

In the Matter of)
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Revision of Rules and Requirements) PS Docket No. _____
For Telecommunications Service Priority)

⁴ ECD manages several priority services programs besides TSP, including Wireless Priority Service (WPS). NTIA has also submitted a rulemaking petition proposing amendments to the rules governing WPS. *See* Petition for Rulemaking of the National Telecommunications and

operations of TSP, the current Executive Branch governance structure for the service, and the need to reflect new communications providers and technologies available to National Security and Emergency Preparedness (NS/EP) users.

I. INTRODUCTION

In November 1988, in response to a petition from the Secretary of Defense in his capacity as the Executive Agent for the National Communications System (NCS), the Commission determined that the public interest would be served by replacing the then-extant Restoration Priority System with a new NS/EP telecommunications program, TSP. Since then, the TSP program has served as the regulatory, administrative, and operational framework for priority restoration and provisioning of qualified NS/EP telecommunications services. Its principal purposes are (1) to ensure expedited provisioning and restoration of critical NS/EP voice and data circuits, and (2) to support national leadership; Federal, state, local, tribal and territorial governments; and other authorized NS/EP users, to include private sector entities.⁵ In furtherance of those objectives, the Commission requires common carriers and certain other service providers to prioritize the provisioning and restoration of TSP-designated facilities over any non-TSP facilities and services.

While the public interest rationale for service providers to have the capability to prioritize provisioning and restoration of telecommunications services is as compelling now as it was in 1988, the evolution in the government structures relating to NS/EP communications, the

Information Administration, WT Dkt. No. 96-86; 47 C.F.R. § 64.402 and App. B. Given the similarities in the two programs, including common definitions, the text of this filing in places closely follows that in the WPS proceeding.

⁵ See DHS, “Telecommunications Service Priority (TSP),” <https://www.dhs.gov/telecommunications-service-priority-tsp>.

emergence of non-common carrier communications service providers that are capable of and willing to provide priority treatment to NS/EP services, as well as the changing communications needs of NS/EP users, necessitate alterations in the operating protocols for TSP adopted 30 years ago.

The changes detailed below are principally administrative in nature – to reflect, for example, shifts in the identity and/or responsibilities of the Federal agencies that oversee NS/EP communications. Further, because Part 64, Appendix A was drafted before TSP was first provided, some of its specifications do not align with business practices that have developed as the service has evolved. As more fully explained below, NTIA therefore requests that the Commission initiate a rulemaking to make the revisions to Part 64, Appendix A (hereafter referred to as Appendix A) of its rules as set forth in Attachment 1 to this filing.

II. REQUESTED CHANGES TO APPENDIX A

In this petition, we request a range of administrative and technical updates to the original TSP rules. Attachment 1 to this petition contains a “redlined” version of the rules indicating the specific changes that we propose. A number of the requested changes below will result in numerous small edits to the rules themselves, and our goal with Attachment 1 is to capture all of the changes requested below.

A. Amend Appendix A to Better Protect the Confidentiality of TSP Data.

Federal, state, local, tribal and territorial governments, and other authorized NS/EP users, to include the military and private-sector entities, use TSP to protect mission-essential communications at their primary places of operation, as well as at locations designed to maintain continuity of operations (COOP) and continuity of government (COG). While information related to an individual TSP circuit provides minimal risk if disclosed, in aggregate that data, if compromised, could present a national security risk. Service providers looking to reduce costs

have considered offshoring certain operations, administrative, or management functions, which could create risk by exposing TSP data to companies and individuals outside the United States. In light of this, to supplement the existing protections that limit disclosure to those with a need-to-know, the rules should be strengthened to direct TSP service providers to ensure they have policies and procedures in place to prevent and detect the unauthorized disclosure of TSP data, and to eliminate the risk of TSP data being managed offshore.

B. Amend Appendix A to Specify TSP Providers' Reporting Obligations in Connection with a Disaster.

DHS is responsible for ensuring that TSP addresses the NS/EP user community's needs.⁶ To meet this obligation, DHS must effectively assess a TSP provider's ability to support TSP "under all conditions." These activities require DHS to receive, store, maintain, process, and protect from disclosure (except as required by law) information from TSP providers detailing the effectiveness of prioritization and restoration activities. While TSP performance data from steady state operations can be useful, DHS considers performance data related to disaster operations – when there is often a contention for telecommunications personnel and resources – to be essential to determining the effectiveness of the TSP program. DHS seeks a rule change to require service providers to furnish the performance data necessary for DHS to make that assessment. To limit the reporting requirement to disaster-specific situations, DHS recommends that providers' reporting be tied to the counties that are reporting under the Disaster Information Reporting System (DIRS). In particular, DHS seeks to receive TSP provisioning and restoration times as well as aggregate data that would allow DHS to compare these times to non-TSP services during the disaster reporting period. DHS plans to work with the Commission and service providers to determine the specific criteria for reporting and frequency. The Commission

⁶ Exec. Order No. 13618 § 5.2, 3 C.F.R. § 13618 (2012), *reprinted in* 42 U.S.C. § 5195 note.

should therefore amend Appendix A to direct TSP providers to supply DHS data related to provisioning and restoration times for areas covered during the activation of the DIRS.⁷

C. Amend Appendix A to State More Clearly TSP Providers' Obligations Concerning Facilities Provisioning and Restoration.

DHS encounters a wide diversity of timelines governing how quickly carriers fulfill their obligations under the TSP program.⁸ To promote consistency, the Commission should alter the varying and ambiguous language in section 6 of Appendix A used to specify the time frames within which TSP providers must provision and restore TSP-subject facilities.⁹ The imprecision in the current rules concerning those timeframes has created confusion, disagreements, dissatisfaction, and unrealistic expectations between service users, service vendors, and DHS's TSP program office staff. Although DHS understands the challenges associated with provisioning and restoring facilities, frequently under difficult conditions, greater clarity and consistency in the relevant requirements will benefit all parties involved. We recommend that the Commission use the single term *promptly* in section 6 of Appendix A to describe TSP providers' provisioning and restoration obligations.

⁷ We request that these reporting requirements be included in revised TSP rules issued by the Commission. To reduce the burden on carriers, once DHS and the carriers have refined the reporting requirements as suggested above, DHS would be open to having the required information included in DIRS-related reporting to the Commission, so long as such reporting is also available to DHS.

⁸ References to a carrier's "obligations" under TSP address obligations under the Commission's TSP rules, which should be equally applied to common carriers that must provide TSP services, as well as non-common carriers that choose to provide TSP services.

⁹ E.g., App. A, § 6.f.(1)(a), (1)(b)(i), (2)(a) (TSP providers must "allocate resources" needed to, respectively, "ensure best efforts to provide NS/EP services by the time required;" "provide Emergency NS/EP services as soon as possible;" and "restore NS/EP services as quickly as practicable").

The Commission should also modify section 6 of Appendix A (Attachment 1) to reflect these timelines in the obligations imposed on TSP service vendors. Specifically, the Commission should:

- Amend the first sentence of section 6.g.(1)(a) to read:

Promptly allocate all resources necessary to provision Emergency NS/EP services by the requested due date, dispatching outside normal business hours when necessary and without regard to overtime costs or costs for expedited action.

- Alter section 6.g.(1)(b)(i) to read:

Promptly allocating resources to meet requested service dates for Essential NS/EP services, negotiating a mutually (customer and vendor) acceptable service due date when the requested service due date cannot be met; and

- Amend section 6.g.(2)(a) to read:

Promptly allocate all resources necessary to restore NS/EP services; beginning the restoration activities upon knowledge of a service outage, dispatching outside normal business hours without regard to overtime costs or costs for expedited action, when necessary to restore services assigned priority levels “1”, “2”, and “3”. Dispatching outside of normal business hours is appropriate for services assigned priority level “4” and “5” only when the next business day is more than 24 hours away. In circumstances where immediate restoration activities cannot commence due to circumstances beyond the service vendor’s control, e.g., access, safety, or security restrictions related to a disaster, service vendors will dispatch repair personnel as soon as access is granted or the hazard or restriction is removed.

D. Update the Program’s Scope to Account for Non-Common Carriers that Agree to Provide TSP on a Voluntary Basis.

Mandated TSP obligations principally apply only to common carrier services.¹⁰ Today, some non-common carriers (e.g., some providers of broadband Internet access service) have chosen to contract, on a voluntary basis, with DHS to provide TSP-like prioritized provisioning and restoration services and the government welcomes and appreciates the willingness of those companies to offer TSP voluntarily. To efficiently manage a TSP system that includes both

¹⁰ See App. A, § 4.a.(1). Obligations also attach to non-common carrier services that are interconnected with common carrier services with TSP priorities. *Id.* § 4.a.(2).

common and other carriers, however, it is essential that both types of carriers (mandated and voluntary) be subject to the same set of operating rules for services included in TSP. A lack of consistency and uniformity creates challenges for some NS/EP users, and at times has led to confusion and misunderstanding among those customers.

For example, DHS has encountered instances in which a non-common carrier service provider is able to offer TSP-like capabilities in only part of its service area, leading customers to mistakenly believe that a particular circuit is covered by TSP on an end-to-end basis, when in reality only a portion of the service is covered. In such cases, providers should be required to disclose to requesting customers which portions of the service support priority, and which portions do not.

Similarly, DHS has experienced situations in which a carrier operating as the “prime” provider of a circuit subject to TSP obligations may buy “last mile” access services from non-common carriers, with adverse consequences for the prime’s ability to provide TSP provisioning and, critically, restoration on an end-to-end basis. The Commission should therefore require “prime” carriers offering a TSP circuit to acquire services only from providers that can provide TSP to the end points. If that is not possible, those primes should disclose to the potential customer which portions of the requested service will carry TSP, and which portions will not.

More generally, for providers who voluntarily offer TSP-like prioritized provisioning and restoration, the Commission should clarify that they must do so in accordance with the requirements of Appendix A. This would ensure that participating service providers supply consistent services and are fully aware of their obligations under the program, while establishing minimum service expectations to NS/EP purchasers. Further, because the choice to provide TSP services voluntarily implies the right to withdraw participation, the Commission should also

prescribe notice and reasonable time constraints on the exercise of that right, to ensure that a provider's choice to withdraw from the TSP program does not unduly impair the readiness, reliability and effective provision of NS/EP communications.

E. Amend Appendix A to Eliminate the Requirement for a TSP System Oversight Committee.

Section 6 of Appendix A directs the Executive Office of the President (EOP) to establish and assist a TSP System Oversight Committee (Oversight Committee) to oversee the TSP program.¹¹ As the TSP program has evolved over the last three decades, DHS has developed and refined processes and procedures that, in its view, obviate the need for a mandatory oversight committee. 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. The semi-annual meeting schedule and requirements of the Federal Advisory Committee Act complicate the Program Office's ability to use that forum as a resource capable of addressing time-sensitive matters.

Over time, DHS has come to rely upon the members of the Communications Information Sharing and Analysis Center (ISAC) to serve as the sounding board to exchange information and gain advice on a broad range of issues, including the TSP program.¹² The operational nature of

¹¹ App. A, § 6.b.(2)(j). The TSP System Oversight Committee was established “*to identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence. In addition to representatives of the Executive Office of the President, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to that Committee.*”

¹² The Communications ISAC is the operational arm of the communications sector. Also known as the DHS National Coordinating Center, the ISAC's goal is to avert or mitigate impacts upon telecommunications infrastructure so that communication networks remain operational. The Communications ISAC operates twenty-four hours, seven days a week and is an operational

the Communications ISAC, and the fact that industry members of the Oversight Committee are typically drawn from Communications ISAC member companies, allows it to be a more responsive advisory body. In practice, the TSP Program Office directly leverages the expertise of members of the Communications ISAC to address operational concerns in real time, eliminating the need to defer items to be addressed until a regularly scheduled Oversight Committee meeting. Ending the largely redundant Oversight Committee would also enable DHS to further the goal of streamlining the government's engagement with industry and the public. Therefore, the Commission should eliminate the requirement for an Oversight Committee and adopt rules that allow DHS to consult with the Communications ISAC (or successor organization) as the TSP Program Office's resource to identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence.

F. Redefine “Invocation Official” and Align the Requirements to Reflect the Service User Organization’s Individual that Authorizes Payment to the Service Vendor.

Appendix A currently specifies the minimum qualifications for an “Invocation Official,” and identifies that person as the federal official within, or acting on behalf of, each TSP user’s organization who must inform affected TSP service providers and the Executive Office of the President that NS/EP treatment is being invoked.¹³ Appendix A also requires that this individual be appointed in writing.

component within the National Cybersecurity and Communications Integration Center. *See* DHS, <https://www.dhs.gov/national-coordinating-center-communications>.

¹³ App. A, § 9.c specifies that 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 NS/EP 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

At the time the rules were published, it was initially believed that having a senior official identified as the invocation official was necessary to affirm the NS/EP determination as well as agree to obligate funds on behalf of the department or agency. In practice, DHS found that the requirement to have senior officials involved in the TSP request introduced unnecessary delays in the approval process given the demands placed on senior officials and their often limited availability. These officials were also typically not the individuals who interacted with the service providers and often lacked direct knowledge of the purpose and need for the NS/EP service.

Although the need still exists for an authorized person from the requesting Service User organization to assume responsibility for validating that the requested service satisfies the TSP Program's NS/EP criteria, this validation does not need to be performed by a single specified senior member of the organization. Rather, the invocation official should be someone who understands how the requested service ties to the organization's NS/EP mission, as well as one having authority to approve the expenditure of funds necessary to complete the action. The TSP program office believes this validation is best performed by an individual with operational responsibilities for telecommunications procurement and/or management within the organization.

As such, DHS modified its business practices to lessen the seniority requirement to allow for an individual who is able to attest to the need for priority treatment as well as obligate funds on behalf of the organization to serve as the invocation official. DHS has found this practice to be more efficient while still safeguarding against abuse of the TSP program.

procedures issued by the Executive Office of the President. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental regulations or procedures issued by the Executive Office of the President.

We request that the Commission modify the “Invocation Official” requirements to accept invocation by a federal employee within the Service User organization who can attest to the need for TSP and authorize payment to the Service Vendor. This will ensure that individuals with responsibility for service vendor payments are aware of, and consent to meeting, the financial obligations associated with TSP.

Additionally, the requirement to have an invocation official designated in writing is a legacy requirement that is no longer necessary given current DHS business practices. This requirement should also be eliminated.

G. Update Appendix A to Align Changes in Authority over the TSP Program Management and Oversight, and Reflect New Terminology and Technologies.

Section 6 of Appendix A, which creates responsibilities for the various actors involved in the provision of TSP, assigns a number of those responsibilities to the EOP.¹⁴ Executive Order 13618, however, transferred some of those responsibilities to DHS.¹⁵ DHS, in turn, has entrusted its Emergency Communications Division with the day-to-day administration of all of the NS/EP priority service programs (including TSP, Government Emergency Telecommunications System (GETS), and Wireless Priority Service (WPS)).

The EOP’s day-to-day responsibilities have lessened over time and now focus on broad policy setting, including establishing NS/EP requirements for national continuity policy, minimum requirements for Executive Branch continuity communications, and exercising the President’s war emergency powers under section 706 of the Communications Act. Although the EOP’s influence over TSP remains, Executive Order 13618 assigned DHS responsibilities for

¹⁴ *Id.* § 3.

¹⁵ *Compare* Exec. Order No. 13618 § 5.2, *with* 47 C.F.R. Part 64, App. B, § 3.b.

TSP that are not captured in the Commission’s rules. The Commission should therefore amend Appendix A to reflect the EOP’s and DHS’s actual current responsibilities for TSP.

In addition to this change in Executive Branch responsibilities, the technical terminology has also changed. When the TSP rules were first issued, the terminology and technical requirements largely reflected the state of the telecommunications industry at that time. For example, the rules refer to “private line circuits” and “subscriber loops,” which were common in the 1980s and 1990s. Although these technologies still exist, they are being replaced by newer technologies and capabilities, such as Control Plane Services, Ethernet TCP/IP networks, Passive Optical Networks (PONs), and Session Initiation Protocol (SIP) trunks, as the industry transitions from legacy circuit-switched technology to Internet Protocol (IP) packet-switched technology.

The Commission should therefore update Appendix A to reflect these changes. The Commission should also include definitions to account for new services, such as private NS/EP telecommunications services that consist of non-common carrier services including IP and Ethernet, and non-traditional services, such as broadband Internet access and digital video. Additionally, because the telecommunications industry is in a state of perpetual evolution, with legacy technologies being replaced by new ones on a constant basis, the Commission should revise section k of Appendix A not only to encompass current service offerings – e.g., Ethernet services – but also to recognize that other technologies may someday qualify for priority treatment. Doing so will provide a measure of flexibility to accommodate future technologies and NS/EP services, without necessitating further proceedings to change the rules.

The Commission therefore should amend Appendix A, as set forth in Attachment 1, to make these changes to the TSP definitions, as well as to reflect the organizational changes discussed above.

H. Eliminate Outdated and Unnecessary Program Requirements.

Because the TSP rules were adopted before the system was implemented, the rules include requirements governing the migration of circuits covered under the legacy Restoration Priority program, and mandating the continuation of certain Commission orders pending the implementation of the TSP program.¹⁶ This historical content is no longer relevant, and thus Sections 2 and other related references can be removed from the rules.

Finally, the Commission should update Appendix A to ensure the TSP requirements reflect the program as implemented by carriers and to align the rules with current DHS business processes. Consistent with these changes, we request that the Commission revise its TSP reporting requirements to eliminate the need to report to the TSP Oversight Committee and to eliminate the quarterly reporting obligation in favor of an annual report to the Commission that better aligns reporting timeframes to meet relevant programmatic needs.¹⁷

CONCLUSION

The Telecommunications Service Priority Program is an essential tool for ensuring individuals across the NS/EP community can receive prioritized provisioning and restoration of NS/EP circuits and services. NTIA believes that updating the TSP program rules to reflect

¹⁶ *Id.* § 2.b., 2.c.

¹⁷ App. A. § 6.b.(2)(k) requires DHS to report at least quarterly to the Commission and the TSP System Oversight Committee regarding: the number of requests processed for the various priority actions, and the priority levels assigned; relative percentages of services assigned to each priority level under each NSEP category and subcategory; and, any serious misassignment or abuse of priority level assignments.

current DHS business practices as well as the transition to IP-based technologies and services will help ensure the program's continued success and relevancy for decades to come. To facilitate this, the Commission should initiate a rulemaking proceeding to review and revise the TSP Report and Order.

Respectfully submitted,

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

1. Purpose and Authority

- a. This appendix establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NS/EP) Telecommunications Service Priority (TSP) System. The NS/EP TSP System authorizes priority treatment to certain domestic telecommunications services (including portions of U.S. international telecommunication services provided by U.S. service vendors) 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), 201 through 205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201 through 205 and 303(r). These sections grant to the Federal Communications Commission (FCC) the authority over the assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunications services. Under section 706 of the Communications Act, this authority may be superseded, and expanded to include non-common carrier telecommunication services, by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to telecommunication service vendors and users to comply with policies and procedures establishing the NS/EP TSP System, until such policies and procedures are superseded by the President's war emergency powers. This appendix is intended to be read in conjunction with requirements issued by the Executive Office of the President,¹ as well as procedures that the Department of Homeland Security (DHS) issues (1) to implement responsibilities assigned in section 5(c) of this appendix, or (2) for use in the event this appendix is superseded by the President's war emergency powers.
- c. Together, this appendix and the requirements issued by the Executive Office of the President and operational procedures issued by the Department of Homeland Security² establish one uniform system of priorities for provisioning and restoration of NS/EP telecommunication services both before and after invocation of the President's war emergency powers. In order that government and industry resources may be used effectively under all conditions, a single set of rules, regulations, and procedures is necessary, and they must be applied on a day-to-day basis to all NS/EP services so that the priorities they establish can be implemented at once when the need arises.

2. Definitions

As used in this part:

- a. *Assignment* means the designation of priority level(s) for a defined NS/EP telecommunications service for a specified time period.
- b. *Audit* means a quality assurance review in response to identified problems.

¹ The term "Executive Office of the President" as used in this appendix refers to the official or organization designated by the President to act on his behalf.

² Section 5.2 of Executive Order No. 13618, "Assignment of National Security and Emergency Preparedness Communications Functions" July 6, 2012 (77 Fed. Reg. 40779, 40781-82), assigned to the Secretary of Homeland Security certain NS/EP telecommunication resource management responsibilities.

- c. *Control Plane* refers to the part of a network that carries signaling traffic and is responsible for routing. Control packets originate from or are destined for a router. Functions of the control plane include system configuration and management.
- d. *Department of Homeland Security* (DHS) refers to that organization established by the *Homeland Security Act of 2002*, 6 U.S.C. *et seq.* (2002).
- e. *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)).
- f. *National Coordinating Center for Communications (NCC)* refers to the joint telecommunications industry-Federal government operation established within the Department of Homeland Security to assist in the initiation, coordination, restoration, and reconstitution of NS/EP telecommunication services or facilities. The NCC serves as the Information Sharing and Analysis Center (ISAC) for Telecommunications.
- g. *National Security Emergency Preparedness (NS/EP)* telecommunications services, or “NS/EP services,” means telecommunication 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 NS/EP posture of the United States.
- h. *NS/EP treatment* refers to the provisioning of a telecommunication service before others based on the provisioning priority level assigned by the Department of Homeland Security. With respect to provisioning, these services fall into two specific categories, Emergency NS/EP and Essential NS/EP, and are assigned priority levels pursuant to section 10 of this appendix.
- i. Emergency Communications Division (ECD) is located within the Department of Homeland Security and leads the Nation’s operable and interoperable public safety and national security and emergency preparedness (NS/EP) communications efforts. The ECD serves as the program office for priority services programs, to include Telecommunications Service Priority. Public Law No. 115-278, the Cybersecurity and Infrastructure Security Agency Act of 2018, designated the Office of Emergency Communications (OEC) as the Emergency Communications Division (ECD).
- j. *Priority action* means the assignment, revision, revocation, or revalidation by the Department of Homeland Security of a priority level associated with an NS/EP telecommunications service.
- k. *Priority level* means the level that may be assigned to an NS/EP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NS/EP and/or non-NS/EP telecommunication 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.
- l. *Priority level assignment* means the priority level(s) designated for the provisioning and/or restoration of a particular NS/EP telecommunications service under section 9 of this appendix.

- m. *Private NS/EP telecommunications services* include non-common carrier telecommunications services including private line, virtual private line, and private switched network services.
- n. *Provisioning* means the act of supplying telecommunications 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 NS/EP telecommunications services* include those NS/EP telecommunications services utilizing public switched networks. Such services may include both inter-exchange and intra-exchange network facilities.
- p. *Reconciliation* means the comparison of NS/EP service information and the resolution of identified discrepancies.
- q. *Restoration* means the repair or returning to service of one or more telecommunication services that have experienced a service outage or are unusable for any reason, including a damaged or impaired telecommunications facility.
- r. *Revalidation* means the re-justification by a service user of a priority level assignment. This may result in extension by the Department of Homeland Security of the expiration date associated with the priority level assignment.
- s. *Revision* means the change of priority level assignment for an NS/EP telecommunications service. This includes any extension of an existing priority level assignment to an expanded NS/EP service.
- t. *Revocation* means the elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NS/EP service are revoked upon service termination.
- u. *Service identification* refers to the information uniquely identifying an NS/EP telecommunications service to the service vendor and/or service user.
- v. *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 10 of this appendix.
- w. *Service vendor* refers to 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.
- x. *Spare circuits or services* refers to those not being used or contracted for by any customer.
- y. *Telecommunication services* means 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. The term can include necessary telecommunication facilities.
- z. *Telecommunications Service Priority (TSP) system user* refers to any individual, organization, or activity that interacts with the NS/EP TSP System.

3. Scope

- a. *Domestic NS/EP services.* The NS/EP TSP System and procedures established by this appendix authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) 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; or
 - (b) Intrastate telecommunication services inseparable from interstate or foreign telecommunications services, and intrastate telecommunication services to which priority levels are assigned pursuant to section 9 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 9 of this appendix; and
- (3) Services provided by non-common carriers offering to provide TSP on a voluntary basis. Non-common carriers offering to provide TSP must comply with the operating protocols specified in this Appendix.

NOTE:

TSP applicability to public switched services is limited to (a) provisioning of such services (e.g., DS-1, optical carrier services, and Ethernet) and other services that the selected vendor is able to provision) and (b) restoration of services that the selected vendor is able to restore.

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

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

- (1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to section 10 of this appendix; and
- (2) Portions of U.S. international services which are provided by foreign correspondents. (U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NS/EP TSP System. If such arrangements do not exist, U.S. telecommunication service vendors 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 NS/EP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment, i.e., provisioning and restoration, of NS/EP telecommunication services. As such, it establishes the framework for telecommunication service vendors to provision, restore, or otherwise act on a priority basis to ensure effective NS/EP telecommunication services. The NS/EP TSP System allows the assignment of priority levels to any NS/EP 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 the Department of Homeland Security and retained by service vendors 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 NS/EP telecommunication 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 prior to the invocation of the war emergency powers of the President, priority level assignments will be subject to revision by the FCC or (on an interim basis) the Department of Homeland Security, based upon changing NS/EP needs. No other system of telecommunication service priorities which conflicts with the NS/EP TSP System is authorized.

5. Responsibilities

a. The FCC will:

- (1) Provide regulatory oversight of implementation of the NS/EP TSP System.
- (2) Enforce NS/EP TSP System rules and regulations, which are contained in this appendix.
- (3) Act as final authority for approval, revision, or disapproval of priority actions by the Department of Homeland Security and adjudicate disputes regarding either priority actions or denials of requests for priority actions by the Department of Homeland Security, until superseded by the war emergency powers of the President under section 706 of the Communications Act.
- (4) Function (on a discretionary basis) as a sponsoring Federal organization. (See section 5 d. below.)

b. The Executive Office of the President will, during exercise of the war emergency powers of the President under section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

c. The Department of Homeland Security

(1) Until the exercise of the war emergency powers of the President, administer the NS/EP TSP System which includes:

- (a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Department of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.
- (b) Assigning, revising, revalidating, or revoking priority levels as necessary or upon request of service users concerned, and denying requests for priority actions as necessary, using the categories and criteria specified in section 12 of this appendix. Action on such requests will be completed within 30 days of receipt.
- (c) Maintaining data on priority level assignments.
- (d) Upon request forwarding to the FCC lists of priority actions by the Department of Homeland Security for review and approval.
- (e) Initiating reconciliation as specified in the DHS Service Vendor Handbook for the Telecommunications Service Priority Program.
- (f) Testing and evaluating the NS/EP TSP System for effectiveness.
- (g) Conducting audits as necessary. Any TSP System user may request the Department of Homeland Security to conduct an audit.
- (h) Issuing, subject to review by the FCC procedures supplemental to and consistent with this appendix regarding operation and use of the NS/EP TSP System.

- (i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NS/EP TSP System.
- (j) Leverage relationships with the Communications Information Sharing and Analysis Center (ISAC) or similar entity to identify and review any problems developing in the system and recommend actions to correct them or prevent recurrence.
- (k) Reporting annually to the FCC, together with any recommendations for action, the operational status of and trends in the NS/EP TSP System. These reports will be due by October 31st and will include the following:
 - (i) Numbers of requests processed for the various priority actions, and the priority levels assigned;
 - (ii) Relative percentages of services assigned to each priority level under each NS/EP category and subcategory;
 - (iii) Any apparent serious misassignment or abuse of priority level assignments; and
 - (iv) Any existing or developing problem.
- (l) All reports submitted to the FCC should be directed to Chief, Public Safety and Homeland Security Bureau, Washington, DC 20554.

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

d. Sponsoring Federal organizations will:

- (1) Review and decide whether to sponsor foreign, state, and local government and private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Department of Homeland Security. Recommendations will be based on the categories and criteria in section 12 of this appendix.
- (2) Forward notification of priority actions or denials of requests for priority actions from the Department of Homeland Security to the requesting foreign, state, and local government and private industry entities.
- (3) Cooperate with the Department of Homeland Security during reconciliation, revalidation, and audits.
- (4) Comply with any procedures supplemental to and consistent with this appendix which are issued by the Department of Homeland Security.

e. Service users will:

- (1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this appendix and any supplemental procedures issued by the Department of Homeland Security that are consistent with this appendix.
- (2) Revalidate 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 NS/EP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.
- (4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NS/EP category, when they are available.

- (5) Pay vendors any authorized costs associated with services that are assigned priority level, to include, but not limited to: special construction costs and overtime for service provisioning, as well as service vendor charges related to revoking TSP assignments for services no longer qualified for NS/EP treatment.
- (6) Report to vendors 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 the Department of Homeland Security 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) Cooperate with the Department of Homeland Security during reconciliation, revalidation, and audits.
- (10) Comply with any supplemental requirements issued by the Executive Office of the President and operational procedures issued by the Department of Homeland Security.

f. Non-federal service users, in addition to responsibilities prescribed above in section 5 (e), will obtain a sponsoring Federal organization for all requests for priority actions. If unable to find a sponsoring Federal organization, a non-federal service user may submit its request, which must include documentation of attempts made to obtain a sponsor and reasons given by the sponsor for its refusal, directly to the Department of Homeland Security.

g. Service vendors will:

- (1) When NS/EP treatment is invoked by service users, provision NS/EP telecommunication services before non-NS/EP services, based on priority level assignments made by the Department of Homeland Security. Provisioning will require service vendors to:

(a) Promptly allocate all resources necessary to provision Emergency NS/EP services by the requested due date, dispatching outside of normal business hours when necessary and without regard to overtime costs or costs for expedited action. When limited resources constrain response capability, vendors will address conflicts for resources by:

- (i) Providing NS/EP services in order of provisioning priority level assignment (i.e., “E,” “1,” “2,” “3,” “4,” or “5”);
- (ii) Providing Emergency NS/EP services (i.e., those assigned provisioning priority level “E”) in order of receipt of the service requests;
- (iii) Providing Essential NS/EP services (i.e., those assigned priority levels “1,” “2,” “3,” “4,” or “5”) that have the same provisioning priority level in order of service due dates; and
- (iv) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Department of Homeland Security for resolution.

(b) Comply with NS/EP service requests by:

- (i) Promptly allocating resources to meet requested service dates for Essential NS/EP services, negotiating a mutually (customer and vendor) acceptable service due date when the requested service due date cannot be met; and
- (ii) Seeking National Coordinating Center for Communications (NCC) assistance as necessary.

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

- (a) Promptly allocate all resources necessary to restore NS/EP services; beginning the restoration activities upon knowledge of a service outage, dispatching outside normal business hours without regard to overtime costs or costs for expedited action, when necessary to restore services assigned priority levels “1,” “2,” and “3.” Dispatching outside of normal business hours is appropriate for services assigned priority level “4” and “5” only when the next business day is more than 24 hours away. In circumstances where immediate restoration activities cannot commence due to circumstances beyond the service vendor’s control, e.g., access, safety, or security restrictions related to a disaster, service vendors will dispatch repair personnel as soon as access is granted or the hazard or restriction is removed.
- (b) Restoring NS/EP services assigned the same restoration priority level based upon which can be first restored. (However, restoration actions in progress should not normally be interrupted to restore another NS/EP service assigned the same restoration priority level);
- (c) Patching and/or rerouting NS/EP services assigned restoration priority levels from “1” through “5,” when use of patching and/or rerouting will hasten restoration;
- (d) Seeking NCC assistance as necessary; and
- (e) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Department of Homeland Security for resolution.

(3) Respond to provisioning requests of customers and/or other service vendors, and to restoration priority level assignments when an NS/EP service suffers an outage or is reported as unusable, by:

- (a) Ensuring that vendor personnel understand their responsibilities to handle NS/EP provisioning requests and to restore NS/EP service; and
- (b) Providing a 24-hour point-of-contact for receiving provisioning requests for Emergency NS/EP services and reports of NS/EP service outages or unitability.
- (c) Seek verification from an authorized entity if legitimacy of a priority level assignment or provisioning request for an NS/EP service is in doubt. However, processing of Emergency NS/EP service requests will not be delayed for verification purposes.
- (4) Cooperate with other service vendors involved in provisioning or restoring a portion of an NS/EP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NS/EP services, as detailed in sections 5(g) (1), (2), and (3) above.
- (5) All service vendors, including resale carriers, are required to ensure that service vendors supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NS/EP services.
- (6) Preempt, when necessary, existing services to provide an NS/EP service as authorized in section 6 of this appendix.

(7) Assist in ensuring that priority level assignments of NS/EP 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 the Department of Homeland Security, when acting as a prime contractor to a service user, confirmation information regarding NS/EP service completion for that portion of the service they have contracted to supply;
- (d) Supplying, to the Department of Homeland Security, NS/EP service information for the purpose of reconciliation;
- (e) Cooperating with the Department of Homeland Security during reconciliation; and
- (f) Initiating reconciliation with their subcontractors and arranging for subsequent subcontractors to cooperate in the reconciliation process as specified in the DHS Service Vendor Handbook for the Telecommunications Service Priority Program.

(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 war emergency powers of the President under section 706 of the Communications Act are in effect.

(10) Cooperate with the Department of Homeland Security during audits.

(11) Comply with any procedures supplemental to and consistent with this appendix that are issued by the Department of Homeland Security and reviewed by the FCC.

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

(13) Implement policies and procedures to prevent and detect the unauthorized disclosure of TSP data, and eliminate the risk of TSP data being sent to, or accessed by individuals or entities located offshore or by anyone that might use the information for competitive advantage.

(14) Provide the Department of Homeland Security the performance data necessary to assess TSP effectiveness as a component of nationwide NS/EP priority telecommunications service. Service vendors will provide DHS data related to provisioning and restoration times for areas covered by the activation of the Disaster Information Reporting System (DIRS). DHS will coordinate with the Commission to develop the specific data requirements and post-disaster reporting timeframes.

6. Preemption of Existing Services

When necessary to provision or restore NS/EP services, service vendors may preempt services they provide as specified below. “User” as used in this Section means any user of a telecommunications service, including both NS/EP and non-NS/EP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NS/EP services assigned a provisioning priority level “E” or restore NS/EP services assigned a restoration priority level from “1” through “5:”

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

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

(3) Service vendors 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 vendors may, based on their best judgment, determine the sequence in which existing services may be preempted to provision NS/EP services assigned a provisioning priority of “1” through “5.” Preemption is not subject to the consent of the user whose service will be preempted.

7. Requests for Priority Assignments

All service users are required to submit requests for priority actions through the Department of Homeland Security in the format and following the procedures prescribed by that Office.

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 12 of this appendix. A priority level assignment made by the Department of Homeland Security will serve as that Office's determination; however, requesting users can appeal this determination to the FCC as described in section 10. Until the war emergency powers of the President are invoked, priority level assignments must be approved by the Department of Homeland Security. After invocation of the war emergency powers of the President, these requirements may be superseded by other procedures issued by the Executive Office of the President.

b. *Use of Priority Level Assignments.*

(1) All provisioning and restoration priority level assignments for services in the Emergency NS/EP category will be included in initial service orders to vendors. Provisioning priority level assignments for Essential NS/EP services, however, will not usually be included in initial service orders to vendors. NS/EP treatment for Essential NS/EP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors 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 vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Department of Homeland Security.

NOTE:

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

When selecting subcontractors, service vendors acting as prime contractors should prefer a carrier capable of providing TSP when multiple last-mile service provider options exist to ensure end-to-end priority treatment of NS/EP services.

c. Invocation of NS/EP treatment. To invoke NS/EP treatment for the priority provisioning of an NS/EP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user's organization must make a written or oral declaration to concerned service vendor(s) and the Department of Homeland Security that NS/EP treatment is being invoked. The Authorized Federal official is responsible for validating the requested service(s) meet the NS/EP criteria and is able to obligate/expend funds to cover all costs associated with fulfilling the service user's TSP request. The authority to invoke NS/EP treatment may be delegated as directed by the service user's organization; however, the authorized federal official should have a comprehensive understanding of the TSP program, as well as the ability to obligate funding on behalf of the organization. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental procedures issued by the Department of Homeland Security.

9. Appeal

Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Department of Homeland Security within 30 days of notification to the service user. The appellant must use the form or format required by the Department of Homeland Security and must serve the FCC with a copy of its appeal. The Department of Homeland Security will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Department of Homeland Security's decision on appeal. Additionally, the Department of Homeland Security 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 the Department of Homeland Security 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 the Department of Homeland Security that include a claim of new information that has not been presented before for consideration may be submitted at any time.

10. NS/EP TSP System Categories, Criteria, and Priority Levels

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

(1) The Essential NS/EP 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 NS/EP category, which has no sub-categories.

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

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

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

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

b. *Emergency NS/EP.* Telecommunications services in the Emergency NS/EP 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 NS/EP category, the service must meet criteria directly supporting or resulting from at least one of the following NS/EP 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 NS/EP 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 telecommunications service is so critical to protection of life and property or to NS/EP that it must be provided immediately; or
- (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.* Services qualifying under the Emergency NS/EP category are assigned priority level “E” for provisioning.

(a) After 30 days, assignments of provisioning priority level “E” for Emergency NS/EP services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

c. *Essential NS/EP.* Telecommunication services in the Essential NS/EP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority level of “1,” “2,” “3,” “4,” or “5” for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of lack of service or of service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. Failure to revalidate may result in revocation of priority and a carrier service order charge to remove TSP Code from records. To be categorized as Essential NS/EP, a telecommunications 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 NS/EP telecommunication services may be re-categorized as Emergency NS/EP and assigned a priority level “E” for provisioning.)

(1) *National security leadership.* This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control plane services necessary to ensure the rapid and efficient provisioning or restoration of other NS/EP telecommunication 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 NS/EP function.

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

- (i) Critical orderwire, or control plane service, supporting other NS/EP 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; or
- (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.

(2) *National security posture and U.S. population attack warning.* This subcategory covers those minimum additional telecommunication services essential to maintaining an optimum

defense, diplomatic, or continuity-of-government postures before, during, and after crises situations. Such situations are those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NS/EP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NS/EP 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; or
- (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.

(3) *Public health, safety, and maintenance of law and order.* This subcategory covers the minimum number of telecommunication 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 NS/EP functions.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NS/EP 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);
- (iv) 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; or
- (x) Transportation to accomplish the foregoing NS/EP functions.

(b) *Priority level assignment.* Service under this subcategory will normally be assigned priority levels “3,” “4,” or “5” for provisioning and restoration.

(4) *Public welfare and maintenance of national economic posture.* This subcategory covers the minimum number of telecommunications 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 NS/EP function.

(a) *Criteria.* To qualify under this subcategory, a service must support at least one of the following NS/EP 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; or
- (vi) Transportation to accomplish the foregoing NS/EP functions.

(b) *Priority level assignment.* Services under this subcategory will normally be assigned priority levels “4” or “5” for provisioning and restoration.

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

e. *Non-NS/EP services.* Telecommunication services in the non-NS/EP category will be those which do not meet the criteria for either Emergency NS/EP or Essential NS/EP.