priority level in WPS. DHS, however, is concerned that the rules do not expressly stipulate that users assigned to that category must receive the highest priority in relation to all other users, including those using non-WPS priority services offered through individual service contracts.[104] While that is the existing practice, DHS believes it should be "explicit and conspicuous" in the Commission's rules.[105] NTIA requests that we update our rules accordingly. Verizon supports NTIA's request.[106] We propose to amend the description of Priority Level 1 to clarify that it exceeds all other priority services offered by WPS providers. We seek comment on this proposal. We also seek comment on how the different priority levels used by various priority services programs should interrelate for network management purposes.

38. *Preemption and Degradation*. Preemption is the process of terminating lower priority communications in favor of higher priority communications. Degradation is the process of reducing the quality of lower priority communications in favor of higher priority communications. NTIA asserts that preemption and degradation are "critical priority feature[s] that will enable the highest priority NS/EP users to communicate and coordinate" during emergency situations – when commercial networks are often the most congested.[107] The Commission's WPS rules currently permit re-ordering of queued (not-yet-established) call requests based on user priority, but do not provide for re-ordering of active (in-

[100] NCTA Comments at 6 ("While NTIA correctly identifies overlap between the Oversight Committee and the Communications Information Sharing and Analysis Center (Comm ISAC), the TSP Oversight Committee is a valuable forum in its own right. Moreover, many members of Comm ISAC are not TSP stakeholders and therefore need not be involved in decisions about the TSP program.").

[101] AT&T Comments at 5; Verizon Comments at 3.

[102] 47 CFR pt. 64, Appx. B § 5.

[103] *Id*.

[104] WPS Petition at 19.

[105] *Id*.

[106] Verizon Reply Comments at 4-5 (asserting the Commission should reaffirm that WPS Priority Level 1 users are always given top priority).

[107] WPS Petition at 6.

progress) calls.[108] NTIA requests changes to the Commission's rules affirmatively to allow Priority Level 1 and 2 voice calls,[109] if necessary, to preempt or degrade other in-progress calls, except for public safety emergency (911) calls.[110]

39. Some commenters disagree with NTIA's assertion that the Commission's WPS rules do not allow for preemption of in-progress calls.[111] AT&T argues that "[n]othing in the Communications Act or the Commission's rules prohibits WPS providers from offering… preemption of voice and data services in their private contractual arrangements with WPS users."[112] Verizon agrees with AT&T and points out that both companies "openly provide competitive service offerings with priority and preemption capabilities via their respective public safety networks and services."[113] AT&T suggests that rather than updating the current WPS rules as NTIA proposes, the Commission should consider issuing a declaratory ruling to clarify WPS providers' rights and obligations under the current rules.[114] In contrast, TechFreedom agrees with NTIA that the WPS rules do not allow providers to terminate or degrade ongoing calls or data communications, but asserts that additional data and information are needed to properly evaluate NTIA's proposal.[115]

40. Although the current WPS rules do not provide for re-ordering of active (in-progress) calls, we agree with AT&T and Verizon that the rules do not prohibit preemption. However, we recognize that the lack of explicit language authorizing preemption has led to varying interpretations of the rules by WPS providers. Thus, we propose to update our rules to expressly authorize Priority Level 1 and 2 voice calls, when necessary, to preempt or degrade other in-progress calls, except for public safety emergency (911) calls.

41. We seek comment on this proposal. Specifically, we ask commenters to address whether or how our rules should reflect the potential need for preemption during periods of significant congestion. How would service providers determine whether the amount of congestion was significant enough to warrant preemption? Would the burdens of preemption outweigh the benefits? We also seek comment on whether call degradation, on a standalone basis, would ensure successful transport of NSEP communications. In other words, is it necessary to allow both preemption and degradation of in-progress communications? Is degradation more, less, or equally cost-effective when compared to preemption? We also seek comment on whether the TSP approach to preemption/degradation could provide a framework for WPS. The TSP rules expressly allow service providers to preempt or interrupt service to non-NSEP

[108] *See* 47 CFR pt. 64, Appx. B § 2(c) (PAS/WPS "does not preempt calls in progress").

[109] Priority Level 2 includes "personnel key to managing the initial response to an emergency at the local, state, regional and federal levels. Personnel selected for this priority should be responsible for ensuring the viability or reconstruction of the basic infrastructure in an emergency area. In addition, personnel essential to continuity of government and national security functions (such as the conduct of international affairs and intelligence activities) are also included in this priority." 47 CFR pt. 64, Appx. B § 5(b).

[110] WPS Petition at 7 ("Further, because Priority Level 1 and 2 is granted only to the most critical leadership of the nation, including the President, those users comprise only a small fraction of WPS users. Specifically, Priority Level 1 and 2 accounts for less than 20,000 users, as compared to almost 396 million wireless subscriber connections in the United States.").

[111] *See* AT&T Comments at 6-10; Verizon (WPS) Reply Comments at 1; Verizon (TSP) Reply Comments at 2.

[112] AT&T Comments at 6.

[113] Verizon (TSP) Reply Comments at 2.

[114] AT&T Comments at 10.

[115] TechFreedom Comments at 7.

users and to preempt lower priority users as necessary to provide or restore service.[116] Should similar parameters govern WPS?

42. *Eligible Services*. Since the WPS rules were adopted in 2000, the "capacity and capabilities of [wireless] networks have expanded immensely."[117] As a result, wireless service providers are now able to offer a wide array of voice, data, and video services which, in turn, has "spawned a multitude of communications applications (*e.g.*, email, video calls, web browsing)."[118] The development of new technologies has direct implications for NSEP users, who increasingly rely on the innovative services and applications to "make and complete mission-essential communications in an efficient and effective manner."[119] Thus, DHS has intimated that NSEP requirements for WPS do not already include priority data and video services, in addition to voice services.[120] Based on this reading of our rules, NTIA requests that we update our rules to allow the provision of next-generation voice, data, and video services by wireless service providers on a priority basis.[121] Commenters highlight that the existing regulatory framework allows for priority wireless service to be contractually arranged, and provides flexibility for DHS and WPS providers to negotiate the services and capacities that will be offered.[122]

43. We propose to amend our rules to expressly permit wireless service providers,[123] on a voluntary basis, to give NSEP personnel priority access to, and priority use of, all secure and non-secure voice, data, and video services available over their networks. We seek comment on this proposal. What innovative services and applications do NSEP users need for mission-critical communications? Do wireless service providers currently face legal or regulatory obstacles to voluntarily providing prioritized voice, data, and video services on their wireless networks?

44. *Eligible users*. Under the current rules, WPS priority assignments "should only be requested for key personnel and those individuals in national security and emergency response leadership positions."[124] As such, the current language excludes multiple categories of NSEP users, such as critical infrastructure protection, financial services, and hospital personnel.[125] However, the Homeland Security Act of 2002 created the ability for critical infrastructure protection personnel to "meet the qualifying criteria" for WPS,[126] and DHS is currently assigning hospital personnel to Priority Level 3 and financial

[116] 47 CFR pt. 64, Appx. A, § 7.

[117] WPS Petition at 7-8.

[118] *Id*. at 8.

[119] *Id*.

[120] *Id*.

[121] *Id*.

[122] Verizon (WPS) Reply Comments at 1-2 ("Incorporating IP-enabled technologies into WPS and development of these new innovative capabilities is generally best left to arrangements between DHS and industry stakeholders."); T-Mobile Reply Comments at 2 ("[O]ne of the strength of the Commission's long-standing approach to WPS is that it provides for flexibility – giving WPS providers and [DHS] the ability to 'customize the capabilities offered and terms of service pursuant to contract.'").

[123] We propose to eliminate references to "CMRS" and, where necessary, substitute the term "wireless" to describe services, networks, and providers in Appendix B to part 64 of the Commission's rules. For purposes of this *Notice*, the phrase "wireless service providers" encompasses both commercial and private mobile service providers.

[124] 47 CFR pt. 64, Appx. B § 5 ("PAS is not intended for use by all emergency service personnel.").

[125] WPS Petition at 21.

[126] *Id*.

services personnel to Priority Level 4.[127] NTIA requests that we update our WPS rules to include these communities of NSEP users.[128] Verizon supports NTIA's request.[129]

45. We propose to modify the descriptions of priority levels and qualifying criteria in Appendix B to expand WPS eligibility to additional users, particularly those with response and restoration roles during emergency situations. Specifically, we propose to allow entities from any of the 16 critical infrastructure sectors identified in Presidential Policy Directive (PPD)-21 to qualify for WPS.[130] Further, we propose to modify the descriptions of priority levels and qualifying criteria in Appendix B to allow eligible financial services and hospital personnel to qualify for WPS. We seek comment on these proposals. Should the Commission determine which entities qualify for each priority level, or should that function be completed by DHS? How should the priority level assignments for each of the entities from the 16 critical infrastructure sectors be determined? How should eligibility for financial services and hospital personnel be determined?

46. *Priority Signaling*. As stated in the Commission's rules, WPS "provides the means for NSEP telecommunications users to obtain priority access to available radio channels when necessary to initiate emergency calls."[131] However, recent emergency situations have demonstrated that "WPS effectiveness can be compromised by the effects of signaling congestion that prevent successful WPS handset network registration and service invocation."[132] NTIA requests that we update our rules "to make clear that WPS service providers can provide priority signaling."[133] AT&T argues that NTIA's requested rule change is unnecessary because WPS providers already offer priority signaling via contractual arrangements with DHS.[134]

47. Although the Commission's rules do not expressly authorize priority signaling, we agree with AT&T that it is currently permitted in the context of WPS. To promote consistency and prevent confusion among providers, we propose to update our WPS rules to expressly authorize priority signaling to ensure networks are able to detect WPS handset network registration and service invocation. We seek comment on this proposal.

48. *Methods of Invocation*. As described above, the WPS rules allow authorized users to invoke priority access on a per call basis by dialing a specified feature code before each call.[135] However,

---

[127] WPS Petition at 21.

[128] *Id*. at 21-22.

[129] Verizon (WPS) Reply Comments at 4 ("Verizon generally supports the priority levels and allocations described in the Petition, including reaffirming that WPS Priority Level 1 users (those serving the President) are always given top priority, and expanding eligibility for the "Leadership and Key Personnel" category to better reflect today's diversity of first responder and critical infrastructure wireless users.").

[130] White House, Presidential Policy Directive 21 (PPD-21): Critical Infrastructure Security and Resilience, https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil (2013). The critical infrastructure sectors include: Chemical; Commercial Facilities; Communications; Critical Manufacturing; Dams; Defense Industrial Base; Emergency Services; Energy; Financial Services; Food and Agriculture; Government Facilities; Healthcare and Public Health; Information Technology; Nuclear Reactors, Materials, and Waste; Transportation Systems; and Water and Wastewater Systems.

[131] 47 CFR pt. 64, Appx. B § 2(c).

[132] WPS Petition at 22. NTIA cites the July 2008 Los Angeles earthquake, the 2011 Virginia earthquake, and the 2013 Boston Marathon bombing as examples of emergency situations that reinforced the need for WPS users to have priority signaling to ensure they gain access to network resources to complete NSEP calls. *Id*.

[133] WPS Petition at 22-23.

[134] AT&T (TSP) Comments at 6.

[135] 47 CFR pt. 64, Appx. B § 2(c).

NTIA believes the requirement that WPS must be invoked for each communication "hinder[s] efficient response" during emergency situations, in that vital time may be lost when users must dial that code for every priority call.[136] To address this problem, NTIA requests that we update the WPS rules to allow for a "variety of arrangements" available under current technical standards and capabilities for WPS invocation, including "always on" for certain WPS authorized users..[137] T-Mobile supports this proposal because it would provide greater flexibility for service providers to decide how to offer WPS services in the manner most suitable for their subscribers and networks.[138]

49. We propose to amend our rules to eliminate the requirement that priority access must be invoked on a per call basis. We decline to propose specific methods of WPS invocation because DHS could address that issue via contractual arrangements with service providers. We seek comment on this proposal. Do commenters agree with our approach of not requiring specific methods of invocation?

50. *Program Name*. As described above, government, industry, and users commonly refer to Priority Access Service as Wireless Priority Service.[139] According to NTIA, the name Wireless Priority Service more accurately reflects the service's current requirements and capabilities."[140] To reflect the prevailing naming convention, NTIA requests that we amend Part 64, Appendix B to replace all references to Priority Access Service with Wireless Priority Service in Appendix B to reflect the current naming convention. We propose to make the changes that NTIA requests to Appendix B and to make a similar change to section 64.402 of the Commission's rules. We seek comment on these proposals.

D. Other Rule Changes Requested by DHS/NTIA

51. In addition to the proposed rule changes discussed above, DHS and NTIA request other rule changes that would impose new requirements on TSP and WPS providers. However, some commenters object that these rule changes would increase regulatory burdens on service providers by increasing the costs of complying with the Commission's priority services rules.

52. *Protection of TSP Data*. Federal, state, local, Tribal, and territorial governments, and other authorized organizations use the TSP System to "protect mission-essential communications at their primary places of operation, as well as at locations designed to maintain continuity of operations… and continuity of government."[141] NTIA notes that the unauthorized disclosure of sensitive information related to TSP circuits, in the aggregate, could pose a national security risk.[142] In addition, NTIA asserts that service providers moving certain operational, administrative, and management functions overseas could create additional risk by exposing TSP data to companies and individuals outside the United States.[143] The TSP rules direct service providers to "not disclose information concerning NSEP services they provide to those not having a need-to-know or might use the information for competitive advantage," but the rules do not require service providers to take affirmative steps to prevent or detect the unauthorized disclosure of TSP data or to eliminate the risk of TSP data being managed offshore.[144]

---

[136] WPS Petition at 11.

[137] *Id*.

[138] T-Mobile Reply Comments at 2-3.

[139] *Id*. at 15.

[140] *Id*.

[141] TSP Petition at 3.

[142] *Id*.

[143] *Id*. at 3-4.

[144] 47 CFR pt. 64, Appx. A § 6(f)(13).

NTIA requests that we update the TSP rules to address these issues.[145] Commenters generally agree that the Commission should strengthen the TSP rules to prevent unauthorized access to sensitive TSP data.[146] However, some commenters raise concerns regarding NTIA's proposal to prevent TSP data from being managed offshore.[147]

53. We seek further comment on NTIA's requested rule changes and the means by which the Commission's rules could be strengthened. What is the ideal method to achieve the goal of maintaining data security without sacrificing service providers' flexibility to manage TSP data? We also seek comment on NTIA's assertion that service providers moving certain TSP functions overseas could create additional security risks. Do commenters agree with NTIA? If so, what actions should the Commission take to address this issue? What are the potential implications of creating distinctions between onshore and offshore operations?

54. *Provisioning and Restoration Timeframes*. The Commission's TSP rules include three subsections that address the timeframes that service providers must meet to (1) provision service; (2) restore service; and (3) meet requested service dates for TSP-subject facilities.[148] However, each subsection mandates a different standard for the time and level of effort required for service providers to provision or restore TSP facilities.[149] NTIA claims the "varying and ambiguous language" in the current rules "has created confusion, disagreements, dissatisfaction, and unrealistic expectations" between users, providers, and DHS's program staff.[150] As such, NTIA recommends the Commission replace the current language with the single term "promptly" to describe TSP service providers' provisioning and restoration obligations.[151]

55. Commenters raise concerns with NTIA's requested rule changes. For example, some commenters assert that NTIA's proposal to require TSP service providers to "promptly" provision or restore service by allocating "all resources necessary" could place unreasonable demands on service providers.[152] Further, commenters argue that the word "promptly" itself does not offer meaningful clarity because the term is no more specific than the similarly ambiguous phrases in the current rules.[153] Commenters also assert that any rule changes should account for the contextual nature of restoration efforts and take incident-specific factors into consideration.[154]

---

[145] TSP Petition at 4.

[146] *See* AT&T Comments at 3 ("The Commission should revise its rules to establish baseline procedures regarding disclosure of TSP data, which will help give clarity to service providers as well as requesting parties and ensure the protection of sensitive data.").

[147] NCTA Comments at 5-6 ("[T]he security of the relevant data generally depends on the procedures employed by a company and its contractors, not the physical location where the data resides."); USTelecom Comments at 6-7 ("It is… not clear that 'offshoring' alone is inherently less secure than keeping operations onshore.").

[148] 47 CFR pt. 64, Appx. A § 6.f.(1)(a), (1)(b)(i), (2)(a).

[149] *See, e.g.*, 47 CFR pt. 64, Appx. A, § 6.f.(1)(a), (1)(b)(i), (2)(a) (TSP service providers must "allocate resources" needed to, respectively, "ensure best efforts to provide NS/EP services by the time required;" "provide Emergency NS/EP services as soon as possible;" and "restore NS/EP services as quickly as practicable").

[150] TSP Petition at 5.

[151] *Id*.

[152] NCTA Comments at 5 ("[A] formal regulation requiring providers to act without regard to costs is untenable."); ATIS Reply Comments at 5-6.

[153] AT&T Comments at 4 (the word "promptly" is "too ambiguous and subject to interpretation" to establish a meaningful timeframe); USTelecom Comments at 4 (the proposed language is "overly broad and subjective" and risks adding additional uncertainty to the restoration process); ATIS Reply Comments at 5-6.

[154] USTelecom Comments at 4; Verizon Comments at 6, note 11.

56. We seek further comment on NTIA's requested rule changes relating to restoration timeframes. We ask commenters to address the threshold question of whether provisioning and restoration timeframes should be the same. Considering that provisioning and restoration consist of different activities, do they require different timeframes? Do commenters agree with NTIA that we should replace the current language with the single term "promptly"? Is "promptly" sufficiently unambiguous, or will it lead to confusion and uncertainty? To the extent commenters believe "all resources" is unreasonable, what would they propose as an alternate standard? How can our rules ensure flexibility for carriers to address event-specific circumstances and resource demands? Should we incorporate language to address external circumstances (e.g., those "beyond the service provider's control")?[155] Commenters should address any potential costs or burdens related to NTIA's requested rule changes. As an alternative approach, should we eliminate the restoration timeframes from our rules? Would such an approach give DHS the flexibility necessary to establish restoration standards through contractual agreements with service providers?

57. *Reporting Requirements*. Executive Order 13618 directs DHS to ensure the priority services programs operate effectively and meet the needs of NSEP users "under all circumstances, including conditions of crisis or emergency."[156] DHS considers performance data related to disaster operations to be "essential to determining the effectiveness" of the priority services programs.[157]

58. NTIA requests the Commission amend its TSP rules to require service providers to report to DHS provisioning and restoration times for TSP circuits in areas covered by the activation of the Disaster Information Reporting System (DIRS).[158] Specifically, DHS believes that such reporting obligations would give it access to TSP provisioning and restoration times and aggregate data that would allow it to compare the data for TSP services to similar data for non-TSP services.[159] NTIA does not propose specific obligations concerning the timing and frequency for reporting this information but, instead, proposes that DHS coordinate with the Commission to develop specific data requirements and reporting timeframes.[160]

59. NTIA also requests the Commission amend its WPS rules to require service providers to file implementation, usage, and performance data with DHS so that it can assess the program's readiness, usage, and performance at all times and all places offered, and for specific geographic areas and times.[161] DHS currently collects and analyzes data from WPS providers detailing "usage, performance, implementation, and supporting infrastructure,"[162] but it does not receive consistent information from all providers.[163] NTIA asserts the proposed requirement is necessary to ensure consistency across all WPS providers and to formalize the process by which providers submit WPS data to DHS.[164]

---

[155] TSP Petition at 6.

[156] *See* Executive Order 13618 § 5.2(b); *id.* § 5.2(a) (directing DHS to ensure the priority services programs meet the needs of NSEP users by "oversee[ing] the development, testing, implementation, and sustainment of NSEP communications").

[157] TSP Petition at 4.

[158] *Id* at 4-5.

[159] *Id* at 4.

[160] *Id*.

[161] WPS Petition at 14.

[162] *Id*. at 13.

[163] *Id*.

[164] *Id*. at 14.

60. Commenters object to NTIA's request to add reporting requirements to the TSP and WPS rules. With regard to TSP, commenters argue that requiring service providers to report TSP restoration times to DHS should be limited to post-disaster reporting so that service providers need not divert resources away from the disaster response efforts.[165] Some commenters suggest that comparing the provisioning and restoration times of TSP services and non-TSP services is unlikely to produce useful results.[166] Other commenters contend that mandatory TSP reporting requirements could undercut the effectiveness of DIRS because service providers could attempt to avoid TSP reporting obligations by declining to participate in DIRS reporting.[167] Commenters also point out practical implementation concerns with NTIA's proposals.[168]

61. Some commenters also oppose NTIA's WPS proposal, arguing that imposing performance data reporting requirements could inhibit providers' flexibility and ability to innovate.[169] Instead, commenters favor contractual solutions that they believe would permit providers the flexibility to customize offerings based on their specific network characteristics.[170] T-Mobile raises concerns regarding the highly sensitive nature of the WPS data and argues that service providers should work with DHS and other federal agencies to determine the "appropriate information disclosure" rather that the Commission "codifying what data should be shared."[171]

62. We seek further comment on NTIA's request to add reporting requirements to the TSP and WPS rules. Does NTIA's proposed approach strike an appropriate balance between the potential costs/burdens of compliance and the potential benefits to NSEP users? What costs/burdens (in time and expense) would service providers encounter? What public safety and/or national security benefits would result? Would the benefits outweigh the costs? We also seek comment on whether it is necessary for the Commission to adopt rules-based requirements or whether DHS could obtain the same information through contractual negotiations with service providers. Is there an alternative method by which DHS could assess the effectiveness of the priority services programs during crisis or emergency situations?

---

[165] AT&T Comments at 4 ("[I]f the Commission imposes new reporting requirements on carriers, it should provide an ample timeframe for reporting following a disaster… to ensure that carriers are not forced to divert resources away from recovery to data collection."); NCTA Comments at 3 ("[R]equiring cable operators and other providers to gather additional data on their performance during a disaster situation raises concerns that the data collection will detract from restoration efforts . . . ."); ATIS Reply Comments at 4 ("[T]he Commission should avoid creating new requirements that could distract providers during disasters from their important service restoration efforts.").

[166] AT&T Comments at 3-4 (asserting that collection of provisioning and restoration times is unlikely to yield "useful data" or "meaningful conclusions"); NCTA Comments at 3-4 ("[C]omparing the provisioning and restoration times of TSP services and non-TSP services does not seem likely to lend itself to a meaningful analysis of any individual provider, and would be even less meaningful if used to compare performance across providers."); ATIS Reply Comments at 3 ("[T]he performance data that would be collected during a DIRS activation would likely not be actionable and/or useful").

[167] USTelecom Comments at 3-4 ("[T]he Commission should be mindful to not undermine the voluntary nature of DIRS [by]… creating disincentives for voluntary participation."); ATIS Reply Comments at 4-5 ("Creating mandatory reporting obligations related to a voluntary reporting system could undermine the voluntary nature of DIRS or create an incentive for providers not to participate in DIRS.").

[168] Verizon Comments at 5-6 (pointing out that service providers will need to assess whether and how their existing IT capabilities can timely capture more granular facility-specific restoration information for a covered service, tie that facility to a particular DIRS-covered geographic area and timeline, and compile the relevant information in DHS's desired format); ATIS Reply Comments at 4.

[169] T-Mobile Reply Comments at 3-4.

[170] *Id*.

[171] *Id*.

Finally, we seek comment on whether any reporting requirements should include restrictions on DHS's ability to use or share commercially sensitive data.

E. Alternative Approach: Applying the GETS Model to TSP and WPS

63. As an alternative to the proposals described above, we seek comment on whether the goals of this proceeding could be achieved by replacing the current rules-based approach to priority services with a "light-touch" regulatory framework for all priority services programs. Under this alternative approach, all service providers, on a voluntary basis, may offer prioritized restoration and provisioning of voice, data, and video services to authorized users. Likewise, all service providers, on a voluntary basis, would be authorized to give NSEP personnel priority access to, and priority use of, all voice, data, and video services available over their networks. Details could be negotiated and administered by DHS via contract. We seek comment on whether there are currently any legal or regulatory barriers to this alternative approach and how to transition to such an approach should we adopt it.

64. We seek comment on whether trends in the current public safety marketplace may favor adoption of a light-touch regulatory approach. We note that in contrast to TSP and WPS, GETS has operated on a contractual basis without FCC rules or regulations. Nonetheless, would this alternative approach require any changes to FCC rules, or could providers and DHS freely begin operating under this approach without further FCC action? This approach appears to have been successful: DHS recently found that GETS call completion rates exceeded their target rates for every fiscal year between 2015 and 2018 (the most recent year for which data is available).[172]

65. Likewise, the recent roll out of the First Responder Network Authority (FirstNet) suggests that priority services programs can operate effectively in a market-driven environment. Congress established FirstNet in 2012 to "ensure the deployment and operation of a nationwide, broadband network for public safety communications."[173] FirstNet offers service priority and preemption, which allow first responders to communicate over an "always-on" network.[174] Public safety entities using FirstNet can boost their priority levels during emergency situations "to ensure first responder teams stay connected" even when networks are congested.[175] AT&T describes preemption as an "enhanced" form of priority service because it "shifts non-emergency traffic to another line," which ensures NSEP users' communications are successfully completed.[176] According to AT&T, priority and preemption support voice calls, "text messages, images, videos, location information, [and] data from apps… in real time."[177] In the first half of 2019, the monthly levels of device connections to FirstNet "outperformed expectations

---

[172] Department of Homeland Security, Cybersecurity and Infrastructure Security Agency Budget Overview: Fiscal Year 2020 Congressional Justification at 9 (2019). Call completion rate is one strategic measure of success that DHS uses to evaluate the effectiveness of the priority services programs. Department of Homeland Security Appropriations for 2020. Part 1C: Department of Homeland Security, Fiscal Year 2020 Budget Justification: Hearing Before Subcomm. on Homeland Sec. of the H. Comm. on Appropriations, 116th Cong. 11, 13 (2019). Specifically, DHS examines the "percent of calls made by [NSEP] users during emergency situations that DHS ensured were connected." *Id.*

[173] Congressional Research Service, The First Responder Network (FirstNet) and Next-Generation Communications for Public Safety: Issues for Congress at 1 (2017), https://fas.org/sgp/crs/homesec/R42543.pdf.

[174] FirstNet, *Early Benefits of FirstNet: Priority and Preemption* (Aug. 2, 2018), https://firstnet.gov/newsroom/blog/early-benefits-firstnet-priority-and-preemption.

[175] *Id.*

[176] Press Release, AT&T, FirstNet Launches Ruthless Preemption for First Responders (Dec. 12, 2017), https://about.att.com/story/preemption_for_first_responders.html.

[177] *Id.*

at approximately 196% of projected targets."[178] In May 2019, "a majority of agencies and nearly 50% of FirstNet's total connections were new subscribers (not AT&T migrations)."[179] These trends suggest that first responders recognize the benefits of prioritization, preemption, and other innovative features that enhance public safety communications. We seek comment on the extent to which first responders and providers have already availed themselves of the option to offer prioritized of information services, such as data and video services.

66. We note that other service providers have recently begun offering their own priority services options to compete with FirstNet. For example, Verizon offers priority and preemption services through its public safety private core.[180] In addition, public safety users "have access to several… enhanced services," including Mobile Broadband Priority Service and data preemption.[181] These services "provide public safety users priority service for data transmissions" by giving users priority over commercial users during periods of heavy network congestion[182] and " reallocat[ing] network resources from commercial data/Internet users to first responders" if networks reach full capacity.[183]

67. Similarly, U.S. Cellular offers "enhanced data priority services for first responders and other emergency response teams."[184] The company uses a "dedicated broadband LTE network that separates mission-critical data from commercial and consumer traffic," ensuring that NSEP personnel "have access to vital services" during emergency situations.[185] In addition to prioritizing network access, U.S. Cellular uses preemption "to automatically and temporarily reallocate lower priority network resources to emergency responders so they can stay connected during emergencies or other high-traffic events."[186]

68. Based on these recent industry trends, we seek comment on whether a light-touch regulatory approach to all priority services would be sufficient to meet the needs of NSEP users. We also seek comment on the potential consequences of adopting such an approach. To what extent would it enhance competition and facilitate the development of innovative service offerings for use by NSEP personnel? What would be the overall impacts on public safety communications? Would DHS be able to use contractual provisions to make the programmatic changes it seeks in the TSP and WPS petitions? What impact, if any, would the light-touch approach have on DHS's ability to manage priority services programs and the Commission's ability to satisfy its responsibilities under Executive Order 13618?

---

[178] TheBigRedGuide, *FirstNet's First Responder Network: Deployment and Subscribers Exceed Expectations*, https://www.thebigredguide.com/insights/firstnet-first-responder-fire-network-deployment-subscribers.1587043740.html (last visited May 28, 2020).

[179] *Id*.

[180] Press Release, Verizon, Verizon Unveils Public Safety Private Core (Mar. 27, 2018), https://www.verizon.com/about/news/verizon-unveils-public-safety-private-core. "The public safety core separates data traffic of public safety mobile users from commercial users across Verizon's 4G LTE network. Public safety users will have their data immediately recognized as public safety with priority access at the tower and through the network. The private core leverages leading edge networking technology to provide security, flexibility and reliability." *Id*.

[181] *Id*.

[182] *Id*. "[Mobile Broadband Priority Service] enables priority service for public safety officials using applications on smartphones or tablets, transmitting data from first responder vehicles or video from surveillance cameras." *Id*.

[183] *Id*.

[184] U.S. Cellular, *U.S. Cellular Introduces Enhanced Data Priority for Public Safety* (Feb. 25, 2019), https://www.uscellular.com/get-to-know-us/our-company/press-room/2019/uscellular-introduces-enhanced-data-priority-for-public-safety.

[185] *Id*.

[186] *Id*.

Would a minimum level of FCC regulation be necessary to provide a "backstop" for the priority services programs?

IV. PROCEDURAL MATTERS

69. *Ex Parte Presentations*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[187] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

70. *Comment Filing Procedures*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs//. Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one active 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (Mar. 19, 2020) available https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.
- During the time the Commission's building is closed to the general public and until further notice,

[187] 47 CFR §§ 1.1200 *et seq.*

if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

71. *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

72. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

73. *Initial Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act (RFA),[188] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and actions considered in this *Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be identified with a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.[189]

74. *Paperwork Reduction Act Analysis*. This *Notice of Proposed Rulemaking* contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

75. *Further Information*. For additional information on this proceeding, contact Chris Smeenk, Attorney Advisor, Operations and Emergency Management Division, Public Safety and Homeland Security Bureau, at (202) 418-1630 or Chris.Smeenk@fcc.gov.

V. ORDERING CLAUSE

76. IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 4(n), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 308(a), 309(a), 309(j), 316, 332, 403, 615(a)(1), 615(c), and 706 of the Communications Act of 1934, as amended, codified at 47 U.S.C. §§ 151, 154(i)-(j) & (n), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 308(a), 309(a), 309(j), 316, 332, 403, 606, 615(a)(1), 615(c); and Executive Order 13618, that this *Notice of Proposed Rulemaking* in PS Docket No. 20-187 is ADOPTED.

77. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed*

[188] *See* 5 U.S.C. § 603.

[189] *See* 5 U.S.C. § 603(a).

Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules for Telecommunications Service Priority

For the reasons discussed in the *Notice of Proposed Rulemaking*, the Federal Communications Commission proposes to amend 47 CFR part 64, Appendix A as follows:

Appendix A to Part 64 - Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)

1. *Purpose and Authority*

a. This appendix establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The NSEP TSP System authorizes priority treatment to certain telecommunications services and Internet Protocol-based services (including voice, data, and video services), for which provisioning or restoration priority (RP) levels are requested, assigned, and approved in accordance with this appendix.

b. This appendix is issued pursuant to sections 1, 4(i), 4(j), 4(o), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 308(a), 309(a), 309(j), 316, 332, 403, 615a-1, 615c, and 606 of the Communications Act of 1934, as amended, codified at 47 U.S.C. §§ 151, 154(i)-(j), (n) & (o), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 308(a), 309(a), 309(j), 316, 332, 403, 615a-1, 615c, 606; Section 706 of the Telecommunications Act of 1996, codified at 47 U.S.C § 1302; and Executive Order 13618. These authorities grant to the Federal Communications Commission (FCC) the authority over the assignment and approval of priorities for provisioning and restoration of telecommunications services and Internet Protocol-based services. Under section 706 of the Communications Act, this authority may be superseded, and the mandatory provisions of this section may be expanded to include non-common carrier telecommunications services, by the war emergency powers of the President of the United States.

c. Together, this appendix and the regulations and procedures issued by the Department of Homeland Security (DHS) establish one uniform system of priorities for provisioning and restoration of NSEP telecommunications services and Internet Protocol-based services both before and after invocation of the President's war emergency powers. In order that government and industry resources may be used effectively under all conditions, a single set of rules, regulations, and procedures is necessary, and they must be applied on a day-to-day basis to all NSEP services so that the priorities they establish can be implemented at once when the need arises.

2. *Definitions*

As used in this appendix:

a. *Assignment* means the designation of priority level(s) for a defined NSEP telecommunications service or Internet Protocol-based service for a specified time period.

b. *Audit* means a quality assurance review in response to identified problems.

c. *Government* refers to the Federal government or any foreign, state, county, municipal or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., “Federal government”, “state government”). “Foreign government” means any sovereign empire, kingdom, state, or independent political community, including foreign diplomatic and consular establishments and coalitions or associations of governments (e.g., North Atlantic Treaty Organization (NATO),

Southeast Asian Treaty Organization (SEATO), Organization of American States (OAS), and government agencies or organization (e.g., Pan American Union, International Postal Union, and International Monetary Fund)).

d. *National Coordinating Center for Communications (NCC)* refers to the joint telecommunications industry-Federal government operation that assists in the initiation, coordination, restoration, and reconstitution of NSEP telecommunications services or facilities.

e. *National Security Emergency Preparedness (NSEP)* services, or "NSEP services," means telecommunications services or Internet Protocol-based services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories, Emergency NSEP and Essential NSEP, and are assigned priority levels pursuant to section 8 of this appendix.

f. *NSEP treatment* refers to the provisioning of a specific NSEP service before others based on the provisioning priority level assigned by DHS.

g. *Priority action* means assignment, revision, revocation, or revalidation by DHS of a priority level associated with an NSEP service.

h. *Priority level* means the level that may be assigned to an NSEP service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunications services. Priority levels authorized by this appendix are designated (highest to lowest) "E," "1," "2," "3," "4," and "5," for provisioning and "1," "2," "3," "4," and "5," for restoration.

i. *Priority level assignment* means the priority level(s) designated for the provisioning and/or restoration of a specific NSEP service under section 8 of this appendix.

j. *Private NSEP services* include non-common carrier telecommunications services.

k. *Provisioning* means the act of supplying service to a user, including all associated transmission, wiring, and equipment. As used herein, "provisioning" and "initiation" are synonymous and include altering the state of an existing priority service or capability.

l. *Public switched NSEP services* include those NSEP services using public switched networks.

m. *Reconciliation* means the comparison of NSEP service information and the resolution of identified discrepancies.

n. *Restoration* means the repair or returning to service of one or more services that have experienced a service outage or are unusable for any reason, including a damaged or impaired facility. Such repair or returning to service may be done by patching, rerouting, substitution of component parts or pathways, and other means, as determined necessary by a service provider.

o. *Revalidation* means the re-justification by a service user of a priority level assignment. This may result in extension by DHS of the expiration date associated with the priority level assignment.

p. *Revision* means the change of priority level assignment for an NSEP service. This includes any extension of an existing priority level assignment to an expanded NSEP service.

q. *Revocation* means the elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NSEP service are revoked upon service termination.

r. *Service identification* refers to the information uniquely identifying an NSEP service to the service provider and/or service user.

s. *Service user* refers to any individual or organization (including a service provider) supported by an NSEP service for which a priority level has been requested or assigned pursuant to section 7 or 8 of this appendix.

t. *Service provider* refers to any person, association, partnership, corporation, organization, or other entity (including government organizations) that offers to supply any equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

u. *Spare circuits or services* refers to those not being used or contracted for by any customer.

v. *Telecommunications services* means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

w. *Telecommunications Service Priority (TSP) system user* refers to any individual, organization, or activity that interacts with the NSEP TSP System.

3. Scope

a. *Service providers.*

(1) This appendix applies to the provision and restoration of certain telecommunications services or Internet Protocol-based services for which priority levels are requested, assigned, and approved pursuant to section 8 of this appendix.

(2) Common carriers must offer prioritized provisioning and restoration of circuit-switched voice communication services. Any service provider may, on a voluntary basis, offer prioritized provisioning and restoration of data, video, and IP-based voice services.

b. *Eligible services.* The NSEP TSP System and procedures established by this appendix authorize priority treatment to the following domestic services (including portions of U.S. international services offered by U.S. service providers) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with this appendix:

(1) Common carrier services which are:

(a) Interstate or foreign telecommunications services,

(b) Intrastate telecommunications services inseparable from interstate or foreign telecommunications services, and intrastate telecommunications services to which priority levels are assigned pursuant to section 8 of this appendix.

(2) Services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to section 8 of this appendix.

b. *Control services and orderwires.* The NSEP TSP System and procedures established by this appendix are not applicable to authorize priority treatment to control services or orderwires owned by a service provider and needed for provisioning, restoration, or maintenance of other services owned by that service provider. Such control services and orderwires shall have priority provisioning and restoration over all other services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP System and procedures established by this appendix are applicable to control services or orderwires leased by a service provider.

c. *Other services.* The NSEP TSP System may apply, at the discretion of and upon special arrangements by the NSEP TSP System users involved, to authorize priority treatment to the following services:

(1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to section 8 of this appendix.

(2) Portions of U.S. international services which are provided by foreign correspondents. (U.S. service providers are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NSEP TSP System. If such arrangements do not exist, U.S. service providers should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which comes closest to meeting the procedures established in this appendix.)

4. *Policy*

The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment, *i.e.,* provisioning and restoration, of NSEP services. As such, it establishes the framework for service providers to provision, restore, or otherwise act on a priority basis to ensure effective NSEP services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilizations, Attack/War, and Post-Attack/Recovery. Although priority levels normally will be assigned by DHS and retained by service providers only for the current time period, they may be preassigned for the other two time periods at the request of service users who are able to identify and justify in advance, their wartime or post-attack NSEP requirements. Absent such preassigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At all times, priority level assignments will be subject to revision by the FCC or (on an interim basis) DHS, based upon changing NSEP needs. No other system of service priorities which conflicts with the NSEP TSP System is authorized.

5. *Responsibilities*

a. The FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.

(2) Enforce NSEP TSP System rules and regulations, which are contained in this appendix.

(3) Act as final authority for approval, revision, or disapproval of priority actions by DHS and adjudicate disputes regarding either priority actions or denials of requests for priority actions by DHS, until superseded by the President's war emergency powers under section 706 of the

Communications Act.

(4) Perform such functions as are required by law and Executive Order 13618, including:

(a) with respect to all entities licensed or regulated by the FCC: the extension, discontinuance, or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices, and classifications; the construction, authorization, activation, deactivation, or closing of radio stations, services, and facilities; the assignment of radio frequencies to licensees; the investigation of violations of pertinent law; and the assessment of communications service provider emergency needs and resources; and

(b) support the continuous operation and restoration of critical communications systems and services by assisting the Secretary of Homeland Security with infrastructure damage assessment and restoration, and by providing the Secretary of Homeland Security with information collected by the FCC on communications infrastructure, service outages, and restoration, as appropriate.

(5) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 5(b) below.)

b. Sponsoring Federal organizations will:

(1) Review and decide whether to sponsor foreign, state, and local government and private industry (including service providers) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to DHS. Recommendations will be based on the categories and criteria in section 10 of this appendix.

(2) Forward notification of priority actions or denials of requests for priority actions from DHS to the requesting foreign, state, and local government and private industry entities.

(3) Cooperate with DHS during reconciliation, revalidation, and audits.

(4) Comply with any regulations and procedures supplemental to and consistent with this appendix which are issued by DHS.

c. Service users will:

(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this appendix and any supplemental regulations and procedures issued by DHS that are consistent with this appendix.

(2) Request and justify revalidation of all priority level assignments at least every three years.

(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end service operation by the service due date, and continued operation; and, for such services in the Emergency NSEP category, by the time that providers are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.

(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.

(5) Pay providers any authorized costs associated with services that are assigned priority levels.

(6) Report to providers any failed or unusable services that are assigned priority levels.

(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise DHS thereof.

(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.

(9) When NSEP treatment is invoked under section 8(c) of this appendix, within 90 days following provisioning of the service involved, forward to the National Coordinating Center (see section 2(d) of this appendix) complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.

(10) Cooperate with DHS during reconciliation, revalidation, and audits.

(11) Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by DHS.

d. Non-federal service users, in addition to responsibilities prescribed above in section 6(d), will obtain a sponsoring Federal organization for all requests for priority actions. If unable to find a sponsoring Federal organization, a non-federal service user may submit its request, which must include documentation of attempts made to obtain a sponsor and reasons given by the sponsor for its refusal, directly to DHS.

e. Service providers will:

(1) When NSEP treatment is invoked by service users, provision NSEP services before non-NSEP services, based on priority level assignments made by DHS. Provisioning will require service providers to:

(a) Allocate resources to ensure best efforts to provide NSEP services by the time required. When limited resources constrain response capability, providers will address conflicts for resources by:

(i) Providing NSEP services in order of provisioning priority level assignment (*i.e.*, "E", "1", "2", "3", "4", or "5");

(ii) Providing Emergency NSEP services (*i.e.*, those assigned provisioning priority level "E") in order of receipt of the service requests;

(iii) Providing Essential NSEP services (*i.e.*, those assigned priority levels "1", "2", "3", "4", or "5") that have the same provisioning priority level in order of service due dates; and

(iv) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service providers and users) to the Executive Office of the President (EOP) for resolution.

(b) Comply with NSEP service requests by:

(i) Allocating resources necessary to provide Emergency NSEP services as soon as possible, dispatching outside normal business hours when necessary;

(ii) Ensuring best efforts to meet requested service dates for Essential NSEP services, negotiating a mutually (authorized user and provider) acceptable service due date when the requested service due date cannot be met; and

(iii) Seeking NCC assistance as authorized under the NCC Charter (see section 1.3, NCC Charter, dated October 9, 1985).

(2) Restore NSEP services which suffer outage or are reported as unusable or otherwise in need of restoration, before non-NSEP services, based on restoration priority level assignments. (Note: For broadband or multiple service facilities, restoration is permitted even though it might result in restoration of services assigned no or lower priority levels along with, or sometimes ahead of, some higher priority level services.) Restoration will require service providers to restore NSEP services in order of restoration priority level assignment (*i.e.*, "1", "2", "3", "4", or "5") by:

(a) Allocating available resources to restore NSEP services as quickly as practicable, dispatching outside normal business hours to restore services assigned priority levels "1", "2", and "3" when necessary, and services assigned priority level "4" and "5" when the next business day is more than 24 hours away;

(b) Restoring NSEP services assigned the same restoration priority level based upon which can be first restored. (However, restoration actions in progress should not normally be interrupted to restore another NSEP service assigned the same restoration priority level);

(c) Patching and/or rerouting NSEP services assigned restoration priority levels from "1" through "5," when use of patching and/or rerouting will hasten restoration;

(d) Seeking NCC assistance authorized under the NCC Charter; and

(e) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service providers and users) to EOP for resolution.

(3) Respond to provisioning requests of authorized users and/or other service providers, and to restoration priority level assignments when an NSEP service suffers an outage or is reported as unusable, by:

(a) Ensuring that provider personnel understand their responsibilities to handle NSEP provisioning requests and to restore NSEP service;

(b) Providing a 24-hour point-of-contact for receiving provisioning requests for Emergency NSEP services and reports of NSEP service outages or unusability; and

(c) Seeking verification from an authorized entity if legitimacy of a priority level assignment or provisioning request for an NSEP service is in doubt. However, processing of Emergency NSEP service requests will not be delayed for verification purposes.

(4) Cooperate with other service providers involved in provisioning or restoring a portion of an NSEP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NSEP services, as detailed in section 5(e)(1), (2), and (3).

(5) All service providers, including resale carriers, are required to ensure that service providers supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NSEP services.

(6) Preempt, when necessary, existing services to provide an NSEP service as authorized in section 6 of this appendix.

(7) Assist in ensuring that priority level assignments of NSEP services are accurately identified "end-to-end" by:

(a) Seeking verification from an authorized Federal government entity if the legitimacy of the restoration priority level assignment is in doubt;

(b) Providing to subcontractors and/or interconnecting carriers the restoration priority level assigned to a service;

(c) Supplying, to DHS, when acting as a prime contractor to a service user, confirmation information regarding NSEP service completion for that portion of the service they have contracted to supply;

(d) Supplying, to DHS, NSEP service information for the purpose of reconciliation;

(e) Cooperating with DHS during reconciliation; and

(f) Periodically initiating reconciliation with their subcontractors and arranging for subsequent subcontractors to cooperate in the reconciliation process.

(8) Receive compensation for costs authorized through tariffs or contracts by:

(a) Provisions contained in properly filed state or Federal tariffs; or

(b) Provisions of properly negotiated contracts where the carrier is not required to file tariffs.

(9) Provision or restore only the portions of services for which they have agreed to be responsible (*i.e.*, have contracted to supply), unless the President's war emergency powers under section 706 of the Communications Act are in effect.

(10) Cooperate with DHS during audits.

(11) Comply with any regulations or procedures supplemental to and consistent with this appendix that are issued by DHS and reviewed by the FCC.

(12) Ensure that at all times a reasonable number of public switched network services are made available for public use.

(13) Not disclose information concerning NSEP services they provide to those not having a need-to-know or might use the information for competitive advantage.

(14) Comply with all relevant Commission rules regarding TSP.

6. *Preemption of Existing Services*

When necessary to provision or restore NSEP services, service providers may preempt services they provide as specified below. "User" as used in this Section means any user of a telecommunications service or Internet Protocol-based service, including both NSEP and non-NSEP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level "E" or restore NSEP services assigned a restoration priority level from "1" through "5":

(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in this appendix and the service provider's best judgment, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services are available for public use, based on the service provider's best judgment, such services may be used to satisfy a requirement for provisioning or restoring NSEP services.

(2) NSEP services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP services with higher priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

(3) Service providers who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service providers may, based on their best judgment, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority of "1" through "5". Preemption is not subject to the consent of the user whose service will be preempted.

7. *Requests for Priority Assignments*

All service users are required to submit requests for priority actions to DHS in the format and following the procedures prescribed by DHS.

8. *Assignment, Approval, Use, and Invocation of Priority Levels*

a. *Assignment and approval of priority levels.* Priority level assignments will be based upon the categories and criteria specified in section 10 of this appendix. A priority level assignment made by DHS will serve as DHS's recommendation to the FCC. Until the President's war emergency powers are invoked, priority level assignments must be approved by the FCC. However, service providers are ordered to implement any priority level assignments that are pending FCC approval. After invocation of the President's war emergency powers, these requirements may be superseded by other procedures issued by DHS.

b. *Use of Priority Level Assignments.*

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to providers. Provisioning priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to providers. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service providers only if the providers cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level assignments will also be transmitted to providers.

(3) Service providers shall accept priority levels and/or revisions only after assignment by DHS.

NOTE:

Service providers acting as prime contractors will accept assigned NSEP priority levels only when they are accompanied by the DHS designated service identification, *i.e.,* TSP Authorization Code. However, service providers are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by DHS when service providers, user, and contracting activities are unable to communicate with either the FCC or DHS. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. *Invocation of NSEP treatment.* To invoke NSEP treatment for the priority provisioning of an NSEP service, an authorized federal employee within, or acting on behalf of, the service user's organization must make a declaration to concerned service provider(s) and DHS that NSEP treatment is being invoked. An authorized invocation official is one who (1) understands how the requested service ties to the organization's NSEP mission, and (2) is authorized by the organization to approve the expenditure of funds necessary for the requested service.

9. *Appeal*

Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to DHS within 30 days of notification to the service user. The appellant must use the form or format required by DHS and must serve the FCC with a copy of its appeal. DHS will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of DHS's decision on appeal. Additionally, DHS may appeal any FCC revisions, approvals, or disapprovals to the FCC. All appeals to the FCC must be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on DHS and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to DHS that include a claim of new information that has not been presented before for consideration may be submitted at any time.

10. *Categories, Criteria, and Priority Levels*

a. *General.* NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture. Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no sub-categories.

(2) Priority levels of "1," "2," "3," "4," and "5" may be assigned for provisioning and/or restoration of Essential NSEP services. However, for Emergency NSEP services, a priority level "E" is assigned for provisioning. A restoration priority level from "1" through "5" may be assigned if an Emergency NSEP service also qualifies for such a restoration priority level under

the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized resource managers within DHS based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign sub-priorities to their services assigned priority levels. Receipt of and response to any such sub-priorities is optional for service providers.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. *Emergency NSEP.* Services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) *Criteria.* To qualify under the Emergency NSEP category, the service must meet criteria directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122).

(b) State or local government activity responding to a Presidentially declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of Presidential war emergency powers under section 706 of the Communications Act.)

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.* and 18 U.S.C. 2511, 2518, 2519).

(2) *Priority Level Assignment.*

(a) Services qualifying under the Emergency NSEP category are assigned priority level "E" for provisioning.

(b) After 30 days, assignments of provisioning priority level "E" for Emergency NSEP

services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service providers.

(c) For restoration, Emergency NSEP services may be assigned priority levels under the provisions applicable to Essential NSEP services (see section 10(c)). Emergency NSEP services not otherwise qualifying for restoration priority level assignment as Essential NSEP may be assigned a restoration priority level "5" for a 30-day period. Such 30-day restoration priority level assignments will be revoked automatically unless extended for another 30-day period. A notice of any such revocation will be sent to service providers.

c. *Essential NSEP.* Services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority level of "1," "2," "3," "4," or "5" for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of lack of service or of service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a service must qualify under one of the four following subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety and Maintenance of Law and Order; or Public Welfare and Maintenance of National Economic Posture. (Note Under emergency circumstances, Essential NSEP services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(1) *National security leadership.* This subcategory will be strictly limited to only those NSEP services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must be at least one of the following:

(i) Critical orderwire, or control service, supporting other NSEP functions.

(ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.

(iii) National Command Authority communications service for military command and control critical to national survival.

(iv) Intelligence communications service critical to warning of potentially catastrophic attack.

(v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "1" for provisioning and restoration during the Peace/Crisis/Mobilization time period.

(2) *National security posture and U.S. population attack warning.* This subcategory covers those minimum additional NSEP services essential to maintaining an optimum defense, diplomatic, or continuity-of-government postures before, during, and after crises situations. Such situations are

those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Threat assessment and attack warning.

(ii) Conduct of diplomacy.

(iii) Collection, processing, and dissemination of intelligence.

(iv) Command and control of military forces.

(v) Military mobilization.

(vi) Continuity of Federal government before, during, and after crises situations.

(vii) Continuity of state and local government functions supporting the Federal government during and after national emergencies.

(viii) Recovery of critical national functions after crises situations.

(ix) National space operations.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority level "2," "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(3) *Public health, safety, and maintenance of law and order.* This subcategory covers the minimum number of NSEP services necessary for giving civil alert to the U.S. population and maintaining law and order and the health and safety of the U.S. population in times of any national, regional, or serious local emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP functions.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Population warning (other than attack warning).

(ii) Law enforcement.

(iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).

(vi) Hospitals and distributions of medical supplies.

(v) Critical logistic functions and public utility services.

(vi) Civil air traffic control.

(vii) Military assistance to civil authorities.

(viii) Defense and protection of critical industrial facilities.

(ix) Critical weather services.

(x) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Service under this subcategory will normally be assigned priority levels "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(4) *Public welfare and maintenance of national economic posture.* This subcategory covers the minimum number of NSEP services necessary for maintaining the public welfare and national economic posture during any national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Distribution of food and other essential supplies.

(ii) Maintenance of national monetary, credit, and financial systems.

(iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.

(iv) Control of production and distribution of strategic materials and energy supplies.

(v) Prevention and control of environmental hazards or damage.

(vi) Transportation to accomplish the foregoing NSEP functions.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority levels "4" or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

d. *Limitations.* Priority levels will be assigned only to the minimum number of NSEP services required to support an NSEP function. Priority levels will not normally be assigned to backup services on a continuing basis, absent additional justification, e.g., a service user specifies a requirement for physically diverse routing or contracts for additional continuity-of-service features. EOP may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by EOP.

e. *Non-NSEP services.* Services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.

APPENDIX B

Proposed Rules

For the reasons discussed in the *Notice of Proposed Rulemaking*, the Federal Communications Commission proposes to amend 47 CFR part 64.402 as follows:

§ 64.402 Policies and procedures for the provision of wireless priority service by wireless service providers.

Wireless service providers that elect to provide wireless priority service to National Security and Emergency Preparedness personnel shall provide wireless priority service in accordance with the policies and procedures set forth in Appendix B to this part.

For the reasons discussed in the *Notice of Proposed Rulemaking*, the Federal Communications Commission proposes to amend 47 CFR part 64, Appendix B as follows:

Appendix B to Part 64 - Wireless Priority Service (WPS) for National Security and Emergency Preparedness (NSEP)

1. *Purpose and Authority*

a. This appendix establishes policies and procedures and outlines responsibilities for the Wireless Priority Service (WPS) to support the needs for National Security Emergency Preparedness (NSEP) personnel and other authorized users. WPS authorizes priority treatment to certain domestic telecommunications services and Internet Protocol-based services for which provisioning priority levels are requested, assigned, and approved in accordance with this appendix.

b. This appendix is issued pursuant to sections 1, 4(i), 4(j), 4(o), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 308(a), 309(a), 309(j), 316, 332, 403, 615a-1, 615c, and 606 of the Communications Act of 1934, as amended, codified at 47 U.S.C. §§ 151, 154(i)-(j), (n) & (o), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 308(a), 309(a), 309(j), 316, 332, 403, 615a-1, 615c, 606; Section 706 of the Telecommunications Act of 1996, codified at 47 U.S.C § 1302; and Executive Order 13618. Under section 706 of the Communications Act, this authority may be superseded by the war emergency powers of the President of the United States.

c. This appendix is intended to be read in conjunction with regulations and procedures that the Department of Homeland Security (DHS) issues to implement the responsibilities assigned in section 5 of this appendix, or for use in the event this appendix is superseded by the President's emergency war powers. Together, this appendix and the regulations and procedures issued by DHS establish one uniform system of wireless priority access service both before and after invocation of the President's emergency war powers.

2. *Definitions*

As used in this appendix:

1. *Authorizing agent* refers to a Federal or State entity that authenticates, evaluates, and makes recommendations to DHS regarding the assignment of wireless priority access service levels.

2. *Service provider* means an FCC-licensed wireless service provider. The term does not include agents of the licensed provider or resellers of wireless service.

3. *Service user* means an individual or organization (including a service provider) to whom or which a priority access assignment has been made.

4. The following terms have the same meaning as in Appendix A to part 64, as amended:

(a) Assignment;

(b) Government;

(c) National Coordinating Center for Communications (NCC);

(d) National Security Emergency Preparedness (NSEP) services (excluding the last sentence);

(e) Reconciliation;

(f) Revalidation;

(g) Revision;

(h) Revocation;

(i) Telecommunications services (excluding the last sentence).

3. *Scope*

a. *Applicability*. This appendix applies to the provision of WPS by wireless service providers to users who qualify under the provisions of section 7 of this appendix.

b. *Eligible services*. Wireless service providers may, on a voluntary basis, offer prioritized provisioning of voice, data, and video services. Providers that elect to offer these services must comply with all provisions of this appendix.

4. *Policy*

WPS provides the means for NSEP users to obtain priority wireless access to available radio channels when necessary to initiate emergency communications. It does not preempt public safety emergency (911) calls, but priority 1 and 2 voice calls may preempt or degrade other in-progress calls, if necessary. NSEP users are authorized to use priority signaling to ensure networks are able to detect WPS handset network registration and service invocation. WPS is used during situations when network congestion is blocking NSEP call attempts. It is available to authorized NSEP users at all times in markets where the service provider has voluntarily decided to provide such service. WPS priorities 1 through 5 are reserved for qualified and authorized NSEP users, and those users are provided access to radio channels before any other users.

5. *Responsibilities*

a. The FCC will:

1. Provide regulatory oversight of the implementation of WPS.

2. Enforce WPS rules and regulations.

3. Act as final authority for approval, revision, or disapproval of priority assignments by DHS by adjudicating disputes regarding either priority assignments or the denial thereof by DHS until superseded by the President's war emergency powers under Section 706 of the Communications Act.

4. Perform such functions as are required by law and Executive Order 13618, including:

(a) with respect to all entities licensed or regulated by the FCC: the extension, discontinuance, or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices, and classifications; the construction, authorization, activation, deactivation, or closing of radio stations, services, and facilities; the assignment of radio frequencies to licensees; the investigation of violations of pertinent law; and the assessment of communications service provider emergency needs and resources; and

(b) support the continuous operation and restoration of critical communications systems and services by assisting the Secretary of Homeland Security with infrastructure damage assessment and restoration, and by providing the Secretary of Homeland Security with information collected by the FCC on communications infrastructure, service outages, and restoration, as appropriate.

b. Authorizing agents will:

1. Identify themselves as authorizing agents and their respective communities of interest (State, Federal Agency) to DHS. State authorizing agents will provide a central point of contact to receive priority requests from users within their state. Federal authorizing agents will provide a central point of contact to receive priority requests from federal users or federally sponsored entities.

2. Authenticate, evaluate, and make recommendations to DHS to approve priority level assignment requests using the priorities and criteria specified in section 7 of this appendix. As a guide, WPS authorizing agents should request the lowest priority level that is applicable and the minimum number of wireless services required to support an NSEP function. When appropriate, the authorizing agent will recommend approval or deny requests for WPS.

3. Ensure that documentation is complete and accurate before forwarding it to DHS.

4. Serve as a conduit for forwarding WPS information from DHS to the service user and vice versa. Information will include WPS requests and assignments, reconciliation and revalidation notifications, and other information.

5. Participate in reconciliation and revalidation of WPS information at the request of DHS.

6. Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by DHS.

7. Disclose content of the WPS database only to those having a need-to-know.

c. Service users will:

1. Determine the need for and request WPS assignments in a planned process, not waiting until an

emergency has occurred.

2. Request WPS assignments for the lowest applicable priority level and minimum number of wireless services necessary to provide NSEP management and response functions during emergency/disaster situations.

3. Initiate WPS requests through the appropriate authorizing agent. DHS will make final approval or denial of WPS requests and may direct service providers to remove WPS if appropriate. (Note: State and local government or private users will apply for WPS through their designated State government authorizing agent. Federal users will apply for WPS through their employing agency. State and local users in states where there has been no designation will be sponsored by the Federal agency concerned with the emergency function as set forth in Executive Order 12656. If no authorizing agent is determined using these criteria, DHS will serve as the authorizing agent.)

4. Submit all correspondence regarding WPS to the authorizing agent.

5. Invoke WPS only when congestion blocks network access and the user must establish communications to fulfill an NSEP mission. Calls should be as brief as possible to afford service to other NSEP users.

6. Participate in reconciliation and revalidation of WPS information at the request of the authorizing agent or DHS.

7. Request discontinuance of WPS when the NSEP qualifying criteria used to obtain WPS is no longer applicable.

8. Pay service providers as billed for WPS.

9. Comply with regulations and procedures that are issued by the DHS which are supplemental to and consistent with this appendix.

d. Service providers who offer any form of wireless priority access service for NSEP purposes will provide that service in accordance with this appendix. As currently described in the Priority Access and Channel Assignment Standard (IS-53-A), service providers will:

1. Provide WPS levels 1, 2, 3, 4, or 5 only upon receipt of an authorization from DHS and remove WPS for specific users at the direction of DHS.

2. Ensure that WPS system priorities supersede any other NSEP priority which may be provided.

3. Designate a point of contact to coordinate with DHS regarding WPS.

4. Participate in reconciliation and revalidation of WPS information at the request of DHS.

5. As technically and economically feasible, provide roaming service users the same grade of WPS provided to local service users.

6. Disclose content of the NSEP WPS database only to those having a need-to-know or who will not use the information for economic advantage.

7. Comply with regulations and procedures supplemental to and consistent with this appendix that

are issued by DHS.

8. Ensure that at all times a reasonable amount of wireless spectrum is made available for public use.

9. Notify DHS and the service user if WPS is to be discontinued as a service.

e. An appropriate body identified by DHS will identify and review any systemic problems associated with the WPS system and recommend actions to correct them or prevent their recurrence.

6. *Appeal*

Service users and authorizing agents may appeal any priority level assignment, denial, revision, or revocation to DHS within 30 days of notification to the service user. DHS will act on the appeal within 90 days of receipt. If a dispute still exists, an appeal may then be made to the FCC within 30 days of notification of DHS's decision. The party filing the appeal must include factual details supporting its claim and must provide a copy of the appeal to DHS and any other party directly involved. Involved parties may file a response to the appeal made to the FCC within 20 days, and the initial filing party may file a reply within 10 days thereafter. The FCC will provide notice of its decision to the parties of record. Until a decision is made, the service will remain status quo.

7. *WPS Priority Levels and Qualifying Criteria*

a. The following WPS priority levels and qualifying criteria apply equally to all users and will be used as a basis for all WPS assignments. There are five levels of NSEP priorities, priority one being the highest. The five priority levels are:

1. Executive Leadership and Policy Makers.

Users who qualify for the Executive Leadership and Policy Makers priority will be assigned priority one. A limited number of technicians who are essential to restoring wireless networks shall also receive this highest priority treatment. Users assigned to priority one receive the highest priority in relation to all other carrier-provided services. Examples of those eligible include:

(i) The President of the United States, the Secretary of Defense, selected military leaders, and the minimum number of senior staff necessary to support these officials;

(ii) State governors, lieutenant governors, cabinet-level officials responsible for public safety and health, and the minimum number of senior staff necessary to support these officials; and

(iii) Mayors, county commissioners, and the minimum number of senior staff to support these officials

2. Disaster Response/Military Command and Control.

Users who qualify for the Disaster Response/Military Command and Control priority will be assigned priority two. Individuals eligible for this priority include personnel key to managing the initial response to an emergency at the local, state, regional and federal levels. Personnel selected for this priority should be responsible for ensuring the viability or reconstruction of the basic infrastructure in an emergency area. In addition, personnel essential to continuity of government

and national security functions (such as the conduct of international affairs and intelligence activities) are also included in this priority. Examples of those eligible include:

(i) Federal emergency operations center coordinators, e.g., Manager, National Coordinating Center for Communications, National Interagency Fire Center, Federal Coordinating Officer, Federal Emergency Communications Coordinator, Director of Military Support;

(ii) State emergency Services director, National Guard Leadership, State and Federal Damage Assessment Team Leaders;

(iii) Federal, state and local personnel with continuity of government responsibilities;

(iv) Incident Command Center Managers, local emergency managers, other state and local elected public safety officials; and

(v) Federal personnel with intelligence and diplomatic responsibilities.

3. Public Health, Safety and Law Enforcement Command.

Users who qualify for the Public Health, Safety, and Law Enforcement Command priority will be assigned priority three. Eligible for this priority are individuals who direct operations critical to life, property, and maintenance of law and order immediately following an event. Examples of those eligible include:

(i) Federal law enforcement command;

(ii) State police leadership;

(iii) Local fire and law enforcement command;

(iv) Emergency medical service leaders;

(v) Search and rescue team leaders;

(vi) Emergency communications coordinators; and

(vii) Hospital personnel.

4. Public Services/Utilities and Public Welfare.

Users who qualify for the Public Services/Utilities and Public Welfare priority will be assigned priority four. Eligible for this priority are those users whose responsibilities include managing public works and utility infrastructure damage assessment and restoration efforts and transportation to accomplish emergency response activities. Examples of those eligible include:

(i) Army Corps of Engineers leadership;

(ii) Power, water and sewage and communications utilities;

(iii) Transportation leadership; and

(iv) Financial services personnel.

5. Disaster Recovery.

Users who qualify for the Disaster Recovery priority will be assigned priority five. Eligible for this priority are those individuals responsible for managing a variety of recovery operations after the initial response has been accomplished. These functions may include managing medical resources such as supplies, personnel, or patients in medical facilities. Other activities such as coordination to establish and stock shelters, to obtain detailed damage assessments, or to support key disaster field office personnel may be included. Examples of those eligible include:

(i) Medical recovery operations leadership;

(ii) Detailed damage assessment leadership;

(iii) Disaster shelter coordination and management; and

(iv) Critical Disaster Field Office support personnel.

b. These priority levels were selected to meet the needs of the emergency response community and provide priority access for the command and control functions critical to management of and response to national security and emergency situations, particularly during the first 24 to 72 hours following an event. Priority assignments should only be requested for key personnel and those individuals in national security and emergency response leadership positions. WPS is not intended for use by all emergency service personnel.

8. *Limitations*

WPS will be assigned only to the minimum number of wireless services required to support an NSEP function. Executive Office of the President may also establish limitations upon the relative numbers of services that may be assigned WPS or the total number of WPS users in a service area. These limitations will not take precedence over laws or executive orders. Limitations established shall not be exceeded.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rule Making* (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines in the *Notice*. The Commission will send a copy of *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, we propose changes to, and seek comment on, our telecommunications priority access rules which include the Telecommunications Services Priority (TSP) program and Wireless Priority Service (WSP), established in 1988 and 2000 respectively. These rules which are currently limited to voice communications, were established when communications networks were primarily based on circuit-switched technologies and have not been updated to address newer communications technologies. We note in the *Notice*, that "[t]he Commission has observed that consumers are increasingly moving away from traditional telephone services provided over copper wires and towards next-generation technologies using a variety of transmission means, including fiber, and wireless spectrum-based services."[4] Indeed, most American consumers have moved from legacy landlines to wireless or Internet-based alternatives, evidenced by the number of legacy landlines dropping by 160 million since 2000 – a trend that is likely to continue.[5]

3. The need for, and objective of, the proposed rules is to update our priority services requirements to take into account newer forms of both content (e.g., video, data) and transmission (e.g., IP-based), and to ensure that such programs operate effectively in today's IP-based network environment, particularly since priority services programs are used by National Security and Emergency Preparedness (NSEP) personnel. Accordingly, in the *Notice* we propose modifications to our rules to address next generation networks, technologies and services. In particular, we propose to expand the scope of the priority services rules to include current and future technologies by replacing specific and limited terms with more general and neutral terms. Such actions should make our rules flexible enough to apply to all forms of communication technologies that may be used in NSEP communications.

4. To enhance regulatory efficiency and reduce the burden on service providers by making it easier to identify and comply with the applicable priority service rules, we propose to simplify, streamline and, to the extent possible, consolidate our priority service rules into a single appendix in part 64 of the Commission's rules. Under our proposal, the amended appendices would continue to differentiate between the priority services programs.

---

[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] *Notice* at 7, para. 12, citing *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, FCC 18-111, para. 2 (2018).

[5] Rand, U.S. Consumer Preferences for Telephone and Internet Services at 4 (2020), https://www.rand.org/pubs/research_reports/RR1382.readonline.html.

5. Finally, the *Notice* addresses requests from the Department of Homeland Security (DHS) through the National Telecommunications and Information Administration (NTIA) to update the existing rules and requirements for the priority services programs. NTIA filed two Petitions for Rulemaking on behalf of DHS, requesting that the FCC update its TSP and Priority Access Service (PAS) rules to address changes in technology and evolving user needs for these programs.[6] The Bureau sought comment on both petitions via public notice. Accordingly, the rule changes prescribed in the *Notice* are informed by a careful review of NTIA's Petitions for Rulemaking and the public comments submitted in response to the public notices.

B. Legal Basis

6. The proposed action is authorized pursuant to Sections 1, 4(i), 4(j), 4(n), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615(a)(1), and 615(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j) & (n), 201-205, 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 308(a), 309(a), 309(j), 316, 332, 403, 606, 615(a)(1), 615(c); and Executive Order 13618.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[7] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[8] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[9] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[10]

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[11] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[12] These types of small businesses represent

[6] The first petition filed in July 2018, sought a Commission rulemaking to update the PAS rules. The second petition filed in July 2019, sought to update the TSP rules, and updated NTIA's July 2018 WPS petition to reflect revisions to technical standards and the provisions of the Cybersecurity and Infrastructure Security Agency Act of 2018.

[7] 5 U.S.C. § 603(b)(3).

[8] 5 U.S.C. § 601(6).

[9] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Section 3 of the Small Business Act, which is codified at 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[10] 15 U.S.C. § 632.

[11] *See* 5 U.S.C. § 601(3)-(6).

[12] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

99.9% of all businesses in the United States, which translates to 30.7 million businesses.[13]

9. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[14] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[15] Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[16]

10. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[17] U.S. Census Bureau data from the 2017 Census of Governments[18] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[19] Of this number there were 36,931 general purpose governments (county[20], municipal and town or township[21]) with populations of

[13] *Id*.

[14] 5 U.S.C. § 601(4).

[15] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file,"

https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[16] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data used for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[17] 5 U.S.C. § 601(5).

[18] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[19] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[20] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[21] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

less than 50,000 and 12,040 special purpose governments - independent school districts[22] with enrollment populations of less than 50,000.[23] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[24]

1. Telecommunications Service Providers

a. Wireless Telecommunications Providers

11. Pursuant to 47 CFR § 9.10(a), the Commission's 911 service requirements are only applicable to Commercial Mobile Radio Service (CMRS) "[providers], excluding mobile satellite service operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees."

12. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

13. *All Other* Telecommunications. The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[25] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[26] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[27] The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less.[28] For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the

[22] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[23] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[24] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

[25] *See* U.S. Census Bureau, *2017 NAICS Definitions, "517919 All Other Telecommunications"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

[26] *Id.*

[27] *Id*.

[28] *See* 13 CFR § 121.201, NAICS Code 517919.

entire year.[29] Of those firms, a total of 1,400 had annual receipts less than $25 million and 42 firms had annual receipts of $25 million to $49,999,999.[30] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

14. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)).* For the AWS-1 bands,[31] the Commission has defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS-2 and AWS-3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.[32]

15. *Competitive Local Exchange Carriers (Competitive LECs). Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers[33] and under that size standard, such a business is small if it has 1,500 or fewer employees.[34] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.[35] Of that number, 3,083 operated with fewer than 1,000 employees.[36] Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either

[29] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

[30] *Id.*

[31] The service is defined in section 90.1301 *et seq*. of the Commission's Rules, 47 CFR § 90.1301 *et seq*.

[32] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, Appx. B (2003), *modified by Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058, Appx. C (2005); *Service Rules for Advanced Wireless Services in the 1915–1920 MHz*, *1995–2000 MHz*, *2020–2025 MHz and 2175–2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, Appx. B (2005); *Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, Appx. (2007).

[33] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[34] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[35] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[36] *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

competitive local exchange services or competitive access provider services.[37] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.[38] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[39] Also, 72 carriers have reported that they are Other Local Service Providers.[40] Of this total, 70 have 1,500 or fewer employees.[41] Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

16. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[42] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[43] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.[44] Of this total, 3,083 operated with fewer than 1,000 employees.[45] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[46] Of this total, an estimated 1,006 have 1,500 or fewer employees.[47] Thus using the SBA's size standard the majority of Incumbent LECs can be considered small entities.

17. *Narrowband Personal Communications Services.* Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses.[48] A "small business"

---

[37] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[43] *See* 13 CFR § 120.201, NAICS Code 517311 (previously 517110).

[44] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[45] *Id.* The largest category provided by the census data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[46] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[47] *Id*.

[48] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[49]

18. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[50] The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite)[51], which is an entity employing no more than 1,500 persons.[52] U.S. Census Bureau data in this industry for 2012 show that there were 967 firms that operated for the entire year.[53] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[54] Thus, under this SBA category and the associated small business size standard, the majority of Offshore Radiotelephone Service firms can be considered small. There are presently approximately 55 licensees in this service. However, the Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite).

19. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[55] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[56] The SBA has established a small business size standard for this industry of 1,250 employees or less.[57] U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year.[58] Of that number, 828 establishments operated with fewer than 1,000

[49] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

[50] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR §§ 22.1001-22.1037.

[51] *See* U.S. Census Bureau, *2017 NAICS Definitions, "517312 Wireless Telecommunications Carriers (except Satellite)*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[52] 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[53] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[54] *Id*. Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[55] *See* U.S. Census Bureau, *2017 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*", *See* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2017.

[56] *Id*.

[57] *See* 13 CFR § 121.201, NAICS Code 334220.

[58] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false.

employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.[59] Based on this data, we conclude that a majority of manufacturers in this industry are small.

20. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[60] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[61] The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite)[62], which is an entity employing no more than 1,500 persons.[63] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[64] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[65] Thus under this category and the associated size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

21. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[66] The SBA has approved these small business size standards.[67] In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

22. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and

[59] *Id*. Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[60] The service is defined in 47 CFR § 22.99.

[61] BETRS is defined in 47 CFR §§ 22.757 and 22.759.

[62] *See* U.S. Census Bureau, *2017 NAICS Definitions, "517312 Wireless Telecommunications Carriers (except Satellite)*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[63] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[64] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[65] *Id*. Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[66] *Amendment of the Commission's Rules to Establish Part 27*, *the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[67] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

wireless video services.[68] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[69] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[70] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[71] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

23. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).[72] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[73] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[74] Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.[75] Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.[76] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[77] Therefore, more than half of these entities can be considered small.

24. *700 MHz* Guard *Band Licensees*. In 2000, in the *700 MHz Guard Band Order*, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[78] A

---

[68] *See* U.S. Census Bureau, *2017 NAICS Definitions*, "*517210 Wireless Telecommunications Carriers (except Satellite)*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[69] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[70] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210. https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[71] *Id*. Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[72] *See* U.S. Census Bureau, *2017 NAICS Definitions*, "*517210 Wireless Telecommunications Carriers (except Satellite)*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[73] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[74] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[75] *Id*. Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[76] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[77] *Id*.

[78] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Report and Order, 15 FCC Rcd 5299 (2000) (*746–764 MHz Band Second Report and Order*). Service rules were

small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[79] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[80] SBA approval of these definitions is not required.[81] An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000.[82] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[83]

25. *Lower 700 MHz Band Licenses*. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[84] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[85] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[86] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—"entrepreneur"—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[87] The SBA approved these small size

amended in 2007, but no changes were made to small business size categories. *See* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007).

[79] *See id*. at 5343, para. 108.

[80] *See id*.

[81] *See id*. at 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[82] *See 700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (WTB 2000).

[83] *See 700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (WTB 2001).

[84] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52–59 Report and Order*).

[85] *See id*. at 1087-88, para. 172.

[86] *See id*.

[87] *See id*., at 1088, para. 173.

standards.[88] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[89] A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[90] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[91] On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

26. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.[92] An auction of 700 MHz licenses commenced January 24, 2008, and closed on March 18, 2008, which included: 176 Economic Area licenses in the A-Block, 734 Cellular Market Area licenses in the B-Block, and 176 EA licenses in the E-Block.[93] Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

27. *Upper 700 MHz Band Licenses*. In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses.[94] On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block.[95] The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

28. *Wireless Resellers.* The SBA has not developed a small business size standard specifically for Wireless Resellers. The SBA category of Telecommunications Resellers is the closest

---

[88] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

[89] *See Lower 700 MHz Band Auction Closes*, Public Notice, 17 FCC Rcd 17272 (WTB 2002).

[90] *See id*.

[91] *See id*.

[92] *Service Rules for the 698–746, 747–762 and 777–792 MHz Band; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule*, WT Docket Nos. 07-166, 06-169, 06-150, 03-264, and 96-86, PS Docket No. 06-229, CC Docket No. 94-102, Second Report and Order, 22 FCC Rcd 15289, 15359 n.434 (2007) (*700 MHz Second Report and Order*).

[93] *See Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

[94] *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

[95] *See Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

NAICS code category for wireless resellers.[96] The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.[97] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[98] Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.[99] U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services for the entire year.[100] Of that number, all operated with fewer than 1,000 employees.[101] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[102] Of these, an estimated 211 have 1,500 or fewer employees.[103] Consequently, the Commission estimates that the majority of Wireless Resellers are small entities.

b. Equipment Manufacturers

29. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[104] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[105] The SBA has established a small business size standard for this industry of 1,250 employees or less.[106] U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year.[107] Of that number, 828 establishments operated with fewer than 1,000

[96] *See* 13 CFR § 121.201, NAICS Code 517911.

[97] *See* U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017.

[98] *Id.*

[99] *See* 13 CFR § 121.201, NAICS Code 517911.

[100] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517911, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[101] *Id.* Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[102] *See Trends in Telephone Service,* at tbl. 5.3.

[103] *Id.*

[104] *See* U.S. Census Bureau, *2017 NAICS Definitions*, "*334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334220&search=2017.

[105] *Id.*

[106] *See* 13 CFR § 121.201, NAICS Code 334220.

[107] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false.

employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.[108] Based on this data, we conclude that a majority of manufacturers in this industry can be considered small.

30. *Semiconductor and Related Device Manufacturing*. This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.[109] Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.[110] The SBA has developed a small business size standard for Semiconductor and Related Device Manufacturing, which consists of all such companies having 1,250 or fewer employees.[111] U.S. Census Bureau data for 2012 show that there were 862 establishments that operated that year.[112] Of this total, 843 operated with fewer than 1,000 employees.[113] Thus, under this size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

31. The *Notice* proposes and seeks comment on changes to Commission rules related to priority access services that may affect reporting, recordkeeping, and other compliance requirements for small entities, if adopted. Specifically, regarding TSP, service providers would be required to have policies and procedures in place to prevent and detect the unauthorized disclosure of TSP data, and report provisioning and restoration times for TSP circuits in areas covered by the activation of the Disaster Information Reporting System (DIRS). Service providers would also be required to report provisioning and restoration times, and aggregate data that would allow the DHS to compare the data for TSP services to similar data for non-TSP services. Additionally, non-common carriers that voluntarily provide TSP-like services would be required to abide by the rules currently contained in Appendix A of part 64 of the Commission's rules.

32. Regarding PAS, Commercial Mobile Radio Service (CMRS) providers that offer priority access service (PAS providers) to NSEP users would be required to allow Priority Level 1 and 2 voice calls, if needed, to preempt or degrade in-progress public communications and provision next-generation voice, data, and video services on a priority basis.[114] Priority Level 1 exceeds all other priority services offered by PAS providers. PAS providers would also be required to provide priority signaling to ensure

[108] *Id.* Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[109] *See* U.S. Census Bureau, *2017 NAICS Definition, "334413 Semiconductor and Related Device Manufacturing*," https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334413&search=2017.

[110] *Id.*

[111] *See* 13 CFR § 121.201, NAICS Code 334413.

[112] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334413, https://data.census.gov/cedsci/table?text=EC1231SG2&n=334413&tid=ECNSIZE2012.EC1231SG2&hidePreview=false.

[113] *Id.* Available U.S. Census data does not provide a more precise estimate of the number of firms that have employment of 1,250 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[114] The five priority levels 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; (5) Disaster Recovery. 47 CFR pt. 64, Appx. B § 5.

networks are able to detect PAS handset network registration and service invocation; would be subject to additional methods of invocating PAS priority treatment for NSEP communications; and would be subject to DHS specific requirements to ensure PAS providers meet the survivability of NSEP communications, as required in Executive Order 13618. In addition, PAS providers would be required to file implementation and performance data with DHS so that DHS can assess the program's readiness, usage, and performance at all times and in all places offered, and for specific geographic areas and times.

33. We note that NTIA seeks substantial reporting and record-keeping requirements regarding the TSP and PAS programs. For TSP, NTIA asks that service providers report to DHS provisioning and restoration times for TSP circuits in areas covered by the activation of the Disaster Information Reporting System (DIRS), on belief that such reporting obligations would give it access to TSP provisioning and restoration times and aggregate data that would allow it to compare the data for TSP services to similar data for non-TSP services. NTIA also requests the Commission amend its WPS rules to require service providers to file implementation, usage, and performance data with DHS so that it can assess the program's readiness, usage, and performance at all times and all places offered, and for specific geographic areas and times. We are not prepared to propose the requests as rules, until we have a better understanding of the balance between the costs to providers and the benefits to DHS as program administrator.

34. If the Commission ultimately determines that it will adopt the rules proposed in the *Notice*, small entities may need to hire engineers, consultants, or other professionals to comply with the rules generally, and the rules noted above specifically (i.e., related to reporting and recordkeeping). At this time the Commission cannot, however, quantify the cost of compliance with the potential rule changes and obligations that may result in this proceeding. In our discussion of the proposals in the *Notice*, we specifically seek comments from the parties in the proceeding addressing the costs and benefits of our proposed actions. We expect the information we receive in the comments to help the Commission identify and evaluate relevant matters for small entities, including any compliance costs and burdens that may result from the matters raised in the *Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[115]

36. The Commission has taken steps and considered alternatives that could minimize the economic impact on small entities as a result of the proposals and matters upon which we seek comments in the *Notice*; we believe, for example, that something as straight-forward as proposing to remove the requirement that an agency's TSP "invocation official" must be at or near the top of an agency's management hierarchy can lower costs for small entities. Similarly, our proposal to amend our PAS rules to authorize additional methods of invoking priority treatment for NSEP communications will most likely have an effect of lowering costs.

37. We note that our proposal does not currently seek adoption of several of the rule changes requested by NTIA and DHS, on belief that these rule changes would increase regulatory burdens on service providers/providers by increasing the costs of complying with the Commission's priority services rules. Further, we believe that considering a "light touch" regulatory framework and amending the

[115] *See* 5 U.S.C. § 603(c)(1)-(4).

Commission's priority services rules would enhance regulatory efficiency and reduce the burdens on small entities and other service providers by making it easier to identify and comply with the applicable rules.

38. Next, we raise the issue of rule waivers in light of the importance of end-to-end support of priority services in an IP-based network environment and seek comment on how the Commission might consider requests for waiver of its rules should our proposals be adopted. To the extent waivers are allowed, in order to determine what criteria should the Commission consider in determining whether there is good cause for waiver, we ask among other things, whether the size of the carrier should be a consideration. We also ask whether we should use our existing waiver rules which small entities may already be familiar with or adopt new requirements. New requirements have the potential to be less rigorous than the current rules. Another alternative upon which we seek comment that could be of particular benefit to small entities is whether and what type of mechanism should there be for extending the allowable time to achieve compliance with any rules adopted in this proceeding.

39. Finally, as a general matter, the Commission seeks comment on the minimum benefit expected to result from the policy changes we propose, and on the costs that NSEP providers would incur in order to achieve compliance. To assist in evaluating the economic impact on small entities, the Commission seeks comment on the costs and benefits of the proposed rules and any alternatives raised in the *Notice* that will accomplish our goal of protecting life and property through the provisioning of NSEP communications services, while tailoring implementation of our proposals to minimize compliance costs and any potential burdens. The Commission is particularly interested in how the proposed rules on requiring service providers to have policies and procedures in place to prevent and detect the unauthorized disclosure of TSP data; requiring those providers to report provisioning and restoration times for TSP circuits in areas covered by the activation of the DIRS; and requiring PAS providers to file implementation and performance data with DHS so that DHS can assess the program's readiness, usage, and performance at all times and all places offered, and for specific geographic areas and times, will affect, and economically impact, small entities. While we believe there would be little adverse economic impact on small entities and other service providers because most of the proposed rule changes are administrative in nature, the Commission seeks to understand, with a degree of specificity, how complying with the proposed rules (were they to be adopted) would impact small entities. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Notice*, including costs and benefits analyses. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

40. None.

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Review of Rules and Requirements for Priority Services, National Security Emergency Preparedness Telecommunications Service Priority System, NTIA Petition for Rulemaking to Revise the Rules for Wireless Priority Service, NTIA Petition for Rulemaking to Revise the Rules for the Telecommunications Service Priority System,* PS Docket No. 20-187.

"It's an older code, sir, but it checks out."[116] These fateful words allowed a band of rebels to reach the forest moon of Endor, and ultimately presaged the demise of the second Death Star. No one knows better than those who've studied the Galactic Empire's fate the dangers of relying on outdated procedures in times of emergency. That may have been a long time ago in a galaxy far, far away, but keeping our own such procedures up to date is no less important.

So in this Notice of Proposed Rulemaking, we begin the process of updating and streamlining our priority service rules. Telecommunications Service Priority, or TSP, is a program that directs telecommunications service providers to give preferential treatment to enrolled users, like police and firefighters, when they need to add new communications lines or have their lines restored following a disruption of service. Priority Access Service, more commonly known as Wireless Priority Service, or WPS, involves mobile carriers giving priority to individual devices used by emergency personnel. And the Government Emergency Telecommunications Service, or GETS, is a voluntary program that enables priority access to calls by government and emergency personnel. Now these programs are not the only ways for service providers to prioritize emergency communications, and they do not limit voluntary contractual arrangements that some providers have already established with emergency personnel. But these programs are popular options for prioritization, so it's important that they be up to date.

This effort is timely indeed, for the current rules governing these priority services are woefully outdated. The Commission established rules for WPS in 2000, and for TPS in 1988—in era marked by copper wire and circuit-switched networks. These rules need a makeover. That we do.

First and foremost, the Notice proposes several rules for expanding the scope of certain priority service rules to include data, video, and IP-based voice services when requested under the TSP and WPS programs. For example, it proposes to replace certain references to "telecommunications services" to ensure our priority service rules encompass both telecommunications and IP-based services.

The Notice also proposes to streamline cumbersome administrative hurdles in the TSP program. For example, under current rules, only a specified senior official, such as the director or head of a federal agency, can invoke the use of priority services (a perk, I hasten to add, that I have not yet enjoyed). But that doesn't provide sufficient flexibility during an emergency. So instead, we propose to modify the rules to allow invocation by a federal employee acting on behalf of the user's organization who can attest to the need for TSP and authorize payment.

The Notice also proposes several measures to streamline WPS. For example, it seeks comment on clarifying priority levels to make clear that Level 1, reserved for Executive Leadership and Policy Makers, exceeds all other priority services offered by WPS participants. It also proposes to expand the scope of eligible users of WPS to include eligible hospitals and financial service providers. And it proposes a priority signaling method so that networks can detect when a handset is being prioritized. It also proposes to make WPS easier to use by eliminating a requirement that it be invoked on a per call basis.

[116] Admiral Piett to Darth Vader, *Star Wars: Episode VI – Return of the Jedi* (1983), https://www.youtube.com/watch?v=4HJ-Y8YTo8Q.

We also seek comment on other rule changes requested by the Department of Homeland Security and the National Telecommunications and Information Administration on ways to better secure data while maintaining flexibility, how to articulate the required timeframe for the provisioning and restoration of service, and whether to require increased reporting of performance data.

Finally, the Notice seeks comment on a possible alternative model that would apply the GETS governance structure to TSP and WPS. Under this approach, all service providers could voluntarily offer prioritized restoration and provisioning—as well as access and use—of voice, data, and video services to emergency personnel and other authorized users.

That we've reached this point is due to our hardworking staff, who have my gratitude: Kenneth Burnley, Justin Cain, Rochelle Cohen, Michael Connelly, David Furth, Deb Jordan, Erika Olsen, Tim Perrier, and Chris Smeenk of the Public Safety and Homeland Security Bureau; David Horowitz, Marcus Maher, Keith McCrickard, Linda Oliver, and Bill Richardson of the Office of General Counsel; Alex Espinoza, Chuck Needy, and Emily Talaga of the Office of Economics and Analytics; Bill Andrle, Pam Arluk, Annick Banoun, Michele Berlove, Justin Faulb, Janice Gourin, Jesse Jachman, Daniel Kahn, Melissa Droller Kirkel, and Terri Natoli of the Wireline Competition Bureau; Sean Spivey and Becky Tangren of the Wireless Telecommunications Bureau; Leslie Barnes, Chris Killion, Kathy Harvey, Shannon Lipp, Jeremy Marcus, and Elizabeth Mumaw of the Enforcement Bureau; and Chana Wilkerson of the Office of Communications Business Opportunities. Indeed they are powerful, as the Commission has foreseen.

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Review of Rules and Requirements for Priority Services, National Security Emergency Preparedness Telecommunications Service Priority System, NTIA Petition for Rulemaking to Revise the Rules for Wireless Priority Service, NTIA Petition for Rulemaking to Revise the Rules for the Telecommunications Service Priority System,* PS Docket No. 20-187.

It is common sense – not to mention a good government practice – to regularly review the Commission's priority service regulations, which ensure that critical calls related to our national security go through during emergencies when our networks are likely to be the most congested. Despite the potential importance of these systems, the Commission's rules have not been updated since 1988 and 2000 for the Telecommunications Priority Service (TPS) System and Wireless Priority Service (WPS), respectively. In the time since then, much has changed in how people communicate, especially with the introduction of IP-based technologies that permit data, video, and IP voice services, so reevaluating and updating our rules to reflect existing practices and the modern telecommunications landscape is warranted.

While I look forward to reviewing the comments generated in response to this proceeding and speaking with interested parties, from the outset I see much benefit to and am supportive of the "alternative approach" suggested in this Notice, which would convert our regulatory framework for these programs to a market-based, light-touch approach. Currently, TPS and WPS are both subject to FCC requirements and rules. The Government Emergency Telecommunications Service (GETS), however, is a voluntary service and operates solely through contractual arrangements between the Department of Homeland Security (DHS) and telecommunications providers. The GETS approach has been successful, and permitting DHS and providers to negotiate and enter into contracts without our involvement is preferable. This approach for TPS and WPS would ensure that the priority services classification pertains to the appropriate services in a national emergency, and would remove them from the morass of slow government decision making.

However, if it is collectively decided that our rules should remain – in whole or in part – at the end of this proceeding, there must be oversight of the DHS-selected entity or entities that manage these programs. While some priority service programs are mandatory and some voluntary, I hear from providers that, even when voluntary, they feel obligated to participate for public and government relations reasons — without the ability to provide much input. That is not an acceptable way to run such programs. We must ensure that they have a means to raise concerns and grievances, if they arise.

Additionally, I note that TPS for common carriers is currently involuntary, but the item proposes to acknowledge that service providers can, and already are, providing TPS-type services for data, video, and IP-based voice services on a voluntary basis through contractual agreements. If rules are eventually adopted here, I will ensure that nothing jeopardizes or infringes upon the Title I status of these information services. Regardless, avoiding this jurisdictional mess is yet another reason to move to an entirely contract-based approach that does not involve the Commission in any way.

I thank the Chairman for bringing this telecommunications modernization item to a vote. I approve.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Review of Rules and Requirements for Priority Services, National Security Emergency Preparedness Telecommunications Service Priority System, NTIA Petition for Rulemaking to Revise the Rules for Wireless Priority Service, NTIA Petition for Rulemaking to Revise the Rules for the Telecommunications Service Priority System,* PS Docket No. 20-187.

Since at least the 1980s, our country's National Security and Emergency Preparedness (NSEP) personnel have had access to priority services programs to ensure that their critical communications needs will be met during a national emergency. These programs cover everything from prioritized connections during high-call volume moments to the quick restoration of damaged or degraded communications lines. Today, we launch a rulemaking that looks at whether we should update any of those rules in light of changes in technology.

As we start this proceeding, I want to thank my colleagues for agreeing to a number of changes to the Notice. As originally drafted, the Notice suggested that NSEP personnel would be prevented from obtaining priority services for modern, Internet-based services unless we adopted rules expressly authorizing those services. But that does not square with the reason why the FCC adopted this regulatory framework in the first place.

The FCC did not adopt the priority services rules, which up to now apply mainly to legacy or Title II telecom services, based on a determination that telecommunications carriers would refuse to provide priority treatment to NSEP users in the absence of those rules. Rather, the FCC adopted these regulations based on a concern that without them section 202's non-discrimination requirement would operate to prevent carriers from voluntarily offering priority treatment. In this way, our existing rules are basically a safe harbor that offer carriers a defense to a claim that they are offering priority services in violation of Title II's non-discrimination requirements.

Since those Title II obligations do not apply to the IP or Internet-based offerings we examine here, I wanted to make sure that our Notice reflected the idea that providers and NSEP personnel face no apparent regulatory barrier to contracting for priority treatment. In fact, I am inclined to view a contractual – or what the item calls a GETS-based – approach more favorably than extending some of our reticulated TSP or WPS rules to modern, next-generation IP-based offerings. So I look forward to reviewing the record as it develops on those issues, and am happy to cast my vote for the revised item.

Thank you to the Public Safety and Homeland Security Bureau for its work on the item. It has my support.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL

Re: *Review of Rules and Requirements for Priority Services, National Security Emergency Preparedness Telecommunications Service Priority System, NTIA Petition for Rulemaking to Revise the Rules for Wireless Priority Service, NTIA Petition for Rulemaking to Revise the Rules for the Telecommunications Service Priority System,* PS Docket No. 20-187.

With this rulemaking the Federal Communications Commission kicks off an effort to update its policies for priority communications in times of national emergency. This is important because it has been decades since we examined these rules. In that time, the way we communicate in crisis has changed in a big way. The number of switched access lines has precipitously declined, while internet-based forms of communications have been on the rise. As a result, I support today's effort because it can help ensure that old voice-centric rules evolve in our new data-centric world.

Of course, this is not the only place that we should be seeking to make such changes. When it comes to service outages, the FCC still only requires reporting on voice services. That just doesn't make sense. We are in the middle of a pandemic, living our lives online, and yet our rules governing communications outages are stuck in the era of basic telephone lines. They need an update. They need to include broadband reporting outages, too. A proposal to address this gap in our reporting system has been pending for four years. It needs our attention—and action.

Finally, I appreciate that with this rulemaking the FCC is acting in response to not one, but two, petitions from the National Telecommunications and Information Administration. Later this month, we expect to receive another petition from our NTIA colleagues at the Department of Commerce. Pursuant to a recent Executive Order, they will ask this agency to develop rules about when and how social media companies will be protected under Section 230 of the Communications Decency Act for online content. But let's not take that bait. While social media is frustrating, turning the FCC into the President's speech police is not the answer. If we honor the Constitution, we will dismiss this petition immediately.