

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Establishment of Rules and Requirements)	WT Docket No. 96-86
For Priority Access Service)	
)	

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) supports aspects of NTIA’s proposal that the Commission commence a rulemaking proceeding to consider changes to the rules governing the Telecommunications Service Priority (TSP) program.¹ NCTA supports many of the rule changes proposed by NTIA to update the rules. We have significant concerns, however, with proposed changes to the reporting and service obligations and confidentiality requirements suggested in the NTIA petition.

I. NCTA SUPPORTS MANY OF THE CHANGES PROPOSED BY NTIA

As NTIA explains, there have been significant changes in the marketplace since 1988, but the rules governing the TSP program have not changed since that time. Accordingly, NTIA is correct in suggesting that the Commission should commence a proceeding to update those rules to “reflect the current 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.”²

¹ See Petition for Rulemaking of the National Telecommunications and Information Administration (July 17, 2019) (NTIA Petition); *see also* Public Notice, *Public Safety and Homeland Security Bureau Seeks Comments 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, DA 19-723 (rel. July 30, 2019) (Notice).

² NTIA Petition at 1-2.

NCTA supports many of the specific changes that NTIA has proposed. For example, NCTA supports updating the rules so that all carriers that provide TSP are subject to the same TSP operating rules.³ In NCTA members' experience, the ability of non-common carriers to provide TSP service on a voluntary basis has been very beneficial and should be preserved as the Commission reassesses the TSP rules. With the option to provide voluntary service in place, we agree that the Commission should commence a Notice of Proposed Rulemaking to change this rule as NTIA has proposed. Changing the rules as proposed would provide greater clarity to all providers regarding their obligations and assurance to government officials that the obligations associated with TSP service will not vary based on the type of provider.

NCTA also supports many of the administrative changes that NTIA has proposed.⁴ Proposed changes like modifying the requirements associated with invocation officials and eliminating other outdated and unnecessary program requirements are wholly appropriate given the changes that have taken place in the marketplace and in the structure of the federal government since the rules were first adopted. The Commission should move forward with a Notice of Proposed Rulemaking to update these rules.

II. NCTA HAS CONCERNS ABOUT SOME OF THE PROPOSED CHANGES

A. Reporting Obligations

In its petition, NTIA proposes that the Commission update the rules to collect data from TSP providers that would better enable the Department of Homeland Security (DHS) to assess a provider's performance during disaster operations.⁵ While we appreciate NTIA's interest in DHS having better performance data, collecting and analyzing data on a provider's performance

³ *Id.* at 6-8

⁴ *Id.* at 9-13.

⁵ *Id.* at 4-5

in the midst of a disaster presents a number of very significant challenges that should be considered if this proposal is included in a Notice of Proposed Rulemaking.

First, requiring cable operators and other providers to gather additional data on their performance during a disaster situation raises concerns that the data collection will detract from restoration efforts, which obviously should be the priority. In the context of the Disaster Information Reporting System (DIRS), the Commission has recognized the need to balance its interest in more detailed data collection with the overarching objective of restoring service as quickly as possible, e.g., by maintaining DIRS as a voluntary reporting regime and by limiting the type, granularity, and frequency of reports. In considering whether to adopt additional reporting obligations, the Commission should be mindful not to upset the careful balance that it has struck previously.

Second, the ability to measure the performance of a cable operator or any other provider in restoring and operating its facilities during a disaster is exceedingly difficult because that performance is highly dependent on a variety of factors outside of the provider's control. For example, a cable operator's ability to access a particular area is often subject to the discretion of state and local officials and that access may be subordinate to power companies and others. Even if an operator has access, field staff reports on TSP and other service provisioning and restoration times could yield unreliable information if commercial power restoration goes in and out during a disaster or if there are other changing conditions on the ground which can shift priorities. Any assessment of the level of performance by the operator that fails to account for those conditions would not be meaningful.

Furthermore, comparing the provisioning and restoration times of TSP services and non-TSP services does not seem likely to lend itself to a meaningful analysis for any individual

provider, and would be even less meaningful if used to compare performance across providers. For example, if power is restored to a large residential complex before access is granted to an area with a TSP customer, a provider may restore service to the residential complex before it restores the TSP connection, even as the provider is making diligent efforts to bring the TSP customer back online. Similarly, restoration of certain underlying equipment may bring multiple services back at once, e.g., where all services served off the router come up at one time when the router is restored. In these types of scenarios, comparing restoration performance of TSP and non-TSP services may create the impression that TSP is not being prioritized even where TSP facilities have been restored as quickly as possible. And in some cases, restoration may be affected by actions within the control of the TSP customer, e.g., service may be restored more quickly if the TSP connection is supported by a generator or other alternate power source. As these examples illustrate, attempts to quantify and compare statistics regarding TSP and non-TSP performance are unlikely to produce meaningful information for DHS.

B. Time Frames

In an effort to “promote consistency,” NTIA proposes that the Commission change the language in the current rules describing the time frames within which TSP providers would be expected to provision and restore TSP facilities.⁶ Specifically, NTIA proposes that the Commission “use the single term *promptly* . . . to describe TSP providers’ provisioning and restoration obligations.”⁷ In the specific edits NTIA has proposed, the obligation to provision

⁶ *Id.* at 5

⁷ *Id.* (emphasis in original). The rules currently direct TSP providers to “allocate resources” needed to “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” Appendix A, 6.f.(1)(a), (1)(b)(i), (2)(a).

and restore service promptly seems to be premised on an obligation to “promptly allocate all resources” and to act “without regard to overtime costs or costs of expedited action.”⁸

From NCTA’s perspective, a formal regulation requiring providers to act without regard to costs is untenable. Every disaster is unique with a variety of challenges to consider, including the safety of employees, in deciding when to start restoration activities. NCTA’s members fully appreciate the importance of restoring service in a disaster scenario and they consistently devote substantial resources to disaster planning and recovery so as to limit the negative effects of disasters on their customers. Some companies may also be subject to private contractual obligations that govern their provision of TSP circuits, which impact compliance with TSP restoration prioritization.

Against this backdrop, we have significant concerns about converting this willingness to step up in a disaster situation into an inflexible regulatory obligation to promptly allocate all resources and spend any amount necessary to restore service. The government itself does not take this approach to handling all disaster situations, and similarly it is not a sound approach for companies providing service to the government. The current rule requirement that TSP providers allocate resources to ensure “best efforts” to provide NS/EP services “as soon as possible” is the appropriate standard and could be used throughout the relevant rules to address NTIA’s concerns regarding consistency.

C. Confidentiality Requirements

NTIA proposes that the Commission update the TSP rules to better protect the confidentiality of TSP data.⁹ NCTA agrees that protecting the confidentiality of this data is of

⁸ NTIA Petition at 6.

⁹ *Id.* at 3-4

the utmost importance, but we have concerns about one aspect of NTIA's proposal. NTIA suggests that the rules should be strengthened to "eliminate the risk of TSP data being managed offshore."¹⁰ However, the 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. If the Commission includes this proposal in a Notice of Proposed Rulemaking, it should solicit comment on how best to achieve the goal of maintaining data confidentiality, including data held by government entities, without sacrificing the flexibility that companies have today with respect to how they manage that data.

D. Oversight Committee

While NCTA generally supports the administrative changes proposed by NTIA, one exception is NTIA's proposal to eliminate the TSP Oversight Committee.¹¹ While NTIA correctly identifies overlap between the Oversight Committee and the Communications Information Sharing and Analysis Center (Comm ISAC), the TSP Oversight Committee is a valuable forum in its own right. Moreover, many members of Comm ISAC are not TSP stakeholders and therefore need not be involved in decisions about the TSP program. Any Notice of Proposed Rulemaking should provide parties an opportunity to make the case for keeping the current approach.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 8-9.

CONCLUSION

For all the reasons explained in these comments, the Commission should commence the rulemaking proceeding requested by NTIA, although it should not adopt all of the proposed changes advocated by NTIA.

Respectfully submitted,

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