

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Public Safety and Homeland Security Bureau)	WT Docket No. 96-86
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)	

COMMENTS OF AT&T

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AT&T Services, Inc., on behalf of itself and its affiliates (collectively, “AT&T”), submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Public Notice* seeking comment on a Petition for Rulemaking filed by the National Telecommunications and Information Administration (“NTIA”) requesting that the FCC initiate a proceeding to revise the Telecommunications Service Priority (“TSP”) system.¹

I. INTRODUCTION AND SUMMARY

AT&T agrees that the time is ripe to modernize the TSP rules, which were first enacted in 1988. While the Commission should strengthen its rules regarding confidentiality of TSP data, the agency should employ restraint when it comes to imposing new post-disaster data collection requirements. Proposed rule changes adding clarity are generally welcome, but AT&T does not think adding the word “promptly” to the TSP restoration rules will be meaningful. In addition,

¹ 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 Telecommunications Service Priority (TSP) System, *Public Notice*, WT Docket No. 96-86, DA 19-723 (rel. July 30, 2019) (“*Public Notice*”); Petition for Rulemaking filed July 17, 2019 by NTIA at 4, available at <https://ecfsapi.fcc.gov/file/10717271312819/NTIA%20TSP%20Petition%20for%20Rulemaking%207.17.19.pdf> (“TSP PFR”)

AT&T is supportive of rule changes acknowledging the new technologies that can be used with TSP, but suggests the Commission undergo a formal rulemaking before implementing any changes that expand TSP providers' obligations. Finally, AT&T defers to NTIA as to whether the other proposed rule changes on administrative matters would streamline processes and clarify interested parties' responsibilities.

The FCC's Public Safety & Homeland Security Bureau also seeks a refresh of comments filed in response to its *2018 WPS Public Notice* regarding the Petition for Rulemaking filed by NTIA requesting that the FCC initiate a proceeding to revise the Wireless Priority Service ("WPS") rules.² AT&T has an interest in the WPS portion of this proceeding both as a provider of WPS through a contract with the Emergency Communications Division of the Department of Homeland Security ("DHS/ECD") and as a contractual partner with the FirstNet Authority in deploying and operating the Country's first nationwide high-speed wireless broadband network devoted to first responders (the "NPSBN"). The Commission should continue its light regulatory approach to WPS and be careful to avoid duplicating and/or undermining the FirstNet Authority's ability to work with AT&T to effectively administer the NPSBN.

II. CERTAIN RULE CHANGES AND CLARIFICATIONS COULD IMPROVE TSP.

NTIA proposes various changes to the existing TSP rules to reflect modern practices. AT&T supports updating the TSP rules and proposes changes that will ensure providers can

² *Public Notice* at 2; 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, *Public Notice*, 33 FCC Rcd 8131 (2018) ("*2018 WPS Public Notice*"); Petition for Rulemaking filed July 9, 2018 by NTIA, available at <https://ecfsapi.fcc.gov/file/1070951773719/NTIA%20WPS%20Petition%20for%20Rulemaking.pdf> ("WPS PFR").

continue to effectively serve National Security and Emergency Preparedness (“NS/EP”) users of the TSP program.

Confidentiality of TSP Data. AT&T agrees with NTIA that the Commission should strengthen the TSP rules with respect to disclosure of TSP data to help prevent unauthorized access.³ TSP data is sensitive and its disclosure to parties beyond the service provider could create national security risks. For example, in some instances, state public utility commissions have requested circuit-level detail for TSP customers. Absent clarity regarding the use of TSP data, providers are stuck between complying with such requests and appropriately protecting sensitive data. The Commission should revise its rules to establish baseline procedures regarding disclosure of TSP data, which will help give clarity to service providers as well as requesting parties and ensure the protection of sensitive data.

TSP Providers’ Reporting Obligations in Connection with a Disaster. The Commission should reject the TSP PFR’s proposal to collect data regarding TSP provisioning and restoration times.⁴ Collection of this data is unlikely to yield meaningful conclusions and would only add to carriers’ responsibilities in the critical time following a disaster. First, this data is unlikely to be actionable, as every disaster is unique. A disaster will not affect all carriers in the same way and may not even affect two customers within the same geographic area in the same way.⁵ The specific circumstances of the disaster will influence how easily service can be restored, and a simple metric of time to restore will not tell the whole story of disaster recovery. Further, depending on the network and the disaster at hand, both TSP and non-TSP services may be

³ TSP PFR at 4.

⁴ *Id.* at 4-5.

⁵ See Reply Comments of AT&T, PS Docket No. 14-344 (filed Feb. 21, 2018) (describing unique restoration challenges posed by Hurricanes, Harvey, Irma, and Maria).

restored at the same time. For example, all customers on a fiber connection will be restored at the same time, regardless of whether they are using TSP or non-TSP services. Thus, the proposal to collect data comparing TSP provisioning and restoration times with non-TSP services provisioning and restoration times will not yield useful data.

Second, if the Commission imposes new reporting requirements on carriers, it should provide an ample timeframe for reporting following a disaster. These types of requests should trail disaster events by a sufficient interval to ensure that carriers are not forced to divert resources away from recovery to data collection. The post-disaster hours are critical, and carriers must be able to prioritize network restoration and maintain flexibility for responding to disasters.

TSP Providers' Obligations Concerning Facilities Provisioning and Restoration. While AT&T supports adding clarity to the TSP rules regarding providers' provisioning and restoration obligations, adding the word "promptly" to the rules will not offer meaningful clarity.⁶ This term is too ambiguous and subject to interpretation to meaningfully establish a timeframe for restoration of service. Moreover, AT&T consistently restores service as promptly as possible, even absent a rule to that effect. Therefore, such a rule change is neither effective nor necessary.

Accounting for New Services. Given the continued evolution of telecommunications technologies, AT&T supports the proposal to update the services that are supported by or eligible for TSP.⁷ The original TSP rules are wireline technology-centric and fail to acknowledge that advanced services can also be TSP-supported or qualify for priority treatment. Any changes, however, should be accomplished through a rulemaking proceeding to allow stakeholders to provide input before rules are adopted. A "flexible" approach to accommodating new

⁶ See TSP PFR at 5.

⁷ *Id.* at 12.

technologies should not dispense with the need for notice-and-comment rulemaking before expanding participants' obligations under the TSP program.

Other Rule Changes. NTIA suggests other administrative revisions to the rules that would better define existing TSP practices and properly align responsibilities among the agencies that oversee TSP.⁸ AT&T defers to NTIA on the need for such revisions. However, while AT&T supports the reduction of unnecessary layers of oversight of the TSP program, it is important that some overlying TSP program authority remain in place to ensure that the program is administered consistently in accordance with the appropriate guidelines and regulations.

III. IN ASSESSING WHETHER TO AMEND WPS RULES, THE COMMISSION SHOULD AVOID PRESCRIPTIVE APPROACHES THAT CONSTRAIN THE ABILITY OF WPS PROVIDERS AND THE FIRSTNET AUTHORITY TO SUPPORT CRITICAL EMERGENCY COMMUNICATIONS.

Commenters responding to the *2018 WPS Public Notice* agreed that rather than impose new, overly prescriptive requirements, the Commission should continue to employ a light regulatory touch with respect to WPS.⁹ WPS providers and DHS/ECD should be allowed to maintain the flexibility to customize the capabilities offered and terms of service pursuant to contract. Thus, the Commission should refrain from adopting WPS rules that would be unduly restrictive and would impede the ability of all parties to innovate and adapt to changing circumstances. Indeed, if anything, the Commission should streamline the WPS rules to provide even greater contractual and operational flexibility.

⁸ For example, NTIA suggests eliminating the requirement for a TSP System Oversight Committee, redefining "Invocation Official" and aligning the related requirements, and revising the rules to accurately reflect the division of responsibility between the Executive Office of the President and DHS. TSP PFR at 8-13.

⁹ See Reply Comments of Verizon, WT Docket No. 96-86 at 1-4 (filed Sept. 7, 2018) ("Verizon Reply Comments"); Reply Comments of T-Mobile USA, Inc., WT Docket No. 96-86 at 2-3 (filed Sept. 7, 2018); Comments of AT&T, WT Docket No. 96-86 at 3-5 (filed Aug. 28, 2018) ("AT&T Comments").

In conflict with the preeminent objective of maintaining program flexibility, however, several of the proposed rules are overly broad, burdensome on WPS providers, and usurp by rule topics better covered by contract. For example:

- Proposed Rule 3.f.3 would require WPS providers to provide to DHS certain vaguely defined implementation and performance data, without including sufficient guardrails around DHS's discretion so that WPS providers could avoid unduly burdensome or unwarranted requests for such data from DHS.
- The reference to “end-to-end priority” in the first sentence of Proposed Rule 2.c mischaracterizes what a single WPS provider can offer. Specifically, regarding any particular communication, a WPS provider can guarantee priority to its own qualified customer, but it cannot guarantee that the other party(ies) to the communication will also receive priority if they are not also a customer of that WPS provider. Thus, the “end-to-end priority” reference runs the risk of making a voluntary program mandatory by implying that a WPS provider must make priority on both ends happen, regardless of the circumstances.
- Proposed Rule 2.c would also needlessly delineate certain methods to activate call prioritization. WPS providers currently provide “priority signaling” by contract, demonstrating the lack of any need to adopt a rule indicating that WPS providers may have additional forms of invocation or even “always on” priority. Existing contracts already provide for such flexibility.
- Proposed Rule 3.f.8 appears designed to effectuate NTIA's WPS PFR proposal that DHS be able to specify requirements related to WPS service providers meeting the survivability of NS/EP communications outlined in Executive Order 13818.¹⁰ But this proposed rule would potentially (i) conflict with the FCC's and NTIA's own authorities to set generally applicable network standards; and (ii) diminish carriers' long-standing discretion regarding network-build and operation policies.
- By requiring WPS providers to comply with unspecified, “supplemental” DHS “guidance and procedures”— rather than DHS “regulations”— proposed Rule 3.f.8 may not only violate the Administrative Procedure Act,¹¹ but also unlawfully delegate to DHS virtually unfettered discretion to insist on carrier practices and policies regarding an unlimited array of subjects, including network design and specifications, even after the execution of a contract.

¹⁰ WPS PFR at 12-13.

¹¹ 5 U.S.C. § 551 *et seq.*

In addition, some of the rules DHS would like the FCC to impose would impinge upon Congress' directives in the Spectrum Act.¹² Congress directed the FirstNet Authority to establish and operate the NPSBN to serve first responders.¹³ Several of NTIA's proposed rules could contravene that Congressional authorization by duplicating and/or undermining the FirstNet Authority's ability to work with AT&T to most effectively administer the NPSBN. The Commission should refrain from adopting these proposed rules, including but not limited to the following:

Proposed Rule 3.f.2 would require AT&T to "[e]nsure that [AT&T's] WPS system priorities superseded any other priority service offerings which may be offered by the service provider." Because AT&T is the FirstNet Authority's contractual partner in deploying the NPSBN, this proposed rule could unduly hamstring that partnership's ability to adjust its system priorities over time to satisfy the FirstNet Authority's statutory duty to best serve the interests of first responders using the NPSBN. Put differently, this rule could trigger a substantial and potentially unlawful power shift from the FirstNet Authority to DHS regarding determining how best to allocate the NPSBN's precious resources. Moreover, the mere proposal of this rule overlooks the fact that, consistent with the virtues of the contract-based approach described above, the FirstNet Authority and the DHS/ECD have already negotiated a priority system that interleaves the FirstNet Authority's services and WPS in a manner satisfactory to all Federal parties involved.

In a related vein, the portion of Proposed Rule 3.f.2 stating that a WPS supplier must "[p]rovide WPS priority levels 1, 2, 3, 4, or 5 only upon receipt of an authorization from DHS"

¹² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457) ("Spectrum Act").

¹³ See, e.g., Spectrum Act § 6206.

would be problematic. This provision would arguably require AT&T, in its capacity as the FirstNet Authority’s contractual partner, to go to DHS to obtain approval to assign particular priority/preemption levels to FirstNet subscribers. If so construed, this rule would undermine the FirstNet Authority’s statutory authority and discretion to administer the NPSBN.

As previously explained, Proposed Rule 3.f.8 appears designed to empower DHS to specify requirements related to WPS service providers meeting the survivability of NS/EP communications outlined in Executive Order 13818.¹⁴ But in addition to the negative effects described above, this proposed rule could potentially conflict with or even usurp the FirstNet Authority’s Congressionally-bestowed power to tailor the deployment of the NPSBN as it sees fit.

Further, by requiring WPS providers to comply with unspecified, “supplemental” DHS “guidance and procedures”—rather than DHS “regulations”—proposed Rule 3.f.8 may not only have the wrongful and harmful consequences previously described, but also potentially place AT&T in the untenable position of having to try to comply with conflicting requirements from DHS and FirstNet.

Finally, parts of Proposed Rule 5 would (i) change the descriptions of priority levels and Qualifying Criteria to remove the restrictions to “leadership” and “key” personnel, and (ii) add new categories of personnel eligible for WPS (*e.g.*, hospital, chemical sector, and financial services personnel). The result would be that personnel eligible for Priority Levels 3 and 4 under WPS would substantially overlap with personnel eligible for priority under FirstNet service.

¹⁴ WPS PFR at 12-13.

