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	)	

REPORT AND ORDER

Adopted: May 19, 2022 **Released: May 20, 2022**

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. In this *Report and Order*, we update and streamline the Commission's priority services rules. These rules enable National Security and Emergency Preparedness (NSEP) personnel[1] to obtain

[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 (continued….)

prioritized connectivity during emergency situations by authorizing prioritized provisioning and restoration of communications facilities and prioritized network access for wireless communications. The priority services 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."[2]

2. The priority services rules have long been in need of an update to account for changes in technology. The Commission's current rules date back to the establishment of the Telecommunications Service Priority (TSP) System in 1988[3] and the creation of the Priority Access Service (PAS), more commonly referred to as Wireless Priority Service (WPS), in 2000.[4] These rules were originally developed when communications networks were primarily based on circuit-switched technologies. As such, the rules do not address the advanced capabilities of next-generation communications technologies that support data and voice services, or the ability of users at different priority levels to share network capacity and resources.

3. In this *Report and Order*, we update our priority services rules to reflect today's marketplace and governance framework and to authorize explicitly the prioritization of next-generation technology. Specifically, we remove outdated language that may cause confusion or otherwise impede the use of next-generation technologies to support the provision of priority services for voice, data, and video communications. We also amend the rules to reflect the current framework for administration of priority services by the Department of Homeland Security (DHS) while eliminating burdensome and unnecessary requirements on service providers. These changes will reduce regulatory burdens and make our rules flexible enough to accommodate changing administrative requirements and technological advances related to the priority services programs.

II. BACKGROUND

4. For years, NSEP personnel have had access to priority services programs that support national command, control, and communications by providing prioritized connectivity over commercial communications infrastructure during national emergencies.[5] Three specific programs support prioritized

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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; *see also id.* Appx. B § 2.d.4(e).

[2] 47 CFR pt. 64, Appx. A § 3.f.

[3] *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*).

[4] *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 *Report and Order*.

[5] 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 [the NS/EP Communications 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.* Executive Order 13961 subsequently revoked the provisions of Executive Order 13618 related to the NS/EP Communications Executive Committee and transferred the corresponding responsibilities to the Federal Mission
(continued….)

connectivity for NSEP users[6] of telecommunications services: (1) TSP, (2) WPS, and (3) Government Emergency Telecommunications Service (GETS), which provides prioritization through the Public Switched Telephone Network. All three programs are administered by DHS's Cybersecurity and Infrastructure Security Agency (CISA).[7] However, the Commission's rules only apply to TSP and WPS, while GETS operates solely via contractual arrangements between DHS and service providers.[8]

5. *TSP*. The Commission's TSP rules require certain service providers[9] to prioritize the provisioning and restoration of communications facilities to "ensure effective NSEP telecommunication services."[10] The TSP rules apply, on a mandatory basis, to common carrier services and "services which are provided by government and/or non-common carriers and are interconnected to common carrier services."[11] Service providers that are covered by the mandatory TSP rules must "maintain and provision and, if disrupted, restore facilities and services" in accordance with the prioritization levels outlined in the TSP rules.[12] The Commission designed the TSP System 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."[13] The TSP System "allows the assignment of priority

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Resilience Executive Committee. Exec. Order No. 13961 § 6(b), 3 CFR 487 (2021), Governance and Integration of Federal Mission Resilience (Dec. 7, 2020).

[6] The Commission adopted different definitions of "service user" for each priority services program. For TSP, "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 WPS, "service user means an individual or organization (including a service provider) to whom or which a priority access assignment has been made." 47 CFR pt. 64, Appx. B § 2.d.3.

[7] Cybersecurity and Infrastructure Security Agency, *Priority Telecommunications Services*, https://www.cisa.gov/pts (last visited Apr. 21, 2022). Commenters refer to DHS and CISA interchangeably. To promote clarity and consistency, we use "DHS" to refer to both agencies in this *Report and Order*.

[8] *See generally* Cybersecurity and Infrastructure Security Agency, Government Emergency Telecommunications Service (GETS), https://www.cisa.gov/about-pts (last visited Apr. 21, 2022).

[9] 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 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 *Report and Order*.

[10] *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. The term "telecommunication services" is defined, in turn, 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.

[11] 47 CFR pt. 64, Appx. A § 4.a.

[12] 47 CFR § 64.401.

[13] *TSP Order*, 3 FCC Rcd at 6669-70, para. 117; *see also id.* 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.").

levels to any NSEP service"[14] across three time periods, or stress conditions: (1) Peacetime/Crisis/Mobilizations; (2) Attack/War; and (3) Post-Attack/Recovery.[15] There are more than 2,000 organizations enrolled in TSP[16] (e.g., military bases, federal agencies, hospitals) covering approximately 365,000 active circuits.[17] Costs associated with TSP are governed by tariff or contract and TSP users may be responsible for one-time setup fees and monthly charges, in addition to the actual charges related to provisioning and restoration of the service.[18] The Commission's TSP rules have not been substantively updated since they were initially adopted in 1988.[19]

6. *WPS*. The Commission's WPS rules permit, but do not require, commercial mobile radio service (CMRS) providers to offer mobile wireless priority services.[20] If a service provider elects to offer WPS, it must comply with the Commission's WPS rules, which establish the following five priority levels (ordered from highest to lowest): (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.[21] 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.[22] WPS users are responsible for commercial wireless subscription and equipment costs.[23] 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 service provider's decision to give NSEP users priority treatment might be considered a violation of the Act's non-discrimination provisions.[24] There are more than 606,000 authorized WPS users across the U.S. and U.S. territories.[25] The Commission's WPS rules have not been updated since they were initially adopted in 2000.[26]

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[14] *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.").

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

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

[17] CISA maintains information regarding the number of TSP enrolled organizations and active circuits. CISA does not routinely publish this data, but it will accommodate requests for this information and make release determinations on a need-to-know basis.

[18] *See TSP Order*, 3 FCC Rcd at 6659-6662, paras. 50-64.

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

[20] *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 (stating that Appendix B "applies to the provision of [WPS] by CMRS licensees to users who qualify under the provisions of section 5 of this appendix").

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

[22] *See id.* § 2.c.

[23] *See* User Organization Responsibilities for the Government Emergency Telecommunications Service and Wireless Priority Service, https://www.cisa.gov/sites/default/files/publications/GETS-WPS%20User%20Organization%20Responsibilities_1.pdf at 5 (last visited Apr. 15, 2022).

[24] *PAS Order*, 15 FCC Rcd at 16730, para. 22 ("Providing NSEP users with priority access during emergencies might be considered a violation of [section 202(a) of the Communications Act."); *id.* at 16731, para. 24 (concluding that "providing [WPS] in accordance with the [WPS] rules will be *prima facie* lawful under the Communications Act").

[25] CISA maintains information regarding the number of WPS users. CISA does not routinely publish this data, but it will accommodate requests for this information and make release determinations on a need-to-know basis.

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

7. *Developments Since the Commission's Initial Adoption of the Priority Services Rules*. Both the telecommunications marketplace and the administrative framework of the priority services programs have evolved since the Commission adopted its priority services rules. Consumers are increasingly moving away from legacy telephone services that rely on traditional time-division multiplexing technology, and toward Internet Protocol (IP)-based and next-generation services.[27] Incumbent local exchange carriers are increasingly retiring copper facilities and replacing them with fiber and wireless spectrum-based technology that provides greater capacity and flexibility to support advanced communications services. The Commission has actively supported the transition from legacy networks to next-generation networks,[28] and it has taken measures to reduce regulatory barriers to this transition.[29]

8. While the transition from legacy 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.[30] As carriers replace their legacy systems with new technologies and platforms, some of the 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 of crisis."[31] Availability of priority services only on those traditional voice networks may hamper the ability of NSEP personnel to make effective use of cutting edge emergency response tools that rely on IP-supported data network availability.

9. *Federal Agency Administration/Oversight of Priority Services Programs*. Three agencies are primarily responsible for the oversight and administration of priority services programs – DHS, the Executive Office of the President (EOP), and the FCC. DHS is responsible for "oversee[ing] the development, testing, implementation, and sustainment of NS/EP communications," including the priority

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[27] *See, e.g.*, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 11129, para. 1 (2017).

[28] *See id.* (noting the "new and better" and "innovative" service offerings available over next-generation networks).

[29] *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 (WC Docket Nos. 05-25, 16-143; GN Docket No. 13-5) and Memorandum Opinion and Order (WC Docket No. 18-141), 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); *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, Report and Order, 35 FCC Rcd 12425 (2020); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, First Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 (2017); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, 33 FCC Rcd 5660 (2018); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment et al.*, WC Docket No. 17-84, 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).

[30] 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).

[31] *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.

services programs.[32] DHS also maintains a Joint Program Office that is responsible for "coordination of programs that support NS/EP missions, priorities, goals, and policy."[33] DHS assists organizations with the enrollment process[34] and issues TSP authorization codes.[35] DHS also manages WPS through contract and reimbursement mechanisms.[36] EOP is responsible for "[p]olicy coordination, guidance, dispute resolution, and periodic in-progress reviews" of NSEP telecommunications functions.[37] Within EOP, the Office of Science and Technology Policy "advise[s] the President on prioritization of radio spectrum and wired communications that support NS/EP functions" and "issue[s] an annual memorandum… highlighting national priorities for… analyses, studies, research, and development regarding NS/EP communications."[38] 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 services" by providing information on communications infrastructure, service outages, and restoration.[39]

10. *Notice of Proposed Rulemaking to Update the TSP and WPS Rules*. In July 2020, the Commission adopted a *Notice of Proposed Rulemaking* (*NPRM*) proposing to modernize its priority services rules to cover priority treatment of voice, data, and video services for emergency personnel.[40] The *NPRM* followed two petitions that the National Telecommunications and Information Administration (NTIA) filed on behalf of DHS – one in July 2018[41] and another in July 2019[42] – which asked the

[32] Exec. Order 13618 § 5.2(a) (charging 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").

[33] *Id.* § 4.

[34] Cybersecurity and Infrastructure Security Agency, *Priority Telecommunications Services Enrollment/Management*, https://www.cisa.gov/enroll-pts (last visited Apr. 21, 2022). "The Priority Telecommunications Service Center… is comprised of a team of specialists who assist organizations with the enrollment process for Government Emergency Telecommunications Service, Wireless Priority Service, and Telecommunications Service Priority." *Id*.

[35] Department of Homeland Security, Telecommunications Service Priority (TSP) – Priority for Emergency Communications at 1 (2016), https://www.cisa.gov/sites/default/files/publications/TSP_Priority_for_Emergency_ Communications _FINAL_508C_122116.pdf. "The TSP Program Office provides organizations with their TSP codes once the circuits are enrolled in the service." *Id*.

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

[37] Exec. Order 13618 § 2.1; *accord* 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.

[38] Exec. Order 13618 § 2.2(a)-(b); *accord* 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.

[39] Exec. Order 13618 § 5.6(b); *accord* Congressional Research Service, National Security and Emergency Preparedness Communications: A Summary of Executive Order 13618 at 7 (2012), https://fas.org/sgp/crs/natsec/R42740.pdf.

[40] *Review of Rules and Requirements for Priority Services et al.*, Notice of Proposed Rulemaking, 35 FCC Rcd 7685 (2020) (*Priority Services NPRM*).

[41] 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/ 10709517 73719 (NTIA WPS Petition).

Commission to update its TSP and WPS rules to reflect the current operations of the programs, incorporate the current Executive Branch governance structure, and address changes in technology and evolving user needs.[43] The Bureau sought comment on both petitions via public notice.[44]

11. In the *NPRM*, the Commission proposed to update its priority services rules in several key respects. First, it proposed to extend the rules to cover data, video, and IP-based voice services for NSEP personnel.[45] Second, it proposed to streamline the rules by removing outdated requirements that may impede the use of IP-based technologies.[46] Third, it proposed to amend the rules to reflect current administrative responsibilities for the priority services programs, while eliminating burdensome and unnecessary administrative requirements.[47] We received nine comments and two reply comments in response to the *NPRM*. In addition, CISA and the First Responder Network Authority (FirstNet) submitted *ex parte* comments in December 2020. The comments generally express support for updating our priority services rules as proposed in the *NPRM* to reflect today's marketplace and governance framework and to account for next-generation communications technology.

III. DISCUSSION

12. Today, we update and streamline our priority services rules, as proposed in the *NPRM*, with certain modifications. First, we adopt changes that apply to both TSP and WPS, such as updating the Commission's responsibilities for the priority services programs and clarifying that service providers are authorized to offer prioritization of next-generation services and technologies, including IP-based voice, data, and video communications. Second, we adopt specific changes that apply only to TSP or WPS. In the TSP rules, we expand the list of services that are eligible for priority treatment and clarify the timing and level of effort required for provisioning and restoring service. In the WPS rules, we clarify the operation of the priority levels and expand both the types of services and the groups of users that are eligible for WPS. As explained below, we find that these changes will substantially increase the benefits to NSEP users and public safety while reducing the regulatory costs imposed on providers of priority services.

A. Changes to Priority Services Rules

13. As noted above, the Commission's priority services rules have not been substantively updated since they were initially adopted, which has resulted in many provisions becoming outdated. In this section, we adopt proposals from the *NPRM* to modernize both our TSP and WPS rules to ensure they reflect current terminology, legal authorities, and administrative practices.

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[42] 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 (NTIA TSP Petition). NTIA's second petition 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. *See id.* at 1-2.

[43] *See, e.g.*, NTIA TSP Petition at 1-2; NTIA WPS Petition at 2.

[44] *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) (*WPS 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*).

[45] *Priority Services NPRM*, 35 FCC Rcd at 7694, para. 24.

[46] *See id*. at 7694, para. 22.

[47] *Id.*

14. *Program Administration*. We adopt the *NPRM* proposal to amend our rules to reflect current responsibilities for administering the priority services programs.[48] The roles and responsibilities of some federal agencies have shifted since these rules were originally adopted. Likewise, we find that service providers and NSEP users, as well as other federal agencies, will benefit from a description of the Commission's own responsibilities for the programs. Accordingly, we adopt the *NPRM* proposal, with minor revisions, to add the following language to part 64, Appendix A and Appendix B:

> The FCC: Performs such functions as are required by law, including: (a) with respect to all entities licensed or regulated by the FCC: the extension of or change in network facilities; the discontinuance, reduction, or impairment of interstate 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 FCC rules; and the assessment of communications service provider emergency needs and resources; and (b) supports 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.[49]

15. We also adopt the *NPRM* proposal to eliminate the provisions of part 64, Appendix A and Appendix B that describe the responsibilities of the Executive Office of the President (EOP) for the priority services programs.[50] As noted in the *NPRM*, many of these responsibilities have since been transferred to other federal agencies, particularly DHS. In addition, while DHS and EOP have important responsibilities related to the priority services programs, we find it unnecessary to describe their functions in our rules.

16. Commenters generally support removing portions of the rules that describe EOP's responsibilities because Executive Order 13618 transferred most of EOP's functions to other federal agencies.[51] CISA is the only commenter that opposes this change, contending that because EOP "retains immense WPS-related responsibilities" and has significant influence over TSP and WPS, the Commission's rules should continue to describe EOP's responsibilities.[52] We agree with the majority of commenters that such description is unnecessary because EOP, DHS, and other Executive Branch agencies derive their legal authority from statutes and executive orders – not the Commission's rules. Thus, removing these references from our rules will have no legal or practical impact on the ability of these agencies to perform their functions. In addition, specific Executive Branch agency responsibilities for priority services could change in the future, in which case any codification of these responsibilities in our rules would become outdated and require further action by the Commission to update the rules.

17. We also amend Appendix A and Appendix B to reflect the actual, current administrative responsibilities and functions for the TSP and WPS programs, consistent with our proposal in the *NPRM*.[53] Commenters generally oppose including rules that would require service providers to comply

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[48] *See Priority Services NPRM*, 35 FCC Rcd at 7693-94, paras. 20-21.

[49] *See id.* at 7693, para. 20.

[50] *See id.* at 7694, para. 21.

[51] *See, e.g.*, NCTA Comments at 4. Comments, reply comments, and *ex parte* filings received in response to the *NPRM* are cited as "[Filer Name] Comments," "[Filer Name] Reply Comments," or "[Filer Name] *Ex Parte*." We also received comments and reply comments in response to the TSP Public Notice and the WPS Public Notice, which are cited as "[Filer Name] TSP PN Comments/Reply Comments" and "[Filer Name] WPS PN Comments/Reply Comments," respectively.

[52] CISA *Ex Parte* at 6-7.

with "supplemental regulations and procedures" established by DHS.[54] For example, CTIA asserts that such language could allow DHS to retroactively alter contracts, which, in turn, could "disrupt the contractual bargaining dynamic" between DHS and service providers.[55] Verizon and T-Mobile argue that "without more explicit limitations on DHS's discretion," such requirements "could risk undermining the Commission's intended light regulatory touch… as well as service providers' and DHS's flexibility to address novel technical issues."[56] Commenters also argue that the proposed language could violate the Administrative Procedure Act by "subjecting participating providers to changing obligations without an opportunity for notice and comment."[57]

18. We adopt a dual approach in our modifications of the TSP and WPS rules that reflects differences in the underlying programs. We amend our TSP rules (Appendix A, section 5, as amended) by replacing the references to EOP with DHS and modifying the terminology to indicate that DHS issues "policies" rather than "regulations" for TSP. However, we delete the corresponding provision in the WPS rules (Appendix B, section 3).[58] We believe this dual approach is appropriate given the differing administrative frameworks governing TSP and WPS. For TSP, DHS uses supplemental documents, including an Operations Guide and Service Vendor Handbook, to outline the specific processes and procedures that TSP providers must follow.[59] However, DHS does not use these supplemental documents for WPS, but rather, outlines specific policies and procedures in its contractual arrangements with service providers.

19. We do not agree with commenters who contend that the updated TSP rule would undermine the flexibility of service providers and DHS to address novel issues. The underlying rule has existed since the TSP rules were initially adopted and there is no indication in the record that it has led to imposition of unreasonable requirements on service providers or otherwise negatively impacted the program. Moreover, the rule only obligates TSP users and service providers to comply with DHS policies and procedures that are "consistent with" Appendix A. In the unlikely event that DHS were to issue policies and procedures that are inconsistent with Appendix A, the rule does not obligate TSP users to comply with them. Similarly, we do not believe the amended rule violates the APA because (1) the DHS policies and procedures are largely administrative in nature; and (2) if DHS were to issue substantive rules without notice and comment, our rule does not constrain TSP participants from challenging such rules on APA grounds.

20. *Terminology*. Consistent with our expansion of the priority services rules to encompass IP-based services, discussed below, we adopt our proposal to amend Appendix A and Appendix B, where appropriate, to include these new services and technologies.[60] First, we replace certain references to "telecommunications services" with "National Security Emergency Preparedness (NSEP) services," a broader term that we define to include both telecommunications services and all IP-based services. We adopt the *NPRM* proposal to amend the definition of "NSEP services" in Appendix A as follows:

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[53] *See Priority Services NPRM*, 35 FCC Rcd at 7693-94, paras. 20-21.

[54] CTIA Comments at 6-7; Verizon Comments at 7; T-Mobile Reply Comments at 12.

[55] CTIA Comments at 6.

[56] Verizon Comments at 7; *accord* T-Mobile Reply at 12.

[57] CTIA Comments at 6; Verizon Comments at 7.

[58] *See* 47 CFR pt. 64, Appx. B, § 3.c.6, d.9, e.7 (requiring authorizing agents, service users, and service providers to "[c]omply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP").

[59] *See, e.g.,* Cybersecurity and Infrastructure Security Agency, *TSP Resources*, https://www.cisa.gov/about-pts (last visited Apr. 22, 2022).

[60] *See Priority Services NPRM*, 35 FCC Rcd at 7694, para. 24.

> 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.

We also adopt the same definition for "NSEP services" in Appendix B, except for the last sentence, which is specific to TSP. Further, we define the phrase "Internet Protocol (IP)-based services," as used in the definition of "NSEP services" as: "services and applications that feature digital communications capabilities and which generally use the Internet Protocol." These changes will ensure that the Commission's rules account for current service offerings and other technologies that may someday qualify for priority treatment. As discussed more fully below, commenters support updating our priority services rules to expand the scope of the services that are eligible for priority treatment.[61]

B. Changes to Telecommunications Service Priority Rules

21. In this section, we adopt many of the proposed and requested amendments to the Commission's TSP rules in part 64, Appendix A.[62] Specifically, we (1) eliminate certain outdated references; (2) expand the list of services that are eligible for priority treatment; (3) update the rules to reflect current oversight practices; (4) expand the scope of federal employees authorized to invoke priority treatment; (5) adopt rules to enhance the protection of TSP data; and (6) clarify the timing and level of effort for provisioning and restoring service. Finally, we decline to amend our rules to require service providers to report provisioning and restoration times to DHS.[63]

22. *Outdated Provisions*. As a result of the changes that have occurred since the TSP rules were initially adopted, some provisions of the rules have become outdated and unnecessary. To address this issue, we eliminate section 2 of part 64, Appendix A, which outlines 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 eliminate 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. Commenters support these changes.[64]

23. *Eligible Services*. We adopt our proposal to maintain the current requirement that common carriers must offer prioritized restoration and provisioning of circuit-switched voice communication services.[65] We also adopt the *NPRM* proposal to amend our rules to make clear that service providers may offer, on a voluntary basis, prioritized provisioning and restoration of data,[66] video,

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[61] AT&T Comments at 8-10; ATIS Comments at 3; NCTA Comments at 5; T-Mobile Comments at 5-6, 11; Texas 911 Entities Comments at 2; Verizon Comments at 8-10. CISA requests that we further expand this list by including "information services." CISA *Ex Parte* at 11. However, the *NPRM* did not seek comment on the scope of this term, and we have no record on whether any services that are used to maintain a state of readiness or to respond to or manage any event or crisis would be covered by including "information services" that are not already covered by the definition that we adopt here. We therefore decline to do so at this time but may revisit this determination if, as CISA predicts, there arises a "next generation of services and applications" that would be not be covered by the list as expanded in this *Report and Order*. *Id.*

[62] *See Priority Services NPRM*, 35 FCC Rcd at 7694, 7695-98, 7702-03, paras. 22, 25-35, 52-56.

[63] *See id.* at 7703-04, 7704-05, paras. 57-58, 60, 62.

[64] NCTA Comments at 4; Verizon Comments at 5.

[65] *See Priority Services NPRM*, 35 FCC Rcd at 7695, para. 26.

[66] For purposes of this *Report and Order*, we include text messaging within the context of the "data" category to authorize prioritization. *See Priority Services NPRM*, 35 FCC Rcd at 7694, para. 27 n.70.

and IP-based voice services.[67] As originally drafted, the TSP 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.[68] As such, the rules make no mention of the wide array of innovative service offerings that are currently available to NSEP personnel. This rule change makes clear that neither the Commission's rules nor the Communications Act preclude TSP providers from offering priority treatment of voice, data, and video services for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with Appendix A.[69] This amendment does not alter the regulatory status or treatment of the authorized services; to the extent that these services are not subject to Title II of the Communications Act, they are not subject to the non-discrimination provisions under Section 202 that the TSP rules were drafted to protect against.[70] We note that the orderly administration of the TSP program requires that all participants – regardless of classification status – follow the same set of rules. We therefore make clear that service providers who offer TSP must comply with the Commission's TSP rules.

24. Commenters support clarifying that IP-based services are eligible for TSP.[71] We agree with commenters who assert that specific authorization is not necessary, but including this provision in our rules will prevent confusion among providers and NSEP users regarding the services that are eligible for priority treatment.[72] No commenter objects to requiring service providers that elect to participate in the TSP program with respect to IP-based services to comply with the TSP rules.

25. However, we decline to adopt CISA's request that we *require* TSP service providers to offer prioritized provisioning and restoration of data, video, and IP-based voice services.[73] While there may be potential benefits to making such services mandatory, the record weighs in favor of those services remaining voluntary at this time. First, we recognize that not all TSP providers may be able to offer prioritization for all IP-based services.[74] In addition, because the *NPRM* discussed extending the TSP rules to non-common carrier services only on a voluntary basis, the record lacks sufficient information to evaluate the costs and benefits of making TSP mandatory for non-common carrier services.

26. *Oversight, Industry Engagement, and Executive Branch Reporting*. We adopt the *NPRM* proposal to eliminate references to the TSP System Oversight Committee (Oversight Committee) from the TSP rules.[75] The Oversight Committee, composed of representatives from government and industry stakeholders, was established to identify and review any issues that arose in the administration of the TSP program and to recommend actions to correct them or prevent recurrence.[76] In its petition, however,

[67] *Priority Services NPRM*, 35 FCC Rcd at 7695, para. 27.

[68] *TSP Order*, 3 FCC Rcd at 6658, para. 45.

[69] The current TSP rules stipulate that "other services" are eligible for TSP, including "Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level." 47 CFR pt. 64, Appx. A § 4.c.

[70] *See 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."); *see also* T-Mobile Comments at 6.

[71] AT&T Comments at 10; ATIS Comments at 4; NCTA Comments at 5; Texas 911 Entities Comments at 2.

[72] T-Mobile Comments at 5-6.

[73] CISA *Ex Parte* at 10.

[74] T-Mobile Comments at 6-7.

[75] *See Priority Services NPRM*, 35 FCC Rcd at 7697-98, para. 35. Although this subsection addresses the reasons for eliminating these oversight rules, the Commission already eliminated them earlier in this *Report & Order* by eliminating the provisions of Appendix A that describe EOP's responsibilities. *See supra* para 15.

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

NTIA explained that the administration of the TSP program has evolved to obviate the need for the Oversight Committee.[77] Specifically, NTIA notes that the Oversight Committee's role has been gradually filled by the Communications Information Sharing and Analysis Center (Comm ISAC),[78] and that DHS has in recent years relied on the Comm ISAC to "exchange information and gain advice" on issues involving the TSP program.[79] Among other advantages, DHS explains, the Comm ISAC is able "to address operational concerns in real time," instead of waiting for a scheduled Oversight Committee meeting.[80]

27. We eliminate the references to the Oversight Committee in our rules as outdated because the Comm ISAC is now fulfilling the Oversight Committee's role. We consider it unnecessary to "adopt rules that allow DHS to consult with the [Comm] ISAC,"[81] as NTIA requests, because DHS does not require Commission authorization to consult with the Comm ISAC or other entities as part of its oversight of the TSP program.

28. NTIA requests that we replace the requirement that EOP submit quarterly reports to the Commission and Oversight Committee with an annual report to the Commission, which NTIA asserts "better aligns reporting timeframes to meet relevant programmatic needs."[82] We agree with commenters that some oversight is needed to ensure accountability and compliance with the Commission's rules.[83] We also agree that DHS, as the agency primarily responsible for daily management and administration of TSP, should author reports on "the operational status of and trends in" TSP.[84] We therefore eliminate the provisions of our rules that direct EOP to submit quarterly[85] and semi-annual[86] reports to the Commission and, instead, request that DHS provide information regarding TSP in annual reports to the Commission. Specifically, we request that the annual reports identify (1) numbers of requests proceeded for the various priority actions, and the priority levels assigned; (2) relative percentages of services assigned to each priority level under each NSEP category and subcategory; (3) any apparent serious misassignment or

[77] NTIA TSP Petition at 8.

[78] *Id.* 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.").

[79] *Id.* at 8.

[80] *Id.* 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.").

[81] *Id.* at 9.

[82] *Id.* at 13.

[83] AT&T Comments at 10-11 ("AT&T supports the elimination of references to the Oversight Committee as long as there continues to be meaningful oversight that allows the program to be administered in accordance with appropriate guidelines and regulations."); Verizon Comments at 9 ("If the committee is disbanded then some formal mechanism of accountability is needed beyond CISA/NCC oversight, such as a semiannual or quarterly report from DHS to the Commission that would allow for input from the NCC and industry TSP stakeholders."); BRETSA Comments at 3 ("The Commission should continue to regulate Priority Services, as necessary to assure consistent service standards, interoperability, and evaluation of network reliability and performance.").

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

[85] *Id.* § 6.b(2)(k).

[86] *Id.* § 6.b(2)(l).

abuse of priority level assignments; and (4) any existing or developing problem, and DHS's recommendations on how it intends to address each problem.

29. *Invocation Officials*. We adopt our proposal to expand the scope of individuals who may invoke priority treatment for an eligible NSEP service.[87] We define an "invocation official" as an individual who (1) understands how the requested service ties to the organization's NSEP mission; (2) is authorized to approve the expenditure of funds necessary for the requested service; and (3) has operational responsibilities for telecommunications procurement and/or management within the organization.[88] Likewise, we eliminate the requirement that the invocation official must be designated in writing.[89] Prior to this change, the Commission's rules required the individual to be part of a narrowly defined class of "senior officials," including agency heads, and that such individual be appointed in writing in accordance with supplemental procedures issued by EOP.[90]

30. We find that these changes will make the operation of the TSP program more efficient while providing greater flexibility for user organizations. These actions 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."[91] We find that it is not necessary for the "invocation official" to be a senior government official, such as the head or director of a federal agency,[92] because, as NTIA points out, requiring senior officials to request TSP participation has produced "unnecessary delays in the approval process given the demands placed on senior officials and their often limited availability."[93] We are also persuaded by NTIA's claim that 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 NS/EP service."[94] Commenters support these changes.[95]

31. *Protection of TSP Data*. We amend the TSP rules to enhance the protection of TSP data. We agree with NTIA that the unauthorized disclosure of sensitive information related to TSP circuits, in the aggregate, could pose a national security risk.[96] We further agree 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.[97] We likewise find merit in the arguments of some commenters that factors such as the use of firewalls, access controls, and other

[87] *Priority Services NPRM*, 35 FCC Rcd at 7696, para. 31.

[88] NTIA TSP Petition at 10; *see Priority Services NPRM*, 35 FCC Rcd at 7696, para. 30.

[89] *Priority Services NPRM*, 35 FCC Rcd at 7696, para. 31.

[90] *See* 47 CFR pt. 64, Appx. A § 9.c. "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." *Id.*

[91] NTIA TSP Petition at 10-11.

[92] *See* 47 CFR pt. 64, Appx. A § 9.c.

[93] NTIA TSP Petition at 10.

[94] *Id*.

[95] NCTA TSP PN Comments at 2; Verizon Comments at 8.

[96] NTIA TSP Petition at 3.

[97] NTIA TSP Petition at 3-4.

security protocols are more consequential than the physical location of the servers that house the TSP data.[98] Even with respect to the physical location of the servers, we note that differing laws in foreign jurisdictions means that the threat of disclosure – through both lawful and unlawful means – varies from country to country. We conclude that a reasonableness test that accounts for the sensitivity of this data is preferable to prescriptive rules. While a reasonableness test provides less of a bright line for compliance, it will allow providers greater flexibility to manage their networks while respecting the confidentiality of this data.[99] We therefore amend our rules to strengthen the current provision addressing the confidentiality of this data. The current version of this provision directs service providers to "[n]ot disclose information concerning NSEP services they provide to those not having a need-to-know or [who] might use the information for competitive advantage."[100] To this section, we add the following language:

> Service providers will take all reasonable efforts to secure the confidentiality of TSP information from unauthorized disclosure, including by storing such information in a location and with security safeguards that are reasonably designed to protect against lawful or unlawful disclosure to company employees or service providers without a legitimate need for this information, or other entities to which the disclosure of this information would pose a threat to the national security of the United States. Service providers will immediately notify the FCC and DHS of any attempt to compel the disclosure of this information and will coordinate with the FCC and DHS prior to such disclosure. In emergency situations where prior notice is impracticable, service providers will notify the FCC and DHS as soon as possible, but no later than 48 hours after such disclosure, and should accompany such notice with an explanation why prior notice was not practicable.

We find that this test strikes the appropriate balance between DHS's concerns about the potential national security risks posed by the disclosure of this data, and the concerns of commenters about the shortcomings of a more prescriptive approach. We therefore conclude that the benefits to national security will far exceed the minimal costs that service providers may incur as a result of these requirements.

32. *Provisioning and Restoration Timeframes*. The Commission's current 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.[101] However, each subsection specifies a different standard ("best efforts," "as soon as possible," and "as quickly as practicable") for the time and level of effort required for service providers to provision or restore TSP facilities.[102] 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.[103]

33. We agree with NTIA that replacing varying timeframe standards with a single standard will eliminate confusion and provide more certainty for service providers regarding their provisioning and

[98] *See* NCTA TSP PN Comments at 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 TSP PN Comments at 6-7 ("It is… not clear that 'offshoring' alone is inherently less secure than keeping operations onshore.").

[99] *See* NCTA TSP PN Comments at 6.

[100] 47 CFR pt. 64, Appx. A § 6.f(13).

[101] *Id.* § 6.f(1)(a), (1)(b)(i), (2)(a).

[102] *See, e.g.*, *id.* § 6.f(1)(a), (1)(b)(i), (2)(a) (stating that TSP service providers must "allocate resources" needed to, respectively, "ensure best efforts to provide NSEP services by the time required"; "provide Emergency NSEP services as soon as possible"; and "restore NSEP services as quickly as practicable").

[103] NTIA TSP Petition at 5.

restoration responsibilities. We also disagree with commenters who argue that we should maintain the existing standards[104] or "eliminate the restoration timeframes from [the] rules entirely."[105] We therefore amend section 6.f of Appendix A by replacing the current language with the single term "promptly" to describe TSP service providers' provisioning and restoration obligations.[106] Further, we define "promptly" as meaning "without delay."

34. In adopting this standard, we address two competing sets of concerns raised by commenters. On the one hand, as NTIA points out, greater clarity and certainty regarding provisioning and restoration timeframes will reduce confusion and provide more concrete expectations for NSEP users, service providers, and DHS's program office staff.[107] On the other hand, we seek to avoid an overly burdensome or prescriptive requirement that could, as other commenters point out, fail to account for the "variable nature of communications outages,"[108] and the costs and benefits of specific circumstances.[109] In general, we agree with commenters that the standard for provisioning and restoration must provide clarity[110] and account for incident specific factors,[111] while not placing unreasonable demands on service providers.[112]

35. We find that the "promptly" standard best addresses the competing interests that are outlined in the record. Requiring "prompt" action – and defining "promptly" to mean "without delay" – necessitates that service providers move as rapidly as is reasonable under the circumstances, which establishes a clear and enforceable floor for action. However, this standard does not mandate specific timelines or levels of effort and it allows for consideration of variable incident-specific circumstances in determining what speed of response and allocation of resources is reasonable. We find the "promptly" standard preferable to the alternative standards proposed by commenters, such as "best efforts,"[113] or "as soon as possible,"[114] which do not convey the same sense of urgency and are more subjective and susceptible to conflicting interpretations.

36. *Reporting Requirements*. In the *NPRM*, we sought comment on NTIA's request that we amend our rules to require service providers to report provisioning and restoration times to DHS for TSP circuits in areas covered by the activation of the Disaster Information Reporting System (DIRS).[115] DHS asserts that it is necessary for the Commission to impose such reporting requirements to enable DHS to obtain access to TSP provisioning and restoration times and aggregate data so that it can compare the data for TSP services to similar data for non-TSP services.[116] However, most commenters oppose NTIA's

[104] ATIS Comments at 4-5.

[105] NCTA Comments at 6.

[106] NTIA TSP Petition at 5.

[107] *Id.*

[108] USTelecom Comments at 3.

[109] ATIS Comments at 4-5; NCTA Comments at 5-6; T-Mobile Comments at 17-18; USTelecom Comments at 3.

[110] ATIS Comments at 5; NCTA Comments at 5-6; USTelecom Comments at 3.

[111] Verizon Comments at 2 ("A new 'promptly' standard for TSP service restoration should flexibly account for event-specific circumstances and resource constraints.").

[112] ATIS Comments at 4-5; NCTA Comments at 5-6; T-Mobile Comments at 17-18; USTelecom Comments at 4.

[113] NCTA Comments at 6; USTelecom Comments at 4.

[114] NCTA Comments at 6.

[115] *See* NTIA TSP Petition at 4-5.

[116] *See Priority Services NPRM*, 35 FCC Rcd at 7704, para. 58.

request and raise a number of arguments for declining to adopt additional reporting requirements.[117] Some commenters point out that requiring service providers to report data in the midst of a disaster could force them to divert resources away from the disaster response efforts.[118] 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.[119] Others argue that comparing the provisioning and restoration times of TSP services and non-TSP services is unlikely to produce useful or actionable results.[120] Finally, a number of commenters raise practical concerns with implementing the reporting requirements by, for example, pointing out that the configuration of networks and IT systems may not allow for reporting with the granularity required to produce such reports.[121]

37. We decline to adopt reporting requirements in our rules. While we recognize the potential benefits of collecting provisioning and restoration data, commenters raise questions about the cost, efficacy, and utility of reporting requirements, and the record does not include sufficient information to rebut these objections. Indeed, no commenter responded to the concerns raised in the record. Only one commenter (BRETSA) indicated support for the requested rule change, but merely noted that requiring data on network performance might improve the management and operation of the TSP program.[122] Moreover, 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.[123] We believe these details should be clarified before the Commission establishes new reporting requirements.

38. Finally, it is unclear whether DHS lacks other means to obtain the requested information. Some commenters contend that DHS may be able to obtain this information through contractual negotiations with service providers.[124] CISA asserts that contractual arrangements for TSP do not currently exist between DHS and service providers and claims that DHS currently has no basis on which to establish contractual arrangements for TSP.[125] However, CISA has not identified any legal prohibition that would preclude consideration of a contractual approach. Nevertheless, recognizing the potential value of collecting greater data about provisioning and restoration times, while we decline to adopt reporting requirements today, we encourage further dialogue regarding whether an appropriate avenue exists for obtaining this data that might be responsive to concerns raised in the record, whether through further changes to our rules or through other means.

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[117] AT&T Comments at 9; AT&T TSP PN Comments at 4; ATIS Comments at 5; ATIS TSP PN Reply Comments at 4; NCTA Comments at 6; NCTA TSP PN Comments at 3; T-Mobile Comments at 17-18.

[118] AT&T Comments at 9; AT&T TSP PN Comments at 4; ATIS Comments at 6; ATIS TSP PN Reply Comments at 4; NCTA TSP PN Comments at 3; Verizon Comments at 2, 7.

[119] ATIS Comments at 6; ATIS TSP PN Reply Comments at 4-5; USTelecom TSP PN Comment at 3-4.

[120] AT&T Comments at 9; AT&T TSP PN Comments at 3-4; ATIS Comments at 5; ATIS TSP PN Reply Comments at 3; NCTA Comments at 6-7; NCTA TSP PN Comments at 3-4; T-Mobile Comments at 17-18.

[121] *See* ATIS Comments at 6 ("Depending on what data would be requested, there may be impacts to providers' information technology systems, as some providers may not have the capability to report more granular data and/or link this to a particular DIRS activation area."); *see also* ATIS TSP PN Reply Comments at 4; Verizon TSP PN Comments at 5-6.

[122] BRETSA Comments at 4.

[123] NTIA TSP Petition at 4 ("DHS plans to work with the Commission and service providers to determine the specific criteria for reporting and frequency.").

[124] AT&T Comments at 9; Verizon Comments at 6-7.

[125] CISA *Ex Parte* at 11, 17.

C. Changes to Wireless Priority Service Rules

39. With a few exceptions and modifications, discussed below, we adopt most of the changes to our WPS rules proposed in the *NPRM*. Specifically, we (1) update the rules to reflect the commonly used name for this program; (2) expand the list of services eligible for WPS to reflect newer technologies, as we did with TSP; (3) expand WPS eligibility to include additional users; (4) clarify the operation of the priority levels to make clear that higher priority services take precedence over those with lower priority; (5) discuss the applicability of the WPS rules to the FirstNet network; (6) clarify the extent to which preemption and degradation may be used to facilitate prioritized communications; (7) expressly authorize priority signaling; and (8) eliminate the requirement that priority access must be invoked on a per-call basis. Finally, as with TSP, we decline to adopt additional reporting requirements proposed by NTIA.

40. *Program Name*. As described above, government, industry, and users commonly refer to Priority Access Service as Wireless Priority Service.[126] To reflect the prevailing naming convention, we adopt the *NPRM* proposal to replace all references to "Priority Access Service" with "Wireless Priority Service" in section 64.402 and part 64, Appendix B.[127] We agree with NTIA that the name Wireless Priority Service "better reflects the service's current requirements and capabilities."[128] No commenters directly addressed this issue, but T-Mobile previously indicated support for "updating the language… as necessary to mitigate any potential confusion and enhance clarity."[129]

41. *Eligible Services*. We adopt the *NPRM* proposal to amend the WPS rules to expressly permit wireless service providers,[130] 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, including IP-based services.[131] We also adopt the *NPRM* proposal to eliminate references to "CMRS" and, where necessary, substitute the term "wireless" to describe services, networks, and providers.[132] Finally, we retain the current requirement that if a service provider elects to offer WPS, it must comply with the Commission's WPS rules.[133]

42. Commenters support amending the rules to authorize wireless service providers to voluntarily offer priority treatment of all voice, data, and video services to eligible users.[134] Since the WPS rules were initially adopted in 2000, the "capacity and capabilities of [wireless] networks have expanded immensely" and wireless service providers are now able to offer a wide array of voice, data,

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[126] NTIA WPS Petition at 15-16.

[127] *See Priority Services NPRM*, 35 FCC Rcd at 7702, para. 50.

[128] NTIA WPS Petition at 15.

[129] T-Mobile WPS PN Reply Comments at 2.

[130] For purposes of this *Report and Order* and Appendix B to part 64 of the Commission's rules, the phrase "wireless service providers" encompasses both commercial and private mobile service providers. *See Priority Services NPRM*, 35 FCC Rcd at 7700, para. 43 n.123. The Communications Act defines commercial mobile service as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public[.]" 47 U.S.C. § 332(d)(1). "Private mobile service" is defined in the Communications Act in the negative as "any mobile service . . . that is not a commercial mobile service or the functional equivalent of a commercial mobile service[.]" 47 U.S.C. § 332(d)(3). *See also* 47 CFR Section 20.3.

[131] *See Priority Services NPRM*, 35 FCC Rcd at 7700, para. 43.

[132] *See id.* at 7700, para. 50 n.123.

[133] *See* 47 CFR § 64.402 ("[Service] 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 id*. pt. 64, Appx. B § 2.b (stating that Appendix B "applies to the provision of [WPS] by CMRS licensees to users who qualify under the provisions of section 5 of the appendix").

[134] AT&T Comments at 8-9; T-Mobile Comments at 11; Verizon Comments at 10.

and video services.[135] The development of new technologies has direct implications for NSEP users, who increasingly rely on these innovative services and applications to "make and complete mission-essential communications in an efficient and effective manner."[136] We find that amending our rules to include all voice, data, and video services, including IP-based services, will promote consistency and prevent confusion among service providers.[137]

43. DHS has interpreted the lack of explicit authorization in our rules to mean that WPS providers are not permitted to offer priority data, video, and IP-based voice services.[138] We disagree with DHS's view, and instead agree with commenters who assert that while specific authorization is not necessary, it will prevent confusion among providers and NSEP users regarding the services that are eligible for priority treatment.[139] We believe that by removing any uncertainty about the legal authority to offer these services, our action will facilitate the development of new services and capabilities which, in turn, will significantly benefit NSEP users.

44. *Eligible Users*. We adopt the *NPRM* proposal 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.[140] Specifically, we amend Appendix B to include entities from the critical infrastructure sectors identified in Presidential Policy Directive (PPD)-21,[141] and we modify the descriptions of priority levels and qualifying criteria to allow financial services and hospital personnel to qualify for WPS.[142] We also remove outdated language that currently limits WPS eligibility to "key personnel"[143] and individuals in "leadership positions"[144] and clarify that WPS should be made available to all NSEP personnel that meet the qualifying criteria.

45. In addition to providing WPS to these critical groups, this amendment also brings our rules in line with developments in the administration of the WPS program. While the current rules do not include multiple categories of NSEP users, such as critical infrastructure protection, financial services, and hospital personnel,[145] DHS is currently assigning priority levels to those users.[146]

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[135] NTIA WPS Petition at 7-8.

[136] *Id.*

[137] As discussed above, *supra* para. 23, this rule change is not intended to alter the regulatory status of these IP-based services.

[138] NTIA WPS Petition at 8.

[139] CTIA Comments at 8.

[140] *See Priority Services NPRM*, 35 FCC Rcd at 7700, para. 45.

[141] 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 current 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. If PPD-21 is amended to include additional critical infrastructure sectors, entities from such sectors would also be eligible for WPS.

[142] *See Priority Services NPRM*, 35 FCC Rcd at 7700-01, para. 45.

[143] 47 CFR pt. 64, Appx. B § 5.

[144] *Id*.

[145] NTIA WPS Petition at 21.

[146] *Id.* (stating that DHS is currently assigning hospital personnel to Priority Level 3 and financial services personnel to Priority Level 4).

46. Commenters generally support allowing more groups of NSEP users to qualify for WPS,[147] but disagree about the process for determining their eligibility and priority level assignments. For example, AT&T states that the Commission should "specify how entities… would be incorporated" into the priority levels,[148] while T-Mobile argues that decision should "continue to lie[] with DHS."[149] We need not address this specific issue in our rules because, as described above, we eliminate the provisions that describe the responsibilities of EOP for the priority services programs. However, we expect that DHS will continue to make WPS eligibility determinations and priority level assignments pursuant to Executive Order 13618.

47. *Priority Levels*. The Commission's WPS rules list five levels of priority, with Priority Level 1 being the highest.[150] NTIA asks the Commission to amend the rules to make explicit that Priority Level 1 communications – those made by the President of the United States, as well as certain executive leaders and policymakers – should receive priority treatment that exceeds that given to users at any other priority level.[151] We agree with NTIA's requested rule change, which would make it both "explicit and conspicuous" that "the nation's executive leadership receive top priority."[152] Commenters generally agree that the Commission should update its rules to clarify the status of Priority Level 1 users.[153] We therefore adopt the *NPRM* proposal and clarify that Priority Level 1 exceeds all other priority services offered by WPS providers.[154]

48. *WPS and FirstNet.* In *ex parte* comments, FirstNet notes that "[although this proceeding appears specifically aimed" at WPS and TSP, "[FirstNet] wishes to clarify that any updates to the FCC's priority services rules should not apply to the distinct, unique FirstNet services."[155] FirstNet requests that the Commission exclude FirstNet services "from any updates or revisions to the Commission's priority services rules and, in particular, that FirstNet services *not* be subject to overriding priority or degradation vis-à-vis any other priority services offerings."[156] AT&T similarly argues that "[a]ccomplishment of the [FirstNet Authority's] mission requires . . . broad authority to assign priority levels," and states that "the WPS rules should not interfere with the interplay of priority levels vis-à-vis FirstNet and WPS and other programs."[157] Verizon asserts that the same principle applies to public safety services offered by other providers, stating that the WPS rules "have never been interpreted so expansively as to preclude wireless providers from offering innovative priority and preemption capabilities in their separate public safety communications offerings."[158] Responding to AT&T, T-Mobile asserts that providers should not be allowed to "pick and choose how users receive priority based on their status with a particular provider," and urges the Commission to "ensure that all WPS subscribers receive priority treatment based solely on

[147] T-Mobile Comments at 13; Verizon Comments at 10-11.

[148] AT&T Comments at 9.

[149] T-Mobile Comments at 13.

[150] *See* 47 CFR pt. 64, Appx. B § 5 ("There are five levels of NSEP priorities, priority one being the highest.").

[151] NTIA WPS Petition at 19.

[152] *Id.*

[153] *See, e.g.,* T-Mobile Comments at 9 ("T-Mobile agrees that the Commission should update its rules to clarify the status of Priority Level 1 users."); Verizon Comments at 11.

[154] *See Priority Services NPRM*, 35 FCC Rcd at 7698, para. 37.

[155] FirstNet *Ex Parte* at 3-4.

[156] *Id.*

[157] AT&T Comments at 7.

[158] Verizon Reply Comments at 3.

their WPS status regardless of what network they are on, including FirstNet."[159]

49. As FirstNet notes, this proceeding is focused on TSP and WPS, and the *NPRM* did not mention or seek comment on FirstNet. Nevertheless, in light of the comments filed on this issue, we believe it is appropriate to clarify the relationship between WPS and FirstNet. As stated above, the WPS rules only apply to service providers that voluntarily elect to participate in WPS. FirstNet is a separate program with distinct statutory authority to operate the Nationwide Public Safety Broadband Network and to offer prioritization to first responders.[160] As such, the WPS rules do not apply to prioritization within the FirstNet network, and FirstNet is therefore not required to comply with the WPS rules in providing such prioritization to its public safety users. However, FirstNet may voluntarily elect to participate in WPS and, if it chooses to do so, like any other WPS participant, its participation must be in accordance with the WPS rules. Indeed, FirstNet states that it offers WPS capability to users that request it, and acknowledges that "[t]o the extent a FirstNet subscriber has the WPS feature enabled on their FirstNet service, the use of that WPS capability would be subject to the prevailing WPS rules."[161]

50. *Preemption and Degradation*. The *NPRM* proposed to authorize preemption[162] and degradation[163] for Priority Level 1 and 2 voice calls, except for public safety emergency (911) calls.[164] NTIA requested this clarification based on its view that "[c]urrent WPS rules do not permit NS/EP calls to preempt other in-progress calls."[165] NTIA asked that the Commission amend its rules because 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."[166] We sought comment on NTIA's requested rule change.[167]

51. The 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-progress) calls.[168] However, as several commenters point out,[169] and as we recognized in the *NPRM*,[170] the lack of explicit authorization does not preclude WPS providers from re-ordering active calls.[171] We similarly find that preemption and degradation of active calls in support of WPS prioritization is not precluded by our rules. To the extent that these mechanisms are employed in WPS by common carriers subject to Title II, we clarify that they are not "unjust or unreasonable" practices that violate the non-discrimination provision of section 202.

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[159] T-Mobile Reply Comments at 6-7.

[160] *See* 47 U.S.C § 1401 *et seq*. Under the Middle Class Tax Relief and Job Creation Act of 2012, Congress directed the First Responder Network Authority ("FirstNet Authority") to ensure the establishment and ongoing operation, maintenance, and enhancement of the nationwide public safety broadband network ("NPSBN" or "FirstNet"), which includes priority services for public safety users. 47 U.S.C § 1422.

[161] FirstNet *Ex Parte* at 2 n.5.

[162] Preemption is the process of terminating lower priority communications in favor of higher priority communications.

[163] Degradation is the process of reducing the quality of lower priority communications in favor of higher priority communications.

[164] *Priority Services NPRM*, 35 FCC Rcd at 7699, para. 40.

[165] NTIA WPS Petition at 5.

[166] *Id.* at 6.

[167] *Priority Services NPRM*, 35 FCC Rcd at 7698-99, paras. 38-41.

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

[169] AT&T Comments at 7-8; CTIA Comments at 8; T-Mobile Comments at 9-10; Verizon Comments at 11-12.

[170] *Priority Services NPRM*, 35 FCC Rcd at 7699, para. 40.

[171] *Priority Services NPRM*, 35 FCC Rcd at 7699, para. 40.

To the extent that these mechanisms are used in support of NSEP communications outside the scope of Title II, they are legally permissible. Thus, while expressly authorizing priority and preemption in the rules may be legally unnecessary, we determine that explicit authorization will help ensure "consistent interpretation of the rules by WPS providers to the ultimate benefit of NSEP users."[172]

52. AT&T expresses concern that authorizing preemption and degradation only in support of Priority Level 1 and 2 voice calls might suggest that it is prohibited for other priority levels.[173] We agree that preemption and degradation of lower-priority communications are permissible at all WPS priority levels. Therefore, we modify the *NPRM* proposed rule to expressly permit, voice, data, text, and video communications from NSEP users assigned to any priority level to preempt or degrade other in-progress communications, except for public safety emergency (911) communications. Likewise, we make clear that preemption and degradation are *permitted* but not *required* by our rules.[174] We agree with commenters that issues related to preemption and degradation should be determined via contractual arrangements because such an approach will give WPS providers increased flexibility to update their service offerings and determine when and how to apply these capabilities.[175]

53. *Priority Signaling*. We adopt the *NPRM* proposal to update our WPS rules to expressly authorize priority signaling to ensure networks can detect WPS handset network registration and service invocation.[176] Priority signaling is an important feature that allows service providers to mitigate the risks of signaling congestion by ensuring "successful WPS handset network registration and service invocation."[177] While commenters correctly note that the Commission's rules do not prohibit priority signaling and that some WPS providers already offer it via contractual arrangements with DHS,[178] commenters do not raise any objections to explicitly authorizing priority signaling in our rules. We find that this rule change will promote clarity and consistency for providers and, therefore, adopt the rule change as proposed in the *NPRM*.

54. *Methods of Invocation*. We adopt the *NPRM* proposal to eliminate the requirement that WPS priority access must be invoked on a per-call basis.[179] Currently, authorized users invoke priority access on a per-call basis by dialing a specified feature code before each call.[180] We agree with NTIA that requiring users to invoke WPS for each communication "hinder[s] efficient response" during emergency situations.[181] Although AT&T argues for maintaining the current requirement in order to ensure that

[172] T-Mobile Comments at 10.

[173] AT&T Comments at 8 ("This proposed language muddies the waters on preemption and should be struck or revised.").

[174] *See* T-Mobile Comments at 10 (noting that "rules explicitly authorizing but not requiring preemption, in addition to priority, will better serve the public interest" (emphasis omitted)).

[175] CTIA Comments at 8; T-Mobile Comments at 10-11.

[176] *Priority Services NPRM*, 35 FCC Rcd at 7701, para. 47.

[177] NTIA 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 could gain access to network resources to complete NS/EP calls." *Id*.

[178] AT&T Comments at 9; ATIS Comments at 4; CTIA Comments at 8; T-Mobile Comments at 14; Verizon Comments at 13; *see also* NTIA WPS Petition at 23 ("DHS, through its WPS service providers, has implemented signaling priority in 3G CDMA and UMTS wireless access technologies and is currently implementing advanced signaling priority in 4G VoLTE air interface technology.").

[179] *Priority Services NPRM*, 35 FCC Rcd at 7701, para. 49.

[180] 47 CFR pt. 64, Appx. B § 2.c.

[181] NTIA WPS Petition at 11.

"WPS functions smoothly for calls that must be transmitted over multiple carrier networks,"[182] we believe that DHS is in the best position to ensure interoperability between the various networks that carry prioritized communications.

55. We also decline to prescribe other specific methods of WPS invocation in our rules. We agree with T-Mobile that methods of invocation should be determined by contractual arrangements because such an approach will ensure that all WPS providers are "afforded the same flexibility and treatment."[183] Commenters support this change because it provides greater flexibility for service providers to decide how to offer WPS services in the manner most suitable for their subscribers and networks.[184]

56. *Reporting Requirements*. We decline to amend our rules to require service providers to file implementation, usage, and performance data with DHS.[185] According to NTIA, DHS currently collects and analyzes data from WPS providers detailing "usage, performance, implementation, and supporting infrastructure," so that it can assess "WPS readiness, usage, and performance at all times and all places offered, as well as for specific geographic areas and times.[186] NTIA asserts that the requested rule change is necessary to ensure consistency across all WPS providers and to formalize the process by which providers submit WPS data to DHS.[187]

57. Commenters oppose NTIA's requested rule change, arguing that new reporting requirements could inhibit providers' flexibility and ability to innovate[188] and duplicate existing reporting processes.[189] Notably, the record includes minimal responses to those objections. Instead, commenters assert that DHS should obtain this information via contractual arrangement with WPS providers.[190] Based on this record and consistent with our discussion above with respect to TSP reporting, we decline to adopt new WSP reporting requirements at this time and encourage further dialogue on this matter.

D. Alternative Contract-Based Approach for TSP and WPS

58. The *NPRM* sought comment on an alternative "light touch" approach, whereby the current rules for TSP and WPS would be eliminated and the programs would operate strictly via contractual arrangements between DHS and service providers.[191] This approach would make TSP and WPS prioritization resemble GETS, which provides prioritization through the Public Switched Telephone Network for over 330,600 GETS card holders.[192] Currently, there are no Commission rules for GETS,

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[182] AT&T Comments at 9-10.

[183] T-Mobile Reply Comments at 7-8 ("AT&T's claim is an attempt to have the Commission adopt rules that would give it a competitive advantage, and thus should be rejected.").

[184] *See* ATIS Comments at 7; T-Mobile PN Reply Comments at 2, 7-8; T-Mobile Comments at 15-16; Verizon Comments at 13.

[185] *See* NTIA WPS Petition at 13.

[186] *Id.* at 13-14.

[187] *Id.* at 14.

[188] T-Mobile WPS PN Reply Comments at 3-4.

[189] Verizon Comments at 7.

[190] CTIA Comments at 7; T-Mobile Comments at 19.

[191] *Priority Services NPRM*, 35 FCC Rcd at 7705, para. 63.

[192] Cybersecurity and Infrastructure Security Agency, *Government Emergency Telecommunications Service (GETS),* https://www.cisa.gov/pts (last visited Apr. 21, 2022). CISA maintains information regarding the number of GETS card holders. CISA does not routinely publish this data, but it will accommodate requests for this information and make release determinations on a need-to-know basis.

which operates solely via contractual arrangements with DHS.[193]

59. Most industry commenters prefer the "light touch" contractual approach to the current rules-based approach.[194] T-Mobile disagrees, arguing that the Commission should "maintain a limited set of rules" for TSP and WPS.[195] Likewise, CISA argues that eliminating the rules would remove the existing liability protections for prioritized non-broadband services and, without such protection from liability, carriers would be unlikely to offer priority services.[196] CISA also asserts that it currently has no basis on which to establish contractual arrangements with TSP providers.[197]

60. We decline to adopt a wholly contractual scheme for priority services. Although a contractual approach could provide some benefits, commenters have not identified fundamental problems or deficiencies in the existing rules-based approach. Overall, the record indicates that both TSP and WPS have functioned without major disruption and have expanded under the current approach. Given the critical role of the priority services programs in supporting the NSEP posture of the United States, we believe that continuing to have baseline rules for TSP and WPS will promote continuity and consistency in these programs. We agree with CISA that the rules provide important liability protections for service providers and that removing these protections could create uncertainty regarding liability that might discourage providers from participating in the programs. Further, a strictly contract-based approach could impose administrative and cost burdens on DHS by requiring it to make extensive programmatic changes. In sum, we conclude that the potential adverse impacts of implementing the alternative approach would outweigh the potential benefits.

IV. PROCEDURAL MATTERS

61. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[198] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[199] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

62. *Congressional Review Act*. [[The Commission will submit this draft *Report and Order* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is "major" or "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2).]] The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

63. *Further Information*. For further information, 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.

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[193] Cybersecurity and Infrastructure Security Agency, *Government Emergency Telecommunications Service (GETS),* https://www.cisa.gov/pts (last visited Apr. 21, 2022).

[194] AT&T Comments at 2-3; ATIS Comments at 4; CTIA Comments at 5; NCTA Comments at 1; USTelecom Comments at 4; Verizon Comments at 2-3.

[195] T-Mobile Comments at 4.

[196] CISA *Ex Parte* at 15-18. One purpose of the TSP and WPS rules is to limit a common carrier's liability under Section 202 of the Communications Act. *See TSP Order*, 3 FCC Rcd at 6658, para. 45; *PAS Order*, 15 FCC Rcd at 16730-31, paras. 22-24.

[197] CISA *Ex Parte* at 11, 17.

[198] *See* 5 U.S.C. § 604. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[199] 5 U.S.C. § 605(b).

V. ORDERING CLAUSES

64. Accordingly, 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, this *Report and Order* IS ADOPTED.

65. IT IS FURTHER ORDERED that part 64 of the Commission's rules IS AMENDED, as set forth in Appendix A and Appendix B, effective thirty (30) days after publication in the Federal Register.

66. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this *Report & Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

67. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel of the Small Business Administration Office of Advocacy.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules for Telecommunications Service Priority

For the reasons discussed in the preamble, the Federal Communications Commission amends part 64 of Title 47 of the Code of Federal Regulations, as follows:

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend Appendix A to part 64 to read 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 rules, policies, and procedures and outlines 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 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(n), 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 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, 615a-1, 615c, 606; 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 (NSEP 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. This appendix establishes rules for provisioning and restoration of NSEP services both before and after invocation of the President's war emergency powers. The rules, regulations, and procedures outlined in this appendix must be applied on a day-to-day basis to all NSEP services that are eligible for TSP so that the priorities they establish can be implemented 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. *Internet Protocol-based services* refers to services and applications that feature digital communications capabilities and which generally use the Internet Protocol.

e. *Invocation Official* refers to an individual who (1) understands how the requested service ties to the organization's NSEP mission; (2) is authorized to approve the expenditure of funds necessary for the requested service; and (3) has operational responsibilities for telecommunications procurement and/or management within the organization.

f. *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.

g. *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.

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

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

j. *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.

k. *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.

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

m. *Promptly* means without delay.

n. *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.

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

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

q. *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.

r. *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.

s. *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.

t. *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.

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

v. *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.

w. *Service provider* refers to a provider of telecommunications services or Internet Protocol-based services. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

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

y. *Sponsoring Federal organization* refers to a Federal agency that determines eligibility for participation in the TSP Program for non-Federal (state, local, tribal, and foreign governments and private sector) organizations. A sponsor can be any Federal agency with which a non-Federal user may be affiliated. The sponsoring Federal agency ensures the service supports an NSEP function and merits TSP participation.

z. *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.

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 and providers of any services that are interconnected to common carrier services 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.

c. *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, e.g., the signaling path(s) or control plane services used by a service provider's technical staff to control, coordinate, and direct network operations. 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.

d. *Other services.* The NSEP TSP System may apply, at the discretion of and upon special arrangements by service 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 by this appendix.

5. ***Responsibilities***

a. The FCC:

(1) Provides regulatory oversight of the NSEP TSP System.

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

(3) Performs such functions as are required by law, including:

(a) with respect to all entities licensed or regulated by the FCC: the extension of or change in network facilities; the discontinuance, reduction, or impairment of interstate 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 FCC rules; and the assessment of communications service provider emergency needs and resources; and

(b) supports 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.

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

b. Sponsoring Federal organizations:

(1) Review and decide whether to sponsor foreign, state, and local government and private industry (including service providers) requests for priority actions. Federal organizations forward sponsored requests with recommendations for disposition to DHS. Such recommendations are 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.

c. Service users:

(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance 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) Prepare 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 Priority Services Program Office 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 DHS policies and procedures that are consistent with this appendix.

d. Non-federal service users, in addition to responsibilities described above in section 5.c, 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:

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

(a) Promptly provide NSEP services. When limited resources constrain response capability, providers will address conflicts for resources by:

(i) Providing NSEP services in order of provisioning priority level assignment, from highest (“E”) to lowest (“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 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 DHS for resolution.

(b) Comply with NSEP service requests by:

(i) Promptly providing Emergency NSEP services, dispatching outside normal business hours when necessary;

(ii) Promptly meeting 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

(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 to 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") by:

(a) Promptly restoring NSEP services by dispatching outside normal business hours to restore services assigned Priority Level 1, 2, or 3, when necessary, and services assigned Priority Level 4 or 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 service 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 when use of patching and/or rerouting will hasten restoration; and
(d) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service providers and users) to DHS 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.

(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 DHS policies or procedures that are consistent with this appendix.

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

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

(14) Take all reasonable efforts to secure the confidentiality of TSP information from unauthorized disclosure, including by storing such information in a location and with security safeguards that are reasonably designed to protect against lawful or unlawful disclosure to company employees or service providers without a legitimate need for this information, or other entities to which the disclosure of this information would pose a threat to the national security of

the United States. Service providers will immediately notify the FCC and DHS of any attempt to compel the disclosure of this information and will coordinate with the FCC and DHS prior to such disclosure. In emergency situations where prior notice is impracticable, service providers will notify the FCC and DHS as soon as possible, but no later than 48 hours after such disclosure, and should accompany such notice with an explanation why prior notice was not practicable.

(15) 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. "Service 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. Existing services may be preempted to provision NSEP services assigned Priority Level E or restore NSEP services assigned Priority Level 1 through 5 according to the following sequence:

(1) Non-NSEP services: If suitable spare services are not available, 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 services or non-NSEP services are available, 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 Priority Level 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 assignments to DHS in the format and following the procedures that DHS prescribes.

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. 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, users, 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; (2) is authorized to approve the expenditure of funds necessary for the requested service; and (3) has operational responsibilities for telecommunications procurement and/or management within the organization.

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. Service users and sponsoring Federal organizations may only appeal directly to the FCC after DHS action on the appeal. 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 1, 2, 3, 4, and 5 may be assigned for provisioning and/or restoration of Essential NSEP services. However, for Emergency NSEP services, Priority Level E is assigned for provisioning, and Priority Levels 1, 2, 3, 4, and 5 may be assigned for restoration of Emergency NSEP services.

(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. It is expected that priority levels may be revised within the three time periods by surviving authorized resource managers within DHS based upon specific facts and circumstances.

(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 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 Priority Level 5 for a 30-day period. Such 30-day restoration priority level assignment 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 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 Priority Level E for provisioning.)

(1) *National security leadership.* This subcategory is 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 services, 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 additional NSEP services that are 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 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 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.

APPENDIX B

Final Rules for Wireless Priority Service

For the reasons discussed in the preamble, the Federal Communications Commission amends part 64 of Title 47 of the Code of Federal Regulations as follows:

Part 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend § 64.402 to read 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.

1. Amend Appendix B to part 64 to read 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 rules, policies, and procedures and outlines responsibilities for the Wireless Priority Service (WPS), previously called Priority Access Service (PAS), to support the needs of National Security Emergency Preparedness (NSEP) personnel. WPS authorizes priority treatment to certain domestic telecommunications services and Internet Protocol-based services (NSEP services) for which 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(n), 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 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, 615a-1, 615c, 606; 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.

2. ***Definitions***

As used in this appendix:

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

b. *Service provider* (or *wireless service provider*) refers to a provider of a wireless communications service or Internet Protocol-based service, including commercial or private mobile service. The term includes agents of the licensed provider and resellers of wireless service.

c. *Service user* means an individual or organization to whom or which a priority access assignment has been made.

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

(1) *Assignment*;

(2) *Government*;

(3) *Internet Protocol-based services*;

(4*) National Coordinating Center for Communications (NCC)*;

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

(6) *Reconciliation*;

(7) *Revalidation*;

(8) *Revision*;

(9) *Revocation*.

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 6 of this appendix.

b. *Eligible services*. Wireless service providers may, on a voluntary basis, give eligible users priority access to, and priority use of, all secure and non-secure voice, data, and video services available over their networks. 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 it may preempt or degrade other in-progress voice calls. NSEP users are authorized to use priority signaling to ensure networks can 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 elected to provide such service. Priority Levels 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:

(1) Provides regulatory oversight of WPS.

(2) Enforces WPS rules and regulations, which are contained in this appendix.

(3) Acts as final authority for approval, revision, or disapproval of priority assignments by DHS and adjudicates disputes regarding priority assignments and denials of such requests by DHS, until superseded by the President's war emergency powers under Section 706 of the Communications Act.

(4) Performs such functions as are required by law, including:

(a) with respect to all entities licensed or regulated by the FCC: the extension of or change in network facilities; the discontinuance, reduction, or impairment of interstate 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 FCC rules; and the assessment of communications service provider emergency needs and resources; and

(b) supports 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:

(1) Identify themselves as authorizing agents and their respective communities of interest to DHS. State authorizing agents provide a central point of contact to receive priority requests from users within their state. Federal authorizing agents 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 6 of this appendix. When appropriate, authorizing agents recommend approval or denial of 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 service users and vice versa. Such information includes WPS requests and assignments, reconciliation and revalidation notifications, and other relevant information.

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

(6) Disclose content of the WPS database only to those having a need-to-know.

c. Service users:

(1) Determine the need for and request WPS assignments in accordance with the processes and procedures established by DHS.

(2) Initiate WPS requests through the appropriate authorizing agent. DHS approves or denies WPS requests and may direct service providers to remove WPS if appropriate. (Note: state and local government and private users apply for WPS through their designated state government authorizing agent. Federal users apply for WPS through their employing agency. State and local

users in states where there has been no designation are 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 serves as the authorizing agent.)

(3) Submit all correspondence regarding WPS to the authorizing agent.

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

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

(6) Pay service providers as billed for WPS.

d. Service providers:

(1) Provide WPS only upon receipt of an authorization from DHS and remove WPS for specific users at the direction of DHS.

(2) Ensure that WPS Priority Level 1 exceeds all other priority services offered by WPS providers.

(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 information regarding WPS users only to those having a need-to-know or who will not use the information for economic advantage.

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

(8) Notify DHS and the service user if WPS is to be discontinued as a service.

(9) Comply with all relevant Commission rules regarding WPS.

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. *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, with Priority Level 1being the highest. The five priority levels are:

(1) Executive Leadership and Policy Makers.

Users who qualify for the Executive Leadership and Policy Makers category will be assigned Priority Level 1. A limited number of technicians who are essential to restoring wireless

networks shall also receive this highest priority treatment. Users assigned to Priority Level 1 receive the highest priority in relation to all other priority services offered by WPS providers. Examples of users who are eligible for Priority Level 1 include:

(i) The President of the United States, the Secretary of Defense, selected military leaders, and the staff who support these officials;

(ii) State governors, lieutenant governors, cabinet-level officials responsible for public safety and health, and the staff who support these officials; and

(iii) Mayors, county commissioners, and the staff who support these officials.

(2) Disaster Response/Military Command and Control.

Users who qualify for the Disaster Response/Military Command and Control category will be assigned Priority Level 2. This priority level includes individuals who manage the initial response to an emergency at the Federal, state, local, and regional levels. Personnel selected for this priority level are 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 level. Examples of users who are eligible for Priority Level 2 include personnel from the following categories:

(i) Federal emergency operations center coordinators, e.g., Chief, Public Safety and Homeland Security Bureau (FCC); Manager, National Coordinating Center for Communications; National Interagency Fire Center, Federal Coordinating Officer, Director of Military Support;

(ii) State emergency services directors, National Guard leadership, Federal and state 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 category will be assigned Priority Level 3. This priority level includes individuals who conduct operations critical to life, property, and maintenance of law and order immediately following an emergency event. Examples of users who are eligible for Priority Level 3 include personnel from the following categories:

(i) Federal law enforcement;

(ii) State police;

(iii) Local fire and law enforcement;

(iv) Emergency medical services;

(v) Search and rescue;

(vi) Emergency communications;

(vii) Critical infrastructure protection; and

(viii) Hospital personnel.

(4) Public Services/Utilities and Public Welfare.

Users who qualify for the Public Services/Utilities and Public Welfare category will be assigned Priority Level 4. This priority level includes individuals who manage public works and utility infrastructure damage assessment and restoration efforts and transportation to accomplish emergency response activities. Examples of users who are eligible for Priority Level 4 include personnel from the following categories:

(i) Army Corps of Engineers;

(ii) Power, water, and sewage;

(iii) Communications;

(iv) Transportation; and

(v) Financial services.

(5) Disaster Recovery.

Users who qualify for the Disaster Recovery category will be assigned Priority Level 5. This priority level includes individuals who manage 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 users who are eligible for Priority Level 5 include personnel from the following categories:

(i) Medical recovery;

(ii) Detailed damage assessment;

(iii) Emergency shelter; and

(iv) Joint Field Office support personnel.

b. These priority levels were selected to meet the needs of NSEP users who manage and respond to national security and public safety emergency situations, particularly during the first 24 to 72 hours following an event.

c. The entities listed above are examples of the groups of users who may qualify for each priority level. The lists are non-exhaustive; other users may qualify for WPS, including those from the critical infrastructure sectors identified in Presidential Policy Directive 21. However, specific eligibility determinations and priority level assignments are made by DHS.

7. ***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. If a dispute still exists following DHS action, 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.

8. ***Preemption or Degradation of Existing Services***

Service providers may preempt or degrade in-progress voice, data, text, and video communications from NSEP users assigned to any priority level, except for public safety emergency (911) communications, when necessary to prioritize eligible WPS communications.

a. Service providers are not required to offer preemption or degradation.

b. Preemption and degradation are authorized for all five priority levels.

c. Preemption and degradation are not subject to the consent of the user whose service will be preempted or degraded.

9. ***Priority Signaling***

Service providers may offer priority signaling to ensure networks can detect WPS handset registration and service invocation.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) adopted in July 2020.[2] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

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

2. In the *Report and Order*, the Commission updates and streamlines its priority services rules. These rules facilitate prioritized connectivity to National Security and Emergency Preparedness (NSEP) personnel[4] during emergency situations by authorizing prioritized provisioning and restoration of communications facilities and prioritized network access for wireless communications. The priority services 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."[5]

3. The Commission takes this action because the priority services rules (the most recent of which were updated over two decades ago) need to be updated to account for changes in technology. The Commission's current rules date back to the establishment of the Telecommunications Service Priority (TSP) System in 1988[6] and the creation of the Priority Access Service (PAS), more commonly referred to as Wireless Priority Service (WPS), in 2000.[7] The Commission's rules were originally developed when communications networks were primarily based on circuit-switched technologies. They do not address the advanced capabilities of Internet Protocol (IP)-based communications that support data and voice services, or the ability of users at different priority levels to share network capacity and resources.

4. The Commission also takes this action to address the 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

[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] *Review of Rules and Requirements for Priority Services*, Notice of Proposed Rulemaking, PS Docket No. 20-187, 35 FCC Rcd 7685 (2020) (*Priority Services NPRM*).

[3] *See* 5 U.S.C. § 604.

[4] "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).

[5] *See* 47 CFR pt. 64, Appx. A § 3.f.

[6] *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*).

[7] *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 *Report & Order*.

Service (PAS) rules to address changes in technology and evolving user needs for these programs.[8] The *NPRM* sought comment on both NTIA petitions as well as on the Commission's proposed rule changes.

5. In the *Report and Order*, the Commission updates its priority services rules to reflect today's marketplace and governance framework and to explicitly authorize the prioritization of next-generation technology. For example, the Commission removes outdated language that could cause confusion and otherwise impede the use of IP-based technologies to support the provision of priority services for voice, data, and video communications. The Commission also amends its priority service rules to reflect current administrative responsibilities for the priority services programs while eliminating burdensome and unnecessary requirements on service providers. The scope of the changes adopted in the *Report and Order* in some instances apply to both TSP and WPS, and in other instances apply only to TSP or only to WPS. These changes are intended to reduce regulatory burdens and make our rules flexible enough to respond to changing administrative requirements or technological advances related to the priority services programs. We also believe that these changes will substantially increase the benefits to NSEP users and public safety while reducing the regulatory costs imposed on providers of priority services.

B. Summary of Significant Issues Raised by Comments in Response to the IRFA

6. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[9]

8. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. 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 rules adopted herein.[10] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[11] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[12] A "small-business

[8] The first NTIA 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.

[9] 5 U.S.C. § 604(a)(3).

[10] *See id.* § 604(a)(4).

[11] *See id*. § 601(6).

[12] *See id*. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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."

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.[13]

10. *700 MHz Guard Band Licensees*. The 700 MHz Guard Band encompasses spectrum in 746-747/776-777 MHz and 762-764/792-794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite)[14] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[15] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[16] Of this number, 2,837 firms employed fewer than 250 employees.[17] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

11. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.[18] The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, 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, and a "very small business" 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.[19] Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses.[20] None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.[21]

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[13] *See* 15 U.S.C. § 632.

[14] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[15] *See* 13 CFR § 121.201, NAICS Code 517312.

[16] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[17] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[18] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[19] *See* 47 CFR § 27.502(a).

[20] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 33: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/33/charts/33cls2.pdf, Auction 38: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/38/charts/38cls2.pdf.

[21] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

12. In frequency bands where licenses were subject to auction, the Commission notes 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. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

13. *Advanced Wireless Services (AWS) - (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); 2000-2020 MHz and 2180-2200 MHz (AWS-4)).* Spectrum is made available and licensed in these bands for the provision of various wireless communications services.[22] Wireless Telecommunications Carriers (except Satellite)[23] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[24] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[25] Of this number, 2,837 firms employed fewer than 250 employees.[26] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

14. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses.[27] The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission 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.[28] Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.[29] In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.[30]

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[22] *See* 47 CFR § 27.1(b).

[23] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[24] *See* 13 CFR § 121.201, NAICS Code 517312.

[25] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[26] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[27] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AD, AH, AT, AW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[28] *See* 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

[29] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 66: Advanced Wireless Services (AWS-1), Summary, Spreadsheets, https://www.fcc.gov/sites/default/files/wireless/auctions/66/charts/66cls2.pdf.

15. In frequency bands where licenses were subject to auction, the Commission notes 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. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

16. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[31] Wired Telecommunications Carriers[32] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[33] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[34] Of this number, 2,964 firms operated with fewer than 250 employees.[35] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.[36] Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.[37] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[38] is the closest industry with a SBA small business size standard.[39] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having

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[30] *See Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, DA-15-131, Attachments A-B, (Auction No. 97) (January 30, 2015).

[31] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[32] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[33] *See* 13 CFR § 121.201, NAICS Code 517311.

[34] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[35] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[36] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[37] *Id.*

[38] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[39] *See* 13 CFR § 121.201, NAICS Code 517311.

1,500 or fewer employees as small.[40] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[41] Of this number, 2,964 firms operated with fewer than 250 employees.[42] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.[43] Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.[44] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

18. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[45] Wireless Telecommunications Carriers (*except* Satellite)[46] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[47] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[48] Of this number, 2,837 firms employed fewer than 250 employees.[49] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

19. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[50] The Commission's small business size standards with respect to Lower

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[40] *Id.*

[41] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[42] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[43] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[44] *Id.*

[45] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44/factsheet, https://www.fcc.gov/auction/49/factsheet, https://www.fcc.gov/auction/60/factsheet.

[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[47] *See* 13 CFR § 121.201, NAICS Code 517312.

[48] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[49] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[50] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match

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700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[51] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[52] 26 winning bidders claiming a small business classification won 214 licenses,[53] and three winning bidders claiming a small business classification won all five auctioned licenses.[54]

20. In frequency bands where licenses were subject to auction, the Commission notes 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. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

21. Narrowband Personal Communications Services. Narrowband Personal Communications Services *(Narrowband PCS)* are PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.[55] PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.[56] Wireless Telecommunications Carriers (*except* Satellite)[57] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[58] U.S. Census

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only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[51] *See* 47 CFR § 27.702(a)(1)-(3).

[52] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[53] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[54] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

[55] *See* 47 CFR § 24.5.

[56] *Id*.

[57] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[58] *See* 13 CFR § 121.201, NAICS Code 517312.

Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[59] Of this number, 2,837 firms employed fewer than 250 employees.[60] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

22. According to Commission data as of December 2021, there were approximately 4,211 active *Narrowband PCS* licenses.[61] The Commission's small business size standards with respect to *Narrowband PCS* involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[62] A "very small business" is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[63] Pursuant to these definitions, seven winning bidders claiming small and very small bidding credits won approximately 359 licenses.[64] One of the winning bidders claiming a small business status classification in these *Narrowband PCS* license auctions had an active license as of December 2021.[65]

23. In frequency bands where licenses were subject to auction, the Commission notes 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. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *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.[66] Wireless Telecommunications Carriers (*except* Satellite)[67] is the closest industry with a SBA

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[59] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[60] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[61] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[62] *See* 47 CFR § 24.321(a)(1)-(2).

[63] *Id.*

[64] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 41: Narrowband PCS, Summary, Closing Charts, License By Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/41/charts/41cls2.pdf; Auction 50: Narrowband PCS, Summary, Closing Charts, License By Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/50/charts/50cls2.pdf.

[65] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

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

small business size standard applicable to this service. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[68] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[69] Of this number, 2,837 firms employed fewer than 250 employees.[70] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small. Additionally, based on Commission data, as of December 2021, there was one licensee with an active license in this service.[71] However, since the Commission does not collect data on the number of employees for this service, at this time we are not able to estimate the number of licensees that would qualify as small under the SBA's small business size standard.

25. *Rural Radiotelephone Service.* Neither the Commission nor the SBA have developed a small business size standard specifically for small businesses providing Rural Radiotelephone Service. Rural Radiotelephone Service is radio service in which licensees are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means.[72] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[73] Wireless Telecommunications Carriers (*except* Satellite),[74] is the closest applicable industry with a SBA small business size standard. The SBA small business size standard for Wireless Telecommunications Carriers (*except* Satellite) classifies firms having 1,500 or fewer employees as small.[75] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[76] Of this total, 2,837 firms employed fewer than 250 employees.[77] Thus, under the SBA size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. Based on Commission data as of December 27, 2021, there were approximately 119 active licenses in the Rural Radiotelephone

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[67] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[68] *See* 13 CFR § 121.201, NAICS Code 517312.

[69] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[70] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[71] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CO; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[72] 47 CFR § 22.99.

[73] BETRS is defined in 47 CFR §§ 22.757, 22.759.

[74] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications* Carriers *(except Satellite),*" https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[75] *See* 13 CFR § 121.201, NAICS Code 517312.

[76] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[77] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Service.[78] The Commission does not collect employment data from these entities holding these licenses and therefore we cannot estimate how many of these entities meet the SBA small business size standard.

26. *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.[79] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[80] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[81]

27. 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."[82] 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.[83] Nationwide, for tax year 2020, there were approximately 447,689 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.[84]

28. 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."[85] U.S. Census Bureau data from the 2017 Census of Governments[86] indicate that there were 90,075 local governmental jurisdictions consisting of general

[78] Based on a FCC Universal Licensing System search on December 27, 2021. https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[79] *See* 5 U.S.C. § 601(3)-(6).

[80] *See* SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf. (Nov 2021).

[81] *Id*.

[82] *See* 5 U.S.C. § 601(4).

[83] 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.

[84] *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 utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[85] *See* 5 U.S.C. § 601(5).

purpose governments and special purpose governments in the United States.[87] Of this number, there were 36,931 general purpose governments (county[88], municipal and town or township[89]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[90] with enrollment populations of less than 50,000.[91] 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."[92]

29. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.[93] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[94] Wireless Telecommunications Carriers (*except* Satellite)[95] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small

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[86] *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.

[87] *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* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[88] *See id.* at tbl.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.

[89] *See id. at* tbl.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.

[90] *See id.* at tbl.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* tbl.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.

[91] 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.

[92] 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 tbls.5, 6 & 10.

[93] *See* 47 CFR § 27.4.

[94] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73/factsheet. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[95] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[96] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[97] Of that number, 2,837 firms employed fewer than 250 employees.[98] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

30. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[99] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, 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, and a "very small business" 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.[100] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[101]

31. In frequency bands where licenses were subject to auction, the Commission notes 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. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

32. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[102] Wireless Telecommunications Carriers (*except* Satellite)[103] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has

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[96] *See* 13 CFR § 121.201, NAICS Code 517312.

[97] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[98] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[99] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[100] *See* 47 CFR § 27.502(a).

[101] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

[102] *See* 47 CFR §§ 27.1 – 27.1607.

[103] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

1,500 or fewer employees.[104] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[105] Of this number, 2,837 firms employed fewer than 250 employees.[106] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

33. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[107]

34. In frequency bands where licenses were subject to auction, the Commission notes 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. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

35. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with a SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[108] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[109] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[110] Of this number, 2,837 firms employed fewer than 250 employees.[111] Additionally, based on

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[104] *See* 13 CFR § 121.201, NAICS Code 517312.

[105] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[106] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[107] *See* 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

[108] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),*" https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[109] *See* 13 CFR § 121.201, NAICS Code 517312.

[110] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[111] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 407 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[112] Of these providers, the Commission estimates that 333 providers have 1,500 or fewer employees.[113] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

36. *Wireless Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with a SBA small business size standard is Telecommunications Resellers.[114] 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.[115] Establishments in this industry resell telecommunications and they do not operate transmission facilities and infrastructure.[116] Mobile virtual network operators (MVNOs) are included in this industry.[117] Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees.[118] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year.[119] Of that number, 1,375 firms operated with fewer than 250 employees.[120] Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

37. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[121] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[122] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[123] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this

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[112] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[113] *Id.*

[114] *See* U.S. Census Bureau*, 2017 NAICS Definition, "517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[115] *Id.*

[116] *Id.*

[117] *Id.*

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

[119] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[120] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[121] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[122] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[123] *See* 13 CFR § 121.201, NAICS Code 517312.

industry that operated for the entire year.[124] Of that number, 2,837 firms employed fewer than 250 employees.[125] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.[126] Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.[127] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

38. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[128] 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.[129] Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[130] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[131] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[132] Of those firms, 1,039 had revenue of less than $25 million.[133] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements For Small Entities

39. The rule changes adopted in the *Report and Order* will impose new and/or modified reporting, recordkeeping, and other compliance obligations on some small entities and other providers. At this time, the Commission cannot quantify the cost of compliance or determine whether small entities will have to hire professional assistance to comply with the updated Priority Services Rules. However,

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[124] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[125] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[126] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[127] *Id.*

[128] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[129] *Id.*

[130] *Id*.

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

[132] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[133] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

because our approach to the rule changes adopted in this proceeding has been to take a flexible approach rather than adopting prescriptive rules and reporting requirements, we do not believe the compliance obligations for small entities will impose any significant costs or burdens.

40. *Telecommunications Service Priority*. The Commission's TSP rules require certain service providers[134] to prioritize the provisioning and restoration of communications facilities to "ensure effective NSEP telecommunication services."[135] The TSP rules apply, on a mandatory basis, to common carrier services and "services which are provided by government and/or non-common carriers and are interconnected to common carrier services."[136] Offering TSP is mandatory for wireline telecommunications providers, regardless of size. All service providers that are requested to provide NSEP prioritization which is paid for by the user not the provider, must offer it. Service providers that offer these services must also "maintain and provision and, if disrupted, restore facilities and services" in accordance with the prioritization levels outlined in the TSP rules.[137]

41. Under the amended rules adopted in the *Report and Order*, small entities and other service providers that offer NSEP priority service must: (1) promptly, which we define as "without delay", provide NSEP service when requested, at the priority level contracted for; (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; (3) respond to NSEP provisioning requests of authorized users and/or other service providers, and (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.

42. Small entities and other services providers are also subject to enhanced data protection requirements to prevent the unauthorized disclosure of sensitive information relating to TSP circuits. The rules we adopt in the *Report and Order* require small entities and other service providers to take all reasonable efforts to secure the confidentiality of TSP information that they maintain from unauthorized disclosure. Such efforts include storing this information in a location and with security safeguards that are reasonably designed to protect against lawful or unlawful disclosure to company employees or service providers without a legitimate need for this information, or other entities to which the disclosure of this information would pose a threat to the national security of the United States. Service providers are required to immediately report any attempts that are made to compel the disclosure of this information to the Commission and DHS and to coordinate with the FCC and DHS prior to such disclosure. In emergency situations where providing prior notice is impracticable, service providers are required notify

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[134] 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 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 *Report and Order*.

[135] *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. The term "telecommunication services" is defined, in turn, 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.

[136] 47 CFR pt. 64, Appx. A § 4.a.

[137] 47 CFR § 64.401.

the FCC and DHS as soon as possible, but no later than 48 hours after such disclosure, and should an explanation why prior notice was not practicable when such notice is provided.

43. Requiring providers to take reasonable efforts will allow providers greater flexibility to manage their networks while respecting the confidentiality of this data. We believe a reasonableness test that accounts for the sensitivity of the data is preferable to prescriptive rules. We also believe that while small entities and other providers will incur costs for our enhanced TSP data protection rules, these costs will be minimal and the benefits to national security will far exceed the costs that service providers may incur as a result of these requirements.

44. *Wireless Priority Service.* Small and other wireless service providers are not required to offer WPS. The Commission's WPS rules permit, but do not require providers to offer mobile wireless priority services. Providers that offer WPS, offer the service pursuant to contractual arrangements with service users who like TSP users pay for the service and equipment costs. Providers that offer WPS, must also abide by the WPS rules promulgated by the Commission. Wireless service providers offering WPS must offer Priority Levels 1, 2, 3, 4, or 5. Priority Level 1 communications which are those made by the President of the United States, as well as certain other executive leaders and policymakers must be given the highest priority by WPS providers in relation to all other carrier-provided services.

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

45. The RFA requires an agency to describe any significant specifically small business alternatives that it has considered in reaching its 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.[138]

46. In the *Report and Order*, the Commission removed existing regulatory burdens, and declined to adopt several of the actions requested by NTIA, and in comments in response to the *NPRM*, that would have significantly increased the economic burden on small entities. As a preliminary matter, in updating and streamlining its priority services rules with adoption of rules applying to both TSP and WPS (e.g., updating the Commission's responsibilities for the priority services programs and clarifying that service providers are authorized to offer prioritization of next-generation services and technologies, including IP-based voice, data, and video communications), the Commission created greater efficiencies by combining rules applicable to both TSP and WPS service providers to the extent that it was possible. The Commission believes creating this greater efficiency could lower compliance costs for small entities.

47. The Commission's approach in this proceeding was to provide small entities and other service providers flexibility, evidenced for example by its adoption of the reasonableness test requiring service providers to take all reasonable efforts to protect the confidentiality of TSP data, rather than imposing prescriptive requirements on small entities and other service providers which could have increased their compliance costs. The Commission also considered but ultimately did not adopt recordkeeping and reporting rules that would have place a significant financial burden on small entities. Specifically, if adopted the proposed rules would have created additional reporting burdens on by requiring NSEP service providers (both TSP and WPS) to report to DHS provisioning and restoration times for TSP circuits in areas covered by the activation of the Disaster Information Reporting System (DIRS), and to aggregate data that would allow DHS to compare the data for TSP and WPS services to similar data for non-TSP and non-WPS services. Instead of ultimately adopting this proposal, the

[138] 5 U.S.C. § 604(a)(6).

Commission suggested that DHS enter into voluntary contractual arrangements with NSEP service providers, including small entities, to acquire the necessary data and information. The Commission believes the potential benefit of such reporting requirements was outweighed by questions of cost, efficacy, and the utility of these requirements, and therefore declined to adopt these provisions in the final rules.

48. The Commission also declined to adopt an alternative approach to the TSP and WPS requirements which would have had the Commission essentially completely remove itself from the priority services field – the "GETS model" approach. This approach would make TSP and WPS prioritization resemble the wholly-contractual Government Emergency Telecommunications Service (GETS). The GETS program, for which the Commission does not have rules, provides prioritization through the Public Switched Telephone Network for over 330,600 GETS card holders and operates solely via contractual arrangements with DHS. Because of the critical role of the priority services programs in supporting the NSEP posture of the United States, the Commission believes that NSEP rules remain necessary to establish baseline standards for these programs. The Commission notes that eliminating the rules would remove the liability protections for service providers which could discourage small entities and other service providers from participating in the programs. The Commission also notes that the elimination of the TSP rules would end the mandatory nature of the program for common carriers, thereby making participation in TSP completely voluntary for all service providers, which we find is not in the public interest. Accordingly, the Commission did not adopt this proposed approach.

G. Report to Congress

49. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[139] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.[140]

[139] *See* 5 U.S.C. § 801(a)(1)(A).

[140] *See* 5 U.S.C. § 604(b).

APPENDIX D

List of Commenting Parties

Comments

Alliance for Telecommunications Industry Solutions
AT&T
Boulder Regional Emergency Telephone Service Authority
CTIA
NCTA - The Internet & Television Association
T-Mobile
Texas 9-1-1 Entities
USTelecom - The Broadband Association
Verizon

Reply Comments

T-Mobile
Verizon

***Ex Parte* Filings**

Cybersecurity and Infrastructure Security Agency
First Responder Network Authority

STATEMENT OF
CHAIRWOMAN 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, Report and Order (May 19, 2022).

If you doubt there is such a thing as a perfect storm, go to Santa Fe and head to the mountains. You'll see a smoky haze in the air and one blackened ridge after another where fires have ravaged the national forest.

In New Mexico, the combination of a record heat wave, long-term drought, and relentlessly high winds have fanned what is now officially the state's largest recorded wildfire in history – the massive Calf Canyon-Hermits Peaks fire. As of Monday, it has already spanned more than 298,000 acres. But the fire danger is expected to remain high for the rest of the summer.

Let's face it – wildfires like this one are transforming the landscape. During the last ten years we have seen more than 60 wildfires over 100,000 acres in size in the United States. These largely western fires are moving faster, burning hotter, and proving harder to manage than ever before. They can wreak havoc on everything they encounter – including our communications networks. And when that happens, first responders are unable to access the information they need to do their jobs and people in affected areas can't call 911, reach out for help, and alert their loved ones when they are safe.

We need clear plans to restore public safety communications when disasters like these strike. With wildfires increasing, hurricane season around the bend, and other natural disasters likely to visit us in the future, the time to update these plans is now.

That's what we do today in this decision to modernize priority communications services. The Federal Communications Commission offers a suite of priority communications services to support national security and public safety communications during disaster. We do this in partnership with the Department of Homeland Security. These services include the Government Emergency Telecommunications Service, which provides priority calling for certain public safety users when landline networks are congested, the Wireless Priority Service, which provides priority calling when cellular networks are congested, and the Telecommunications Service Priority, which prioritizes how we install and restore critical data and voice communications.

When networks are down and emergency communications need to go through, these services make a real difference. In New Mexico, for instance, there is a 100 percent call completion rate for the more than two dozen Wireless Priority Service calls that have been placed during this fire season.

But here's the thing. It's been a long time since we updated these rules. For too long they have not made it easy for service providers to provide newer, IP-based communications services, including data and video. We fix that here. We also remove outdated requirements that were built for the analog era and we expand program eligibility to additional users.

Our communications networks have burned before, and Mother Nature's wrath is sure to visit them again. But today's action will help ensure that we are better prepared when that happens.

Thank you to the staff responsible for this public safety effort, including Ken Burnley, Justin Cain, Shawn Cochran, Michael Connelly, David Furth, Zenji Nakazawa, and Chris Smeenk from the Public Safety and Homeland Security Bureau; Doug Klein, Keith McCrickard, and Bill Richardson from the Office of General Counsel; Patrick Brogan, Eugene Kiselev, Virginia Metallo, Chuck Needy, and Emily Talaga from the Office of Economics and Analytics; Christina Clearwater, Kamran Etemad, Charles Mathias, and Jessica Quinley from the Wireless Telecommunications Bureau; Michele Berlove, and Kirk Burgee from the Wireline Competition Bureau; Kathy Harvey, Shannon Lipp, Jeremy Marcus, Raphael Sznajder, and Ashley Tyson from the Enforcement Bureau; and Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

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, Report and Order (May 19, 2022).

We know that another hurricane season is coming. What we need to know is that the backbone of our defense – National Security and Emergency Preparedness personnel – can utilize any available technology during any emergency to engage in any critical communication.

Today's decision brings us closer to that goal. It modernizes the FCC's priority services rules to reflect changes that have occurred in communications technology and the services' administrative framework since the Commission first enacted these rules. The item updates our rules to cover next-generation communications technology – voice, data, and video communications. It prioritizes critical communications regardless of network congestion, which tends to be highest when disaster strikes. And it eliminates otherwise outdated and unnecessary requirements for priority services providers. The revised rules will increase emergency personnel's flexibility when communicating, and improve the efficiency of those communications during and after national security threats. The item therefore has my support.

When disaster strikes, the nation must work together to mitigate the damage and recover quickly. The item highlights that the FCC, together with DHS and other agencies, is a vital partner in safeguarding our nation during times of crisis and ensuring effective disaster recovery. I look forward to continuing to work with my colleagues and other federal agencies to further advance our national security interests – whether those involve enhancing our networks' resilience, eradicating suspicious network equipment, or ensuring that our emergency respondents have pole position in our networks during emergencies. I thank the Public Safety and Homeland Security Bureau for their hard work on this item.