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

In the Matter of	)	
	)	
The Development of Operational,	)	
Technical and Spectrum Requirements	)	WT Docket No. 96-86
For Meeting Federal, State and Local	)	
Public Safety Agency Communication	)	
Requirements Through the Year 2010	)	
	)	
Establishment of Rules and Requirements	)	
For Priority Access Service	)	

SECOND REPORT AND ORDER

Adopted: July 3, 2000 **Released:** July 13, 2000

By the Commission:

Table of Contents

Title **Paragraph**

I. INTRODUCTION AND EXECUTIVE SUMMARY 1

II. BACKGROUND 5

III. DISCUSSION 9

A. Need and Demand for Priority Access for NSEP Personnel 9

B. Technical and Other Considerations in Determining Whether to Authorize PAS 13

C. Voluntary or Mandatory Provision of Priority Access 17

D. Types of CMRS Systems That May Offer PAS 19

E. Liability Under Federal and State Law 22

F. Uniform Operating Protocols 25

G. Priority Levels for NSEP Personnel 30

H. Administration of PAS 33

IV. PROCEDURAL MATTERS 36

A. Alternative Formats 36

B. Paperwork Reduction Act 37

C. Regulatory Flexibility Act 38

D. Contact for Information 39

VI. ORDERING CLAUSES 40

APPENDIX A: Parties Submitting Comments and Reply Comments
APPENDIX B: Final Regulatory Flexibility Analysis
APPENDIX C: Final Rules

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. Under Section 1 of the Communications Act of 1934, as amended (the Communications Act), the Commission has a statutory mandate "to make available . . . a rapid, efficient Nation-wide . . . communication service . . . for the purpose of the national defense, [and] for the purpose of promoting safety of life and property . . . ."[1] In view of the importance of this mandate, we have a responsibility to determine the most efficient means of providing access to communications infrastructures in order to respond effectively to emergency and disaster situations.[2] As a result, we began a formal examination of priority access to wireless communications systems for personnel responding to emergency and disaster situations.[3]

2. In this *Second Report and Order*, we take another step toward meeting that responsibility. We allow commercial mobile radio service to offer Priority Access Service (PAS) to public safety personnel at the Federal, State and local levels to help meet the national security and emergency preparedness (NSEP) needs of the Nation. Additionally, we adopt rules to implement this decision.

3. Specifically, we determine that we will permit, but not require, commercial mobile radio service (CMRS) providers to offer Priority Access Service to NSEP personnel. PAS will allow authorized NSEP users in emergencies to gain access to the next available wireless channel; priority calls would not, however, preempt calls in progress. We believe that there is a need and a demand for PAS, both by government agencies and by non-government NSEP personnel (*e.g.*, utilities) that were not entitled to the additional spectrum recently provided to the public safety community.[4]

---

[1] 47 U.S.C. § 151.

[2] The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96-86, *Second Notice of Proposed Rulemaking*, 12 FCC Rcd 17706, 17779 ¶ 172 (1997) (*Second NPRM*).

[3] *Id.* at 17779 ¶ 173.

[4] The Congressional mandate to allocate 24 MHz of additional spectrum for public safety services was contained in the Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3004, 111 Stat. 251 (1997), codified at 47 U.S.C. § 337(a)(1).

4. If carriers choose to offer PAS, we are requiring them to adhere to uniform operating protocols concerning the number of priority levels and the priority level for particular NSEP users. We believe that uniform operating protocols will: (a) ensure the compatibility of a peacetime PAS system with a wartime system, (b) allow federal and out-of-region NSEP personnel to avail themselves of PAS, and (c) enable a PAS system to be far more effective. In addition, we conclude that: (a) PAS will include five priority levels, with non-government NSEP personnel receiving entitlement to a priority level as appropriate; (b) access to PAS should be limited to key personnel and those with leadership responsibilities; and (c) the National Communications System (NCS)[5] will have responsibility for the day-to-day administration of PAS, with oversight responsibilities residing with the Commission. We will not, however, require carriers to adhere to particular technical standards to implement PAS. Finally, we hold today that a carrier's provision of PAS in accordance with our Rules will be *prima facie* lawful under federal law, thereby imposing a heavy burden on any complainant who claims a violation of the Communications Act, in particular, a violation of Section 202's anti-discrimination provisions. Without such protection from liability, we believe that carriers are unlikely to offer PAS.

II. BACKGROUND

5. On October 19, 1995, NCS filed a Petition for Rulemaking (Petition) with the Commission requesting the initiation of a rulemaking proceeding to implement what it termed Cellular Priority Access Service.[6] In emergencies, when wireless spectrum is congested, "priority access" would allow authorized priority users to gain access to the next available open channel before subscribers who are not engaged in NSEP functions.[7] Priority calls would not preempt calls in progress,[8] nor would PAS guarantee the completion of the priority call. In 1996, the Wireless Telecommunications Bureau sought comment on the NCS Petition as part of the public safety rulemaking proceeding in WT Docket No. 96-86.[9] On October 24, 1997, we issued a *Second Notice of Proposed Rulemaking*[10] discussing NCS's proposal, which we renamed Priority Access Service. We sought further comment on PAS in light of the Public Safety Wireless Advisory Committee (PSWAC) Final Report[11] and the other issues the Commission was considering with regard to the public safety community.[12]

---

[5]NCS is an organization created by Executive Order to administer and manage the telecommunications assets of 23 Federal organizations in serving the NSEP needs of the Federal, State and local governments. *See* Executive Order 12,472, Assignment of National Security and Emergency Preparedness Telecommunications Functions, 49 Fed. Reg. 13,471 (1984). *See also* NCS Petition at 1-2 n.1.

[6]Petition for Rulemaking of the National Communications System, Cellular Priority Access for National Security and Emergency Preparedness Telecommunications (Oct. 19, 1995) (NCS Petition).

[7]NCS Petition at 2.

[8]*Id.* at 11 & App. B at 3.

[9]*Public Notice*, Commission Seeks Comment on Petition for Rulemaking filed by National Communications System, DA 96-604, WT Docket No. 96-86, 11 FCC Rcd 10903 (1996).

[10]*Second NPRM*, 12 FCC Rcd at 17779-800 ¶¶ 172-227.

[11]PSWAC, Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration, Sept. 11, 1996 [http://pswac.ntia.doc.gov/pubsafe/final.htm] (*PSWAC Final Report*), at 2. The *PSWAC Final Report* is in two volumes. Volume One contains pages 1-72. Volume Two, which contains the reports of the individual subcommittees, is paginated (continued....)

6. NCS contends that cellular usage by the general public in emergency situations leads to congestion in the cellular network, severely curtailing usage by those with NSEP responsibilities.[13] NCS asserts that priority access to cellular spectrum is essential in conducting response and recovery efforts of NSEP personnel at Federal, State, and local levels.[14] The Federal interests, as addressed by NCS, stem from its mandate to assist the Office of Science and Technology Policy (OSTP) in its responsibility for directing the exercise of the war powers of the President.[15] NCS states that if the Director of OSTP (which is responsible for establishing priority access for Federal users) and the Commission were to establish incompatible priority systems, NSEP communications service users would have to change systems under conditions when compatibility is most important, *i.e.*, during the exercise of the President's war powers.[16] Additionally, NCS expresses concern over State initiatives to establish their own priority rules.[17] NCS therefore urges a uniform scheme for effective implementation of a priority access system.[18] It does not ask, however, that the Commission require carriers to offer priority access.

7. The *PSWAC Final Report* also addressed the role of commercial services in supporting public safety communications.[19] PSWAC recommended facilitating "[t]he use of commercial services and private contracts . . . , provided the essential requirements for coverage, priority access and system restoration, security, and reliability are met."[20] The PSWAC Steering Committee further found that priority access to wireless communications channels during peak periods of traffic congestion in emergency and disaster circumstances was required for commercial systems to be a reasonable alternative to spectrum dedicated for public safety communications.[21] The PSWAC Interoperability Subcommittee (PSWAC ISC) also identified the lack of priority access as a limitation of current

(Continued from previous page)
twice: once by each section, and a second time to indicate the page's sequence in the entire report. Thus, for example, the Interoperability Subcommittee Final Report, page 12, is also numbered "285." Throughout this *Second Report and Order*, we cite to the numbers begun in Volume One and carried through to the end — page 285 in the example above.

[12]We received 24 comments and nine reply comments in response to the *Second NPRM*. A list of pleadings and short title references to each party are contained in Appendix A.

[13]NCS Petition at 10, 13.

[14]*Id.*

[15]*Id.* at 7.

[16]NCS Petition at 7.

[17]*Id.* at 7-8.

[18]*Id.* at i, 7-8.

[19]*See PSWAC Final Report* at 4, 21, 25-26.

[20]*Id.* at 4.

[21]*Id.* at 25.

commercial systems and as presenting an obstacle to interoperability.[22] Finally, the PSWAC ISC recognized that public safety organizations will need to establish procedures for the use of commercial systems that are being designed to provide several levels of priority access.[23] This situation, the PSWAC ISC submitted, emphasizes a need for a national focus on operational procedures, standards for systems, training, and interoperability.[24]

8. Accordingly, in the *Second NPRM*, we began examining whether carriers should be allowed to offer priority access services to NSEP personnel. We tentatively concluded that we should consider all CMRS carriers, not just cellular carriers, as potential providers of priority access services.[25] We also tentatively concluded that to the extent PAS was a voluntary offering of a CMRS provider, it would be prudent to limit a carrier's liability under Section 202 of the Communications Act for actions taken in connection with the provision of PAS.[26] Finally, we sought comment on a number of other issues, including whether PAS rules should apply to satellite and air-to-ground systems[27] and how to administer a PAS system.[28]

III. DISCUSSION

A. Need and Demand for Priority Access for NSEP Personnel

9. In the *Second NPRM*, we sought comment on NCS's contention that, while the availability of additional spectrum to the public safety community might mitigate the need for PAS, there was no harm in promulgating rules to permit PAS.[29] We conclude that the recent grant of additional spectrum[30] does not obviate the need for PAS. Public NSEP personnel see commercial systems and PAS as an addition

---

[22] *Id.* at 51. Other limitations of commercial systems identified by the PSWAC ISC are their reliability and command and control characteristics. *Id.*

[23] *Id.* at 475.

[24] *Id.*

[25] *Second NPRM*, 12 FCC Rcd at 17798 ¶ 221.

[26] *Id.* at 17790.

[27] *Id.* at 17779.

[28] *Id.* at 17800. Several commenters raise the question whether we should integrate or otherwise reconcile the 911 system with a priority access system. BAM Comments at 11-12; BAM Reply Comments at 5; GTE Reply Comments at 9; NENA Comments at 1-2; PCIA Comments at 6. We note that we will consider this question in a separate proceeding, such as, *e.g.*, part of the Enhanced 911 Docket, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, rather than as part of this proceeding.

[29] *Second NPRM*, 12 FCC Rcd at 17788 ¶ 194.

[30] *See* Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953, 22953 ¶ 1 (1998) (allocating 24 megahertz to the fixed and mobile services and designating spectrum for public safety use).

to, not a replacement for, their own systems.[31] Further, the non-government NSEP personnel who wish to use PAS were not afforded access to the additional public safety spectrum.[32] Thus, we find that the need and demand for PAS still exists.

10. In general, Federal, State and local government public safety organizations are increasingly using CMRS systems.[33] Certain Federal Government entities stress that there is a growing need to use commercial services rather than dedicated private systems for their wireless communications needs, due to the potential for lower costs of commercial services.[34] Additionally, the *PSWAC Final Report* recommended that the Commission facilitate the use of commercial systems for public safety personnel.[35] The City of Long Beach, California comments that even though it has a private radio system, it currently uses and has no plans to cease using commercial wireless services.[36] Moreover, it has become commonplace in natural disasters and other emergencies for commercial wireless providers to donate both handsets and airtime to public safety personnel for their use during the emergency.[37]

11. NCS urges the adoption of a PAS system to meet the national defense and security needs of the nation. NCS asserts that a Federal Wireless Users Forum (FWUF) and a Federal Wireless Policy Committee have identified priority access to limited cellular spectrum in times of heavy demand as a *critical* requirement of NSEP telecommunications.[38] Thus, NSEP personnel need the ability to receive priority access when using commercial wireless services during emergencies. Further, as several commenters note, there have been emergency situations and natural disasters during which wireless channels have been congested with traffic, thereby preventing NSEP personnel from obtaining access.[39]

---

[31] *See* APCO Comments at 20; Long Beach Comments at 6.

[32] *See* NCS Reply Comments at 2 (additional spectrum made available to public safety entities does not reduce need for PAS by non-government NSEP personnel); Nextel Comments at 8 (because non-government NSEP personnel do not have access to public safety spectrum, Commission should provide them access to PAS).

[33] *See* Letter from Larry Irving, Asst. Sec'y for Communications and Information, U.S. Dept. of Commerce at 1 (May 20, 1998).

[34] *See* Proceedings of the Seventh Federal Wireless Users' Forum Workshop, May 20-22, 1997, at 1-2 (*FWUF Workshop*).

[35] *PSWAC Final Report* at 4.

[36] Long Beach Comments at 6.

[37] *See, e.g.*, *Comm Daily Notebook*, Comm. Daily, Sept. 29, 1998 (BellSouth Mobility delivered portable phones to emergency and police officials after Hurricane George struck Mobile, Alabama); Tom Meersman, *The '97 Floods*, Star Trib. (Minneapolis - St. Paul), May 9, 1997, at 22A (Airtouch communications provided free cellular phones and service after floods); John Wildermuth, *Communities Battle Cellular Towers*, San Francisco Chron., Match 2, 1995 at A1 (GTE Mobilnet provided cellular phones for emergency workers during floods); Sara Catania, *Simi Valley OKs Funds for New Phone System Communications*, Los Angeles Times, Oct. 18, 1994 at 7 (emergency workers could not coordinate emergency efforts until local company donated several dozen cellular phones).

[38] NCS Petition at 8-9.

[39] *See* NCS Petition at 4; Southwestern Bell Mobile Comments at 1-2. *See also Crisis team to be relaunched after Springfield crisis* (WTOP radio report, internet transcript, June 17, 1999) (reporting on overload of cellular networks during large traffic jam).

In other emergencies, such as severe snowstorms, the wireline network has been brought down, leaving wireless systems as the only means of communication and further increasing the likelihood of congestion on the wireless channels.[40] For example, in the Oklahoma City bombing incident, one of the first messages the local public heard was to stop using wireless phones so that emergency and rescue workers could communicate.[41] Fortunately, in that instance the public heeded the call and most NSEP wireless calls were completed.[42] There is no guarantee, however, that similar cooperation from the public will occur during the next emergency. It might be, as a few commenters believe, that there will be only rare occasions when Federal, State and local NSEP personnel will need a PAS system to access their wireless providers.[43] However, by definition, the need for priority access occurs only in emergency situations. Like any emergency contingency rules, we must design the PAS rules for those times when they will be necessary.

12. There currently is a demand by NSEP personnel for priority access, and a greater demand likely will develop once carriers actually begin offering PAS. Most of the public safety users that filed comments believe that PAS will be useful, although none were yet ready to replace their private systems with commercial ones.[44] Non-government NSEP users showed a keen interest in PAS.[45] The American Petroleum Institute stated that as spectrum becomes more crowded and more expensive, securing priority access to CMRS may be the only way for a non-government public safety provider to obtain "adequate and reliable coverage during an emergency."[46]

B. Technical and Other Considerations in Determining Whether to Authorize PAS

13. We also sought comment in the *Second NPRM* on various potential technical limitations to implementing a priority access system.[47] At the time the *Second NPRM* was issued, it was not clear whether CMRS carriers were in a position to offer PAS or whether we should, therefore, defer our

[40] AWWA Comments at 3.

[41] NCS Petition at 4; Southwestern Bell Mobile Comments at 1-2.

[42] Southwestern Bell Mobile Comments at 1-2.

[43] *See* BellSouth Comments at 1, 6-7; BAM Comments at 3-4, 7; BAM Reply Comments at 2; Primeco Comments at 1; Primeco Reply Comments at 1-2.

[44] APCO Comments at 20; Long Beach Comments at 6; NY State Police Comments at 11; NCS Comments at 2, 4; NCS Reply Comments at 3; *see also* GTE Comments at 6, GTE Reply Comments at 2 (noting a growing demand in the marketplace for priority access); *Second NPRM*, 12 FCC Rcd at 17784 n.312 (citing the following parties as supporting NCS's proposal: Nat'l Assoc. of State Telecommunications Directors, Flordia Dept. of Management Services, Los Angeles County Sheriff's Dept. and the County of Los Angeles Internal Services Dept., Oregon State Police, Tennesee Emerg. Mgmt. Agency, and Washington State Emergency Mgmt.); NCS Reply Comments at 2 (citing the following additional parties as stating that there exists a need for PAS: Virginia Army Nat'l Guard and Texas Advisory Comm'n on State Emergency Communications). The State of California disagrees, finding priority access to be of limited value. California Comments at ¶ 51.

[45] AWWA Comments at 3; UTC Comments at 12-13.

[46] API Reply Comments at 7.

[47] *Second NPRM*, 12 FCC Rcd at 17795-97 ¶¶ 214-18.

consideration of PAS.[48] NCS states that the technology had not been fully developed precisely because the FCC had not yet established operating protocols for PAS.[49] Once the manufacturers know the protocols they need to support, or the standards to which they need to adhere, NCS contends the manufacturers will act accordingly.[50] NCS further states that carriers currently have the technical ability to implement PAS.[51] GTE Service Corp. argues that current standards are sufficiently developed to allow implementation of PAS,[52] although Bell Atlantic Mobile claims that one of the standards will not work on the technology it is using.[53] Southwestern Bell Mobile states that a technical standard that would permit PAS for GSM systems was expected to be available in late 1999.[54] While the record in this proceeding does not reflect the current status of a technical standard for GSM systems, we nonetheless believe that technology has advanced to the point where, through software programming, carriers could have the ability to offer PAS without hardware modifications being required. We, thus, conclude that, although all details related to the technology and technical standards have not been resolved, the technology and technical standards are sufficiently developed to allow CMRS systems to offer PAS. Further, we would be concerned about waiting until the technology is perfected if our own inaction was responsible for hindering further technological development. Accordingly, we find the current state of technology is not a reason to not adopt rules permitting CMRS carriers to offer PAS when they are able to do so.[55]

14. Although we recognize that providing priority access to NSEP personnel will mean that there may be times during emergencies when non-NSEP subscribers are not able to obtain access to their wireless services (because NSEP personnel are using the channels), we believe that the benefits of PAS, as described in the record, outweigh any inconvenience to non-NSEP subscribers that result from such use. The ability of CMRS systems to offer PAS should not significantly disadvantage non-NSEP users. By the same token, we believe PAS can provide significant benefits for public safety. Notably, no wireless users or other members of the public filed objections to the Commission allowing commercial wireless providers to offer members of the public safety community priority over the general public in emergencies.

15. Moreover, we believe there might be a significant additional benefit to permitting CMRS providers to offer PAS. If CMRS systems are able to offer PAS, some NSEP users, especially utilities

---

[48] *Id.*

[49] NCS Comments at 6.

[50] *Id.* Nortel believes that it may be possible to develop technical standards that will permit all CMRS systems to offer PAS. Nortel Reply Comments at 6.

[51] NCS Reply Comments at 3.

[52] GTE Comments at 7-8; GTE Reply Comments at 8.

[53] BAM Comments at 13; BAM Reply Comments at 6.

[54] Southwestern Bell Mobile at 3.

[55] As we conclude in the next section, no carrier will be required to offer PAS. We therefore conclude that Bell Atlantic Mobile's concern that one of the current PAS technical standards will not work with the technology it is using also is not a sufficient reason to not permit other carriers to offer PAS when they are able to do so.

and other non-government users, might be able to use commercial systems for all of their needs.[56] This could make valuable public safety-oriented spectrum available for other users, as well as provide additional customers for the commercial services thereby allowing them to build out their systems further. Accordingly, given the need for a PAS system in order to ensure that NSEP personnel will be able to access the wireless system in emergency situations, and the demand for priority access by NSEP personnel, we find that it is in the public interest to permit CMRS systems to provide PAS.

16. Bell Atlantic Mobile and Primeco Personal Communications object to the adoption of PAS rules. They disagree that priority service is necessary and they believe that PAS rules would be difficult to craft.[57] For the reasons stated above,[58] we disagree. Further, in light of our conclusion, set forth in the next section, that no carrier will be required to offer PAS, their objections lose force. If a particular CMRS system does not wish to offer PAS, for whatever reason, then that CMRS system will be permitted to follow that course, but we see no reason why carriers that do wish to offer PAS should not be permitted to do so.

C. Voluntary or Mandatory Provision of Priority Access

17. In the *Second NPRM*, we tentatively concluded that a PAS offering should be voluntary.[59] No commenter disagrees and several affirmatively argue that we should rely on market forces to drive solutions to PAS issues with this tentative conclusion.[60] There are many reasons against mandating that CMRS systems offer PAS. First, not all CMRS systems are now technically able to offer priority service.[61] Indeed, analog systems may never have this capability.[62] Further, in order to provide priority service, some commenters believe that they would be required to spend large amounts of capital to upgrade their systems.[63] While the demand for PAS exists, the extent of that demand in any particular area of the country is uncertain. If the Commission required all commercial systems to offer PAS, then some of those systems might incur large expenditures for little public benefit. We conclude that the best course is to allow CMRS carriers to offer PAS if, in their business judgment, the benefits justify whatever additional cost they might incur.

---

[56] *See PSWAC Final Report* at 302 (noting that a priority access system is necessary for commercial systems to be a reasonable alternative to dedicated public safety radio spectrum).

[57] BAM Comments at 3-4, 7, 9-14; BAM Reply Comments at 1-2, 4-5; Primeco Comments at 1; Primeco Reply Comments at 1-2.

[58] *See supra* paras. 13-15.

[59] *Second NPRM*, 12 FCC Rcd at 17794 ¶ 210.

[60] *See, e.g.*, BellSouth Comments at 5; CTIA Comments at 7-8; GTE Comments at ii, 10-11; GTE Reply Comments at 6-7; Nextel Comments at 7; Nextel Reply Comments at 3; PCIA Comments at 3-4; 360 Degrees Comments at 2-3; *see also* Primeco Comments at 7; Primeco Reply Comments at 4-5.

[61] *See supra* para. 13; Southwestern Bell Mobile Comments at 2; *see also* NCS Petition at 5.

[62] *See* NCS Reply Comments at 6 n.7 (stating that PAS will not be available with analog-based systems).

[63] *See* AMSC Comments at 2; BellSouth Comments at 3; Nextel Comments at 7; Nextel Reply Comments at 3-4.

18. Some parties comment that carriers offering PAS should be free to limit the amount of spectrum they make available to PAS so that non-priority users will be able to access the network.[64] Since PAS will be a voluntary service of CMRS systems, and since we do not know the extent of the demand for PAS by NSEP personnel, we will permit carriers to limit PAS to a portion of their spectrum.

D. Types of CMRS Systems That May Offer PAS

19. NCS originally proposed a priority access system that would be offered by cellular providers.[65] NCS has since filed comments that it does not object if we allow other types of CMRS systems to offer PAS.[66] In the *Second NPRM*, we tentatively concluded that all CMRS providers (with the exception of mobile satellite systems, which we discuss in the next paragraph) should be considered potential providers of PAS.[67] No commenter disagrees. As several commenters point out,[68] federal policy generally favors regulatory symmetry among competing or potentially competing CMRS providers.[69] Allowing some providers but not others to offer PAS could lead to a competitive advantage for firms based on whether or not they were cellular providers.[70] Accordingly, we will permit all CMRS providers to offer PAS to NSEP personnel.

20. In the *Second NPRM*, we also sought comment on whether we should permit Mobile Satellite Systems (MSS) that are treated as CMRS under Part 20 of our Rules to offer PAS.[71] AMSC Subsidiary Group and GTE Service Corp. state that PAS rules should not apply to satellite or air-to-ground systems; they argue that it would be too expensive for such systems to make the technological changes necessary to offer PAS and that such systems are used by few NSEP personnel.[72] However, BellSouth states that the PAS rules should apply to all CMRS carriers including MSS.[73]

---

[64]CTIA Comments at 3, 13; GTE Reply Comments at 7; PCIA Comments at 4. Indeed, NCS's Petition states that providers offering PAS should insure that a reasonable portion of their spectrum is made available to the general public. NCS Petition at 11 n.8.

[65]NCS Petition at 3 n.4.

[66]NCS Comments at 6.

[67]*Second NPRM*, 12 FCC Rcd at 17798 ¶ 221.

[68]CTIA Comments at 15-16; PCIA Comments at 2; Southwestern Bell Mobile Comments at 3.

[69] *See* Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8009-12 ¶¶ 37-43 (1994).

[70]A CMRS provider that could offer PAS but was not required to follow uniform rules might be able to better tailor a system to a particular user's needs, thereby gaining a competitive advantage because of the absence of regulatory requirements.

[71]*Second NPRM*, 12 FCC Rcd at 17799 ¶ 225; *see* 47 C.F.R. § 20.9(a)(10).

[72]AMSC Comments at 1-2; GTE Comments at ii, 12 n.15; GTE Reply Comments at 3 n.3.

[73]BellSouth Comments at 8; *see also* CTIA Comments at 4 (Commission should permit all wireless carriers to offer PAS).

21. We conclude that we should permit satellite and air-to-ground systems to offer PAS. As stated above, federal policy generally favors regulatory symmetry among competing or potentially competing CMRS providers, and permitting some providers but not others to offer PAS would lead to a competitive advantage for firms based on the type of wireless service they offered.[74] This reasoning appears to apply equally to satellite and air-to-ground systems, and we see no reason to exclude them from the opportunity to offer PAS if they wish to do so. Further, because we will not require carriers to offer PAS, we believe the concern that it might be cost prohibitive for satellite and air-to-ground systems to implement PAS is misplaced. If a satellite or air-to-ground system finds it too expensive to implement PAS, it may simply choose not to offer the service.

E. Liability Under Federal and State Law

22. Section 202(a) of the Communications Act prohibits common carriers from making any unjust or unreasonable discrimination in charges, practices, classifications, facilities or services, from giving an undue or unreasonable preference or advantage, or from subjecting any person, class of persons or locality to any undue or unreasonable prejudice or disadvantage.[75] Providing NSEP users with priority access during emergencies might be considered a violation of these provisions and thus, as we stated in the *Second NPRM*, it would be prudent to provide specifically for limitations on liability under Section 202 of the Communications Act.[76] Most commenters agreed with our tentative conclusion that carriers offering PAS should receive some protection from liability for violations of the Communications Act.[77] They further argue that without such protection it is unlikely that carriers will offer PAS.[78]

23. We hold that providing priority access to authorized NSEP users in accordance with our PAS rules will be *prima facie* lawful under the Communications Act and not unreasonable discrimination or an unreasonable preference.[79] Therefore, any person filing a complaint will bear a heavy burden of proof to show that a provider's actions that are related to its PAS offering violate Section 202 of the Communications Act.[80] Initially, we note that Section 202 of the Communications Act does not prevent

---

[74] *See supra* para. 19.

[75] 47 U.S.C. § 202(a).

[76] *Second NPRM*, 12 FCC Rcd at 17790 ¶ 200.

[77] BellSouth Comments at 7; CTIA Comments at 4, 13-15; GTE Comments at iii, 13-14; Motorola Comments at 23; Nextel Comments at 8-10; Primeco Comments at 8; Southwestern Bell Mobile Comments at 3, Southwestern Bell Mobile Reply Comments at 3-4; 360 Degrees Comments at 4.

[78] BAM Comments at 12; BellSouth Comments at 7; CTIA Comments at 14; GTE Reply Comments at 9; Nextel Comments at 8; PCIA Comments at 5-6; Southwestern Bell Mobile Reply Comments at 3.

[79] *Cf.* Petition for Declaratory Ruling Regarding National Security Emergency Preparedness Telecommunications Procedures Manual, 104 FCC 2d 945 (1986) (declaring that a carrier's providing NSEP service in accordance with the interim rules that were adopted before the promulgation of the current TSP rules was *prima facie* lawful). *See* para. 28, *infra*, for examples of priority schemes that would not be considered *prima facie* lawful under 47 U.S.C. § 202. In any event, for the reasons set forth in the next section, we will permit carriers only to offer priority access in accordance with the Rules.

[80] *Cf.* Petition for Declaratory Ruling Regarding National Security Emergency Preparedness Telecommunications Procedures Manual, 104 FCC 2d 945.

carriers from treating users differently; it bars only *unjust* or *unreasonable* discrimination.[81] Carriers may differentiate among users so long as there is a valid reason for doing so. In the case of PAS, in emergency situations, non-NSEP customers simply are not "similarly situated" with NSEP personnel. NSEP personnel are attempting to save and protect lives and property, restore order, and restore critical services. The ability of NSEP personnel to communicate without delays during emergencies is essential. Similarly, within the NSEP community, the levels of priority set by the PAS rules will delineate different types of customers which the carrier may appropriately treat differently in this regard. For example, NCS's proposed priority levels provide for federal defense personnel to receive priority over utility managers. In a national emergency the ability of federal personnel to access the wireless channels is imperative. A CMRS provider therefore does not violate the Communications Act by offering federal users the ability to achieve that access.

24. Several parties ask that we also provide immunity from all types of liability.[82] Parties worry, for example, that a carrier might face potential liability for the inability of a user (particularly one attempting to make an emergency call) to receive an open channel and complete a call because the carrier has provided priority access to NSEP personnel.[83] In the paragraph above, we conclude that providing PAS in accordance with the PAS rules will be *prima facie* lawful under the Communications Act. We therefore limit our discussion here to carriers' possible liability under state law. We first note that since parties filed their comments in this proceeding, Congress has enacted the Wireless Communications and Public Safety Act of 1999 which provides wireless carriers with the same protection from liability under Federal and State law as wireline carriers, especially with regard to emergency calls.[84] This Act should satisfy most of the parties' concerns. Second, we note that CMRS carriers that choose to offer PAS may limit their liability by incorporating appropriate provisions in the contracts with their users.[85]

F. Uniform Operating Protocols

25. NCS proposes that we require CMRS carriers that choose to offer PAS to adhere to uniform operating protocols.[86] NCS is primarily concerned about the compatibility of a peacetime PAS system

---

[81] Investigation of Special Access Tariffs of Local Exchange Carriers, *Tentative Decision*, CC Dkt. No. 85-166, 8 FCC Rcd 1059, 1079 ¶ 135 (1993); MTS and WATS Market Structure, *Third Report and Order*, CC Dkt. No. 78-72, 93 FCC2d 241, 271 ¶ 97 (1983).

[82] BAM Reply Comments at 5-6; CTIA Comments at 13-15; GTE Reply Comments at 9; Nextel Comments at 9-10; PCIA Comments at 6; Southwestern Bell Mobile Comments at 4.

[83] CTIA Comments at 15; GTE Reply Comments at 9; PCIA Comments at 6; Southwestern Bell Mobile Comments at 4.

[84] Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, § 4(a), 113 Stat. 1286, 1288 (1999).

[85] *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18726-28 ¶¶ 97-101 (1996). For example, if carriers choose to make only a portion of their spectrum available to PAS users, *see supra* para. 18, carriers could provide in their contracts that they will not be responsible for the failure of a PAS user to gain access to an open channel. Carriers could also clearly indicate the limitations of the service they offer.

[86] NCS Petition at 6-8.

under our Rules with a wartime system that would be adopted by the Director of OSTP.[87] NCS worries that NSEP communications users would have to change systems under exactly the conditions when compatibility is most important.[88] NCS states that the operating protocols should be consistent with the priority access rules that the Executive Office of the President will adopt concurrently with the Commission's Rules for situations in which the President invokes his war emergency powers pursuant to Section 706 of the Communications Act.[89] Additionally, NCS expresses concern over State initiatives to establish their own priority rules, which are bound to vary from each other, leading to potentially fifty-one (or more) different schemes.[90] NCS contends that compatibility cannot be assured unless a single nationwide set of protocols exists.[91]

26. Several commenters agree with NCS's proposal for uniform operating protocols.[92] Nextel argues that nationwide standards must be established before CMRS carriers can offer priority service.[93] Among other reasons, Nextel argues that without such standards CMRS providers would be caught in the middle of disputes among public safety agencies regarding their particular priority level.[94] GTE Service Corp. states that it is hesitant to employ priority technologies until after national standards are adopted.[95] Those parties who oppose PAS also disagree with the need for uniform operating protocols.[96] For example, Bell Atlantic Mobile states that developing a set of protocols that is appropriate for all

[87] *Id.* at 6.

[88] *Id.* at 7.

[89] *Id.* at 2-3. NCS also states that it is important that PAS be compatible with the Telecommunications Service Priority (TSP) rules contained in 47 C.F.R. Part 64, App. A, governing the provisioning and restoration priority of telecommunications services and network elements by common carriers. *Id.* at 3, 8, 11-13.

[90] *Id.* at 7-8. In this regard, we note that the record does not detail specific State initiatives to implement their own priority rules. It is our understanding, however, that several States have expressed an interest in establishing priority rules and either have conducted preliminary discussions on the issue or are preparing draft priority rules. It is also our understanding that, to date, no States have adopted their own priority rules.

[91] *Id.* at 8; NCS Comments at 3.

[92] BellSouth Comments at 1, 6-7; Ericsson Comments at 21; GTE Comments at ii, 6-7, 11; GTE Reply Comments at 4; Nextel Comments at 8; Nextel Reply Comments at 4-5; Southwestern Bell Mobile Comments at 4; Southwestern Bell Mobile Reply Comments at 2.

[93] Nextel Comments at 8; Nextel Reply Comments at 4-5.

[94] Nextel Reply Comments at 4-5.

[95] GTE Comments at 7.

[96] BAM Comments at 10-11; Primeco Reply Comments at 4-6; *see also* CTIA Comments at 3, 12.

situations would be difficult.[97] Bell Atlantic Mobile recognizes, however, that a PAS system would be far less useful without a set of uniform protocols.[98]

27. We conclude that it is in the public interest for wireless systems that voluntarily choose to offer PAS to adhere to uniform operating protocols.[99] First, as NCS argues, the national defense interest militates in favor of a uniform set of protocols so that compatibility between the peacetime and wartime PAS systems will be guaranteed. We are required to consider national defense needs and concerns when exercising our regulatory responsibilities under the Communications Act.[100] Second, NSEP users need to have uniform access protocols if they are to use PAS in different parts of the country. In many national emergencies, federal and non-local NSEP users assist local personnel. NSEP users should not be placed in the position of needing to know multiple access codes and protocols which differ depending on the local wireless system.[101] Third, allowing individual systems to develop their own access protocols could prevent PAS users from seamlessly roaming between systems, another important potential aspect of PAS.

28. Further, without a set of uniform operating protocols, our rationale for permitting carriers to offer PAS in the first instance might not extend to the different systems that could develop. Operating protocols govern, for example, eligibility for priority access and priority level entitlement. The purpose of PAS is to provide priority access to certain NSEP personnel in emergencies. It is that purpose that supports our holding today that PAS is in the public interest and does not violate the anti-discrimination provisions of Section 202 of the Communications Act. Our reasoning and conclusions set forth above do not necessarily extend to other priority schemes -- for example, one that offered priority service to any user who was willing to pay a premium for the service, or even one that offered PAS only to NSEP personnel but had levels of priority different from those set forth in the proposed regulations. It might not be in the public interest to allow some users to have the highest priority, even if they were willing to pay for the privilege. There is also a public safety interest in always ensuring, for example, that the Executive Office of the President receives the top priority level. For all of these reasons, we find it in the public interest to require CMRS carriers who wish to offer PAS to adhere to a set of uniform operating protocols.

29. In this regard, we note that NCS has proposed a set of protocols.[102] We have reviewed the record in this proceeding and now adopt NCS's proposed protocols as final rules in Part 64 of the Commission's Rules. We believe that adopting these protocols will ensure a nationwide, uniform system for PAS. Additionally, we find that these protocols comport with our mandate under Section 1 of the

[97]BAM Comments at 10-11.

[98]*Id.*

[99]The operating protocols we adopt will not include any technical standards necessary to implement priority access. Those technical standards will continue to be developed by industry groups.

[100]47 U.S.C. § 151; American Tel. & Tel. Co., *Memorandum Opinion & Order*, 44 FCC 602, 605 ¶ 10 (1955); *see also Bendix Aviation Corp. v. FCC*, 272 F.2d 533, 538 (D.C. Cir. 1959).

[101]Further, if the local wireless system is technologically compatible with the non-local users' home system, the non-local NSEP personnel may be able to use their own equipment. We note that technological advances have allowed manufacturers to offer handsets that enable users to access different types of wireless systems easily.

[102]NCS Petition, Appendix B.

Communications Act, which, as noted earlier, is to make available a communications service to provide for national defense and promote safety of life and property. Consequently, we believe that our adopting these protocols further provides a mechanism to permit effective responses to emergency and disaster situations.

G. Priority Levels for NSEP Personnel

30. NCS's Petition generally proposes that a PAS follow our Rules relating to the TSP system,[103] which governs the restoration of telecommunications service in emergencies.[104] NCS proposes five priority levels for NSEP users, with Level One being the highest.[105] Level One includes the Executive Leadership and Policy Makers; Level Two comprises the Disaster Response/Military Command and Control users; Level Three contains Public Health, Safety and Law Enforcement Command users; Level Four includes Public Services/Utilities and Public Welfare users; while Level Five pertains to Disaster Recovery.[106] Eligibility for this last priority would be comprised of individuals responsible for managing a variety of recovery operations after the initial response has been accomplished and would include, for example, medical recovery operations leadership, detailed damage assessment leadership, disaster shelter coordination and management, and critical disaster field support personnel.[107] NCS further proposes that State and local NSEP personnel have the same priority level as Federal defense and law enforcement agencies because State and local personnel will likely be first on the scene of emergencies.[108] NCS's proposed rules state that priority assignments are intended only for key personnel and those in leadership positions; they are not intended for all NSEP personnel.[109]

31. There is little opposition to NCS's proposed priority levels. The California Public-Safety Radio Association and the City of Long Beach, California recommend that State and local emergency providers receive the same priority level as Federal defense and law enforcement agencies.[110] Several commenters propose that non-government NSEP personnel (*e.g.*, public utility workers) receive a priority level.[111] The American Petroleum Institute argues that as spectrum becomes more crowded and more expensive, securing priority access might be the only way for a non-government public safety provider to obtain "adequate and reliable coverage during an emergency."[112] Parties also argue that

[103] 47 C.F.R., Pt. 64, App. A, Sec. 6.

[104] NCS Petition at 10.

[105] NCS Petition at 13-14, Appendix B at 10-13.

[106] *Id.*

[107] NCS Petition at 14, Appendix B at 13.

[108] NCS Petition at 10, 13.

[109] NCS Petition, Appendix B at 10.

[110] CPRA Comments at 6; Long Beach Comments at 6.

[111] API Reply Comments at 7-8; FP&L Comments at 3-4; Nextel Comments at 8; UTC Comments at 12; UTC Reply Comments at 5.

[112] API Reply Comments at 7.

priority access should also be provided to personnel such as private ambulances, the American Automobile Association, etc.,[113] and that there are other individuals in the private sector, for example, the head of operations at a chemical plant, with whom communications in an emergency with private NSEP personnel is imperative and who should therefore be able to access PAS.[114] On the other hand, Primeco Personal Communications (Primeco) argues that there is no general agreement as to the priority levels.[115] Primeco further states that maximum flexibility could be achieved by allowing the National Security Telecommunications Advisory Committee to address the appropriate priority levels rather than having the FCC rigidly codify them.[116] No party commented on NCS's proposal that we limit priority access to key personnel and those in leadership positions.

32. After reviewing the record regarding this matter, we conclude that we should adopt five priority levels, as set forth in NCS's petition. Based on the comments received, we also will allow for other non-government NSEP personnel, such as non-government public safety organizations and companies, and certain safety workers in private companies, to receive priority access at an appropriate level.[117] We understand the concern that priority levels not be rigidly codified,[118] but believe that the adopted levels have the flexibility to meet current and future needs. We also adopt NCS's suggestion to limit priority access to key personnel and those with leadership responsibilities. This will limit the number of persons with priority access to a relatively few and thus cause only a minimal effect on the general wireless user.

H. Administration of PAS

33. NCS also offers to handle the day-to-day administration of a priority access system, as it administers the TSP system.[119] Under the TSP rules, NCS, through the Executive Office of the President, provides the day-to-day administration, while the FCC provides regulatory oversight, enforces the rules, and acts as final authority regarding NCS's decisions.[120] NCS proposes that there be State and Federal "authorizing agents" who will be a central point of contact for NSEP users within each State.[121] An

[113]Nextel Comments at 8; Nextel Reply Comments at 4, 6.

[114]GTE Comments at 14-15.

[115]Primeco Reply Comments at 5.

[116]*Id.* at 5-6.

[117]As discussed below, for any particular user, we propose that the decision regarding the entitlement to priority access and the specific level of priority be set in the first instance by NCS, with final authority for the determination resting with the Commission.

[118]*See* Primeco Reply Comments at 6.

[119]NCS Petition at 3, 12-13.

[120]47 C.F.R., Pt. 64, App. A, Sec. 6.

[121]NCS Petition at 11. NCS states that its proposal that we permit States to be authorizing agents was made at the request of the State and local representatives that were advising NCS on priority access issues. *Id.*

NSEP user seeking priority access will apply to the appropriate authorizing agent, who will authenticate and evaluate the application and recommend the appropriate priority level to NCS.[122]

34. Only a few parties have commented on the question of administration. GTE Service Corp. agrees that the issue could be deferred.[123] Some parties suggest that we should be guided by an advisory committee with both government and industry representation.[124] We note that currently the National Security Telecommunications Advisory Committee's Wireless Services Task Force has a subgroup that has worked with NCS regarding PAS.

35. We believe that NCS's proposal regarding the day-to-day administration of PAS is sound and in the public interest. NCS is experienced in administering the TSP system. Additionally, in proposing the priority access rules, NCS has shown that it seeks and takes heed of the comments and concerns of a broad array of wireless providers, users, and equipment manufacturers. Therefore, we conclude that NCS should have responsibility for the day-to-day administration of PAS, with oversight responsibilities residing with the Commission.

IV. PROCEDURAL MATTERS

A. Alternative Formats

36. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at mcontee@fcc.gov. This *Report and Order* can also be downloaded at http://www.fcc.gov/dtf/.

B. Paperwork Reduction Act

37. This *Report and Order* does not contain either a proposed or modified information collection.

C. Regulatory Flexibility Act

38. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 604, a Final Regulatory Flexibility Analysis of the possible impact on small entities of the rules adopted in this *Second Report and Order* is contained in Appendix B. The Consumer Information Bureau, Reference Information Center, will send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Contact for Information

39. For further information, contact Bert Weintraub, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-1316.

---

[122] *Id.* at 11-12.

[123] GTE Comments at 18.

[124] Southwestern Bell Mobile Comments at 5; GTE Comments at 15-18; GTE Reply Comments at 9-10; *see also* Primeco Reply Comments at 6 (National Security Telecommunications Advisory Committee should address priority levels).

V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 302, 303(f) and (r), 332, 337, that Part 64 of the Commission's Rules is amended as set forth in Appendix C, effective sixty days after publication of this *Second Report and Order* in the Federal Register.

41. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

APPENDIX A

Parties Submitting Comments and Reply Comments in WT Docket No. 96-86

The following list contains the names of parties filing comments and reply comments with regard to Priority Access Service (PAS) in response to the *Second Notice of Proposed Rulemaking* in The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96-86, 12 FCC Rcd 17706 (1997).

Comments

American Red Cross (Red Cross)
American Water Works Association (AWWA)
AMSC Subsidiary Corporation (AMSC)
Association of Public-Safety Communications Officials-International (APCO)
Bell Atlantic Mobile, Inc. (BAM)
BellSouth Corporation (BellSouth)
California Public-Safety Radio Association (CPRA)
California, State of
Cellular Telecommunications Industry Association (CTIA)
Ericsson (Ericsson)
Florida Power and Light Company (FP&L)
GTE Service Corporation (GTE)
Long Beach, City of (Long Beach)
Motorola, Inc. (Motorola)
National Communications System (NCS)
National Emergency Number Association (NENA)
New York State Police (NY State Police)
New York Transit Authority (NY Transit)
Nextel Communications, Inc. (Nextel)
Personal Communications Industry Association (PCIA)
Primeco Personal Communications, L.P. (Primeco)
Southwestern Bell Mobile Systems, Inc. (Southwestern Bell Mobile)
UTC, The Telecommunications Association (UTC)
360° Communications Company (360 Degrees)

Reply Comments

American Petroleum Institute (API)
Bell Atlantic Mobile (BAM)
GTE Service Corporation (GTE)
National Communications Systems (NCS)
Nextel Communications, Inc. (Nextel)
Northern Telecom, Inc. (Nortel)
Primeco Personal Communications, L.P. (Primeco)
Southwestern Bell Mobile Systems, Inc. and Pacific Bell Mobile Services (Southwestern Bell Mobile)
UTC, The Telecommunications Association (UTC)

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),[125] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Notice of Proposed Rulemaking (Second Notice)*.[126] The Commission sought written public comment on the proposals in the *Second Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[127]

A. Need for, and Objectives of, the Second Report and Order

1. The Commission has determined that there is a need and demand for Priority Access Service (PAS) by national security and emergency preparedness (NSEP) and other public safety personnel to enhance NSEP. Consequently, the Commission's objective is to authorize the voluntary provision by CMRS providers for such service. In the *Second Report and Order*, we determine that we will permit, but not require, CMRS providers to offer PAS to NSEP personnel. If carriers choose to offer PAS, we are requiring them to adhere to uniform operating protocols. We also are adopting the PAS priority levels proposed by NCS and designate NCS as the day-to-day administrator of PAS.

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

2. In the IRFA, The Commission found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFA.

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

3. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[128] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[129] In addition, the term "small business" has the

---

[125] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[126] The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requiremnts For Priority Access Service, *Second Notice of Proposed Rulemaking*, WT Docket No. 96-86, 12 FCC Rcd 17706 (1997) ("*Second Notice*"). The IRFA is at 12 FCC Rcd 17809.

[127] *See* 5 U.S.C. § 604.

[128] 5 U.S.C. § 603(b)(3).

[129] *Id.* § 601(6).

same meaning as the term "small business concern" under the Small Business Act.[130] A small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[131] Nationwide, as of 1992, there were approximately 275,801 small organizations.[132] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[133] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[134] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[135] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

4. *CMRS Providers.* CMRS providers include cellular licensees, broadband personal communications service (PCS) licensees, specialized mobile radio (SMR) licensees, and other mobile service providers. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[136] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.[137] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. We also note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or PCS services, which are placed together in the

[130] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[131] 5 U.S.C. § 601(4).

[132] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[133] 5 U.S.C. § 601(5).

[134] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[135] *Id.*

[136] 13 C.F.R. §121.201, SIC code 4812.

[137] *1992 Census,* Series UC92-S-1, at Table 5, SIC code 4812.

data.[138] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this *Second Report and Order*.

5. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[139] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[140] The SBA has approved these regulations defining "small entity" in the context of broadband PCS auctions.[141] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were ninety winning bidders that qualified as small entities in the Block C auctions. A total of ninety-three small and very small business bidders won approximately forty percent of the 1,479 licenses for Blocks D, E, and F.[142] Based on this information, we conclude that the number of small broadband PCS licensees will include the ninety winning C Block bidders and the ninety-three qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

6. *SMR Licensees.* Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses,[143] 800 MHz SMR licenses for the upper 200 channels,[144] and 800 MHz SMR licenses for the lower 230 channels[145] as a firm that has had average

[138] *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999).

[139] *See* Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket 90-314, *Report and Order*, 11 FCC Rcd 7824, 7850-52 ¶¶ 57-60 (1996); *see also* 47 C.F.R. § 24.720(b).

[140] *See id.* at 7852 ¶ 60.

[141] *See, e.g.*, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-84 ¶¶ 114-20 (1994).

[142] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

[143] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639 (1995).

[144] *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz frequency Band, PR Docket No. 93-144, *First Report and Order*, *Eighth Report and Order*, and *Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. It is not possible to determine which of these licensees were not covered by the previous rule but intend to offer real-time, two-way PSTN-interconnected voice or data service utilizing an in-network switching facility. Therefore, we conclude that the number of 900 MHz SMR geographic area licensees affected by this rule modification is at least sixty.

7. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. We conclude that the number of 800 MHz SMR geographic area licensees for the upper 200 channels affected by this rule modification is at least ten.

8. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels.[146] Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses under the Commission's $15 million size standard. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification is at least 3325.

9. With respect to licensees operating under extended implementation authorizations, approximately 6800 such firms provide 800 MHz or 900 MHz SMR service. However, we do not know how many of these qualify as small businesses under the $15 million size standard.[147] Therefore, we conclude that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is up to 6800.

10. *220 MHz Radio Service -- Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.[148] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had

(Continued from previous page)

[145] *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz frequency Band, PR Docket No. 93-144, *Second Report and Order*, 12 FCC Rcd 19079 (1997).

[146] *Id.*.

[147] Because the RFA amendments were not in effect until the record compiled in response to the *Second NPRM* was closed, the Commission did not request information regarding the number of small businesses in this category.

[148] 13 C.F.R. § 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

1,000 or more employees.[149] Therefore, if this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

11. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[150] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[151] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[152] 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.[153]

12. *Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.[154] A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA approved this

[149] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[150] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-95 (1997). The SBA has approved these definitions. *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[151] 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69 ¶ 291.

[152] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

[153] *See Wireless Telecommunications Bureau Grants 654 Phase II 220 MHz Licenses*, Public Notice, DA 99-583 (rel. Mar 24, 1999); *Wireless Telecommunications Bureau Conditionally Grants 23 Phase II 220 MHz Licenses and Announces It is Prepared to Grant Four Additional Phase II 220 MHz Licenses After Final Payment is Made*, Public Notice, DA 990746 (rel. April 16, 1999); *Wireless Telecommunications Bureau Grants One Phase II 220 MHz License and Conditionally Grants Three Phase II 220 MHz Licenses*, Public Notice, DA 99-1111 (rel. Jun 7, 1999); *Wireless Telecommunications Bureau Grants 221 Phase II 220 MHz Licenses*, Public Notice, DA 99-2104 (rel. Oct. 7, 1999).

[154] *See* 47 C.F.R. § 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

1,000 or more employees.[149] Therefore, if this general ratio continues in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

11. *220 MHz Radio Service -- Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[150] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[151] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[152] 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.[153]

12. *Paging.* The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.[154] A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA approved this

[149]U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[150]220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-95 (1997). The SBA has approved these definitions. *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[151]220 MHz Third Report and Order, 12 FCC Rcd at 11068-69 ¶ 291.

[152]*See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

[153]*See Wireless Telecommunications Bureau Grants 654 Phase II 220 MHz Licenses*, Public Notice, DA 99-583 (rel. Mar 24, 1999); *Wireless Telecommunications Bureau Conditionally Grants 23 Phase II 220 MHz Licenses and Announces It is Prepared to Grant Four Additional Phase II 220 MHz Licenses After Final Payment is Made*, Public Notice, DA 990746 (rel. April 16, 1999); *Wireless Telecommunications Bureau Grants One Phase II 220 MHz License and Conditionally Grants Three Phase II 220 MHz Licenses*, Public Notice, DA 99-1111 (rel. Jun 7, 1999); *Wireless Telecommunications Bureau Grants 221 Phase II 220 MHz Licenses*, Public Notice, DA 99-2104 (rel. Oct. 7, 1999).

[154]*See* 47 C.F.R. § 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

16. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[161] The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the rules in the *Second Report and Order* includes these eight entities.

17. *National Security/Emergency Preparedness Personnel.* As a general matter, NSEP personnel include personnel from state and local government, police and fire departments, and emergency medical services. As indicated *supra* in paragraph three of this FRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[162]

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

18. The *Second Report and Order* adopts rules that will require service users that seek PAS assignments to file applications with their authorizing agents and will require authorizing agents to evaluate those applications. The form of the applications and the information required will be determined by NCS at a later date. The *Second Report and Order* also adopts rules that will require service providers that offer PAS to maintain a database of authorized users. The rules permit but do not require service users, authorizing agents, and service providers to participate in PAS. The Commission believes that these requirements are the minimum necessary to implement PAS.

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

19. We have reduced economic burdens wherever possible. The rules adopted permit but do not require CMRS providers to offer PAS to NSEP personnel. Because any offering is voluntary, we believe that we have minimized the economic impact on small entities. While the rules require CMRS providers that do offer PAS to adhere to a set of uniform operating protocols, we do not believe that the protocols will be significantly more expensive to implement, if at all, than other priority systems that CMRS providers might otherwise have chosen to adopt. Significant alternatives considered but rejected were: (1) Do not permit PAS in the first place. We rejected this alternative because we concluded that the recent grant of additional spectrum for public safety does not obviate the need for PAS. (2) Make PAS mandatory. We rejected this alternative because not all CMRS systems, including some small systems, are technically able to offer PAS and because some commenters to the *Second Notice* believe they would have to spend large amounts of capital to upgrade their systems.

---

[161] *See Letter from* Aida Alvarez, Administrator, U.S. Small Business Administration, to Daniel B. Phythyon, Chief of Wireless Telecommunications Bureau, Federal Communications Commission (May 19, 1998) (definition of "small business").

[162] 5 U.S.C. § 601(5).

20. The item also limits access to PAS to key personnel. In this regard, it requires NSEP personnel that wish to avail themselves of PAS to apply for authorization. We believe that the economic burden this requirement imposes on small entities that are potential users is minimal but is necessary in order to ensure that the full benefits of PAS are realized.

Report to Congress: The Commission will send a copy of this *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commisison will send a copy of the *Second Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) also will be published in the Federal Register. *See* 5 U.S.C. § 604(b).

APPENDIX C

FINAL PRIORITY ACCESS (PAS) RULES

Part 64 of Chapter 1 of Title 47 of the Code of Federal regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs. 201, 218, 226, 228, and 254(k) unless otherwise noted.

2. Section 64.401 is amended by revising it to read as follows:

§ 64.401 Policies and procedures for provisioning and restoring certain telecommunications services in emergencies.

The communications common carrier shall maintain and provision and, if disrupted, restore facilities and services in accordance with policies and procedures set forth in Appendix A to this part.

3. A new Section 64.402 is added as follows:

§ 64.402 Policies and procedures for the provision of priority access service by commercial mobile radio service providers.

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

4. A new appendix B to Part 64 is added as follows:

Appendix B to Part 64 – Priority Access Service (PAS) for National Security and Emergency Preparedness (NSEP)

1. Authority

This appendix is issued pursuant to sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended. Under these sections, the Federal Communications Commission (FCC) may permit the assignment and approval of priorities for access to commercial mobile radio service (CMRS) networks. Under section 706 of the Communications Act, this authority may be superseded by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to CMRS providers and users to comply with policies and procedures establishing the Priority Access Service (PAS). This appendix is intended to be read in conjunction with regulations and procedures that the Executive Office of the President issues (1) to implement responsibilities assigned in section 3 of this appendix, or (2) for use in the event this appendix is superseded by the President's emergency war powers. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priority access service both before and after invocation of the President's emergency war powers.

2. Background

a. Purpose. This appendix establishes regulatory authorization for PAS to support the needs of NSEP CMRS users.

b. Applicability. This appendix applies to the provision of PAS by CMRS licensees to users who qualify under the provisions of section 5 of this appendix.

c. Description. PAS provides the means for NSEP telecommunications users to obtain priority access to available radio channels when necessary to initiate emergency calls. It does not preempt calls in progress and is to be used during situations when CMRS network congestion is blocking NSEP call attempts. PAS is to be available to authorized NSEP users at all times in equipped CMRS markets where the service provider has voluntarily decided to provide such service. Authorized users would activate the feature on a per call basis by dialing a feature code such as *XX. PAS priorities 1 through 5 are reserved for qualified and authorized NSEP users, and those users are provided access to CMRS channels before any other CMRS callers.

d. Definitions. As used in this appendix:

1. *Authorizing Agent* refers to a Federal or State entity that authenticates, evaluates and makes recommendations to the Executive Office of the President regarding the assignment of priority access service levels.

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

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

4. The following terms have the same meaning as in Appendix A to Part 64: (a) Assignment; (b) Government; (c) National Communications System; (d) National Coordinating Center; (e) National Security Emergency Preparedness (NSEP) Telecommunications Services (excluding the last sentence); (f) Reconciliation; (g) Revalidation; (h) Revision; and (i) Revocation.

e. Administration. The Executive Office of the President will administer PAS.

3. Responsibilities

a. The *Federal Communications Commission* will provide regulatory oversight of the implementation of PAS, enforce PAS rules and regulations, and act as final authority for approval, revision, or disapproval of priority assignments by the Executive Office of the President by adjudicating disputes regarding either priority assignments or the denial thereof by the Executive Office of the President until superseded by the President's war emergency powers under section 706 of the Communications Act.

b. The *Executive Office of the President (EOP)* will administer the PAS system. It will:

1. Act as the final approval or denial authority for the assignment of priorities and the adjudicator of disputes during the exercise of the President's war emergency powers under Section 706 of the Communications Act.

2. Receive, process, and evaluate requests for priority actions from authorizing agents on

behalf of service users or directly from service users. Assign priorities or deny requests for priority using the priorities and criteria specified in section 5 of this appendix. Actions on such requests should be completed within 30 days of receipt.

3. Convey priority assignments to the service provider and the authorizing agent.

4. Revise, revalidate, reconcile, and revoke priority level assignments with service users and service providers as necessary to maintain the viability of the PAS system.

5. Maintain a database for PAS related information.

6. Issue new or revised regulations, procedures, and instructional material supplemental to and consistent with this appendix regarding the operation, administration, and use of PAS.

7. Provide training on PAS to affected entities and individuals.

8. Enlarge the role of the Telecommunications Service Priority System Oversight Committee to include oversight of the PAS system.

9. Report periodically to the FCC on the status of PAS.

10. Disclose content of the NSEP PAS database only as may be required by law.

c. An *Authorizing Agent* shall:

1. Identify itself as an authorizing agent and its community of interest (State, Federal Agency) to the EOP. State Authorizing Agents will provide a central point of contact to receive priority requests from users within their state. Federal Authorizing Agents will provide a central point of contact to receive priority requests from federal users or federally sponsored entities.

2. Authenticate, evaluate, and make recommendations to the EOP to approve priority level assignment requests using the priorities and criteria specified in section 5 of this appendix. As a guide, PAS authorizing agents should request the lowest priority level that is applicable and the minimum number of CMRS services required to support an NSEP function. When appropriate, the authorizing agent will recommend approval or deny requests for PAS.

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

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

5. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

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

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

d. *Service users* will:

1. Determine the need for and request PAS assignments in a planned process, not waiting until an emergency has occurred.

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

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

serve as the authorizing agent.)

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

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

6. Participate in reconciliation and revalidation of PAS information at the request of the authorizing agent or the EOP.

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

8. Pay service providers as billed for PAS.

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

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

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

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

3. Designate a point of contact to coordinate with the EOP regarding PAS.

4. Participate in reconciliation and revalidation of PAS information at the request of the EOP.

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

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

7. Comply with regulations and procedures supplemental to and consistent with this appendix that are issued by the EOP.

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

9. Notify the EOP and the service user if PAS is to be discontinued as a service.

f. The *Telecommunications Service Priority Oversight Committee* will identify and review any systemic problems associated with the PAS system and recommend actions to correct them or prevent their recurrence.

4. Appeal

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

5. *PAS Priority Levels and Qualifying Criteria*

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

1. Executive Leadership and Policy Makers
2. Disaster Response/Military Command and Control
3. Public Health, Safety and Law Enforcement Command
4. Public Services/Utilities and Public Welfare
5. Disaster Recovery

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

A. Priority 1: Executive Leadership and Policy Makers

Users who qualify for the Executive Leadership and Policy Makers priority will be assigned priority one. A limited number of CMRS technicians who are essential to restoring the CMRS networks shall also receive this highest priority treatment. Examples of those eligible include (i) the President of the United States, the Secretary of Defense, selected military leaders, and the minimum number of senior staff necessary to support these officials; (ii) State governors, lieutenant governors, cabinet-level officials responsible for public safety and health, and the minimum number of senior staff necessary to support these officials; and (iii) Mayors, county commissioners, and the minimum number of senior staff to support these officials.

B. Priority 2: Disaster Response/Military Command and Control

Users who qualify for the Disaster Response/Military Command and Control priority will be assigned priority two. Individuals eligible for this priority include personnel key to managing the initial response to an emergency at the local, state, regional and federal levels. Personnel selected for this priority should be responsible for ensuring the viability or reconstruction of the basic infrastructure in an emergency area. In addition, personnel essential to continuity of government and national security functions (such as the conduct of international affairs and intelligence activities) are also included in this priority. Examples of those eligible include (i) Federal emergency operations center coordinators, e.g., Manager, National Coordinating Center for Telecommunications, National Interagency Fire Center, Federal Coordinating Officer, Federal Emergency Communications Coordinator, Director of Military Support; (ii) State emergency Services director, National Guard Leadership, State and Federal Damage Assessment Team Leaders; (iii) Federal, state and local personnel with continuity of government responsibilities; (iv) Incident Command Center Managers, local emergency managers, other state and local elected public safety officials; and (v) Federal personnel with intelligence and diplomatic responsibilities.

C. Priority 3: Public Health, Safety, and Law Enforcement Command.

Users who qualify for the Public Health, Safety, and Law Enforcement Command priority will be assigned priority three. Eligible for this priority are individuals who direct operations

critical to life, property, and maintenance of law and order immediately following an event. Examples of those eligible include (i) Federal law enforcement command; (ii) State police leadership; (iii) Local fire and law enforcement command; (iv) Emergency medical service leaders; (v) Search and rescue team leaders; and (vi) Emergency communications coordinators.

D. Priority 4: Public Services/Utilities and Public Welfare

Users who qualify for the Public Services/Utilities and Public Welfare priority will be assigned priority four. Eligible for this priority are those users whose responsibilities include managing public works and utility infrastructure damage assessment and restoration efforts and transportation to accomplish emergency response activities. Examples of those eligible include (i) Army Corps of Engineers leadership; (ii) Power, water and sewage and telecommunications utilities; and (iii) Transportation leadership.

E. Priority 5: Disaster Recovery

Users who qualify for the Disaster Recovery priority will be assigned priority five. Eligible for this priority are those individuals responsible for managing a variety of recovery operations after the initial response has been accomplished. These functions may include managing medical resources such as supplies, personnel, or patients in medical facilities. Other activities such as coordination to establish and stock shelters, to obtain detailed damage assessments, or to support key disaster field office personnel may be included. Examples of those eligible include (i) Medical recovery operations leadership; (ii) Detailed damage assessment leadership; (iii) Disaster shelter coordination and management; and (iv) Critical Disaster Field Office support personnel.

6. Limitations

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