

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

In the Matter of	)	
	)	
Public Safety and Homeland Security	)	
Bureau Seeks Comment on Petition for	)	WT Docket No. 96-86
Rulemaking Filed by the National	)	
Telecommunications and Information	)	
Administration to Revise the Rules for	)	
Wireless Priority Service	)	

**EX PARTE COMMENTS OF NTIA**

The National Telecommunications and Information Administration (NTIA), as the President’s principal adviser on domestic and international telecommunications policy, and on behalf of the Emergency Communications Division (ECD)<sup>1</sup> of the Department of Homeland Security (DHS), respectfully submits these comments as a supplement to its initial filing in the above captioned proceeding.<sup>2</sup>

Administrative changes required by the CISA Act of 2018 necessitate corresponding changes to the attachment NTIA included as a draft Appendix B in its WPS Petition for

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<sup>1</sup> On November 16, 2018, President Trump signed into law the Cybersecurity and Infrastructure Security Agency (CISA) Act of 2018, Pub. L. No. 115-454. The CISA Act establishes three divisions in the new agency: Cybersecurity, Infrastructure Security, and Emergency Communications. In its original filing, NTIA made reference to the DHS Office of Emergency Communications (OEC). The CISA Act renamed OEC as the Emergency Communications Division.

<sup>2</sup> “Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking Filed by the National Telecommunications and Information Administration to Revise the Rules for Wireless Priority Service,” DA 18-845 (Aug. 13, 2018), *available at* <https://ecfsapi.fcc.gov/file/081383136455/DA-18-845A1.pdf>.

Rulemaking (Petition).<sup>3</sup> NTIA has also made edits to the text of Appendix B to make more clear that DHS is responsible for issuing procedures and other technical guidance needed for the day-to-day operation of WPS, while the White House remains responsible for setting the Executive Branch's overall national security/emergency preparedness (NS/EP) policies that may impact implementation of WPS.

In addition, in response to a concern raised by the telecommunications industry, NTIA has modified section 3.f of the draft Appendix B to eliminate references to specific existing technical standards that could have locked service providers into using approved standards that may be replaced or updated in the future.<sup>4</sup> The revised Appendix B now reflects the need for WPS service providers to implement the service offering in a manner that complies with identified industry standards, while enabling DHS to respond to the evolution of those standards over time. Lastly, the revised Appendix B now includes a requirement for the GETS/WPS User Council to provide an annual report on the status of the program to the NS/EP Executive Committee.

These supplemental revisions to the Petition aim to ensure that the revised WPS rules facilitate ECD's ability to manage WPS by establishing standardized criteria consistent with the NS/EP community's expectations for WPS.

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<sup>3</sup> Petition of National Telecommunications and Information Administration for Revision of Rules and Requirements for Wireless Priority Service, WT Docket No. 96-86 (filed July 9, 2018) (NTIA Petition), *available at* <https://www.fcc.gov/ecfs/filing/1070951773719>.

<sup>4</sup> *See e.g.*, Reply Comments of Verizon in WT Docket No. 98-86, at 3 (filed Sept. 7, 2018), *available at* [https://ecfsapi.fcc.gov/file/109072441113056/09-07-2018%20Verizon%20WPS%20PN%20Comments%20\(Final%20AS%20Filed\).pdf](https://ecfsapi.fcc.gov/file/109072441113056/09-07-2018%20Verizon%20WPS%20PN%20Comments%20(Final%20AS%20Filed).pdf).

## CONCLUSION

As explained in NTIA's original petition, ECD requires a single, updated set of rules to manage all WPS providers efficiently and effectively. We appreciate the Commission's consideration of this filing, and of the revised draft Appendix B.

Respectfully submitted,

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## **Appendix B to Part 64 -Wireless Priority Service (WPS) for National Security and Emergency Preparedness (NS/EP)**

### **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 (Commission) may permit the assignment and approval of priorities for voice, data, and video telecommunications, and information services provided by 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 service providers and users to comply with policies and procedures establishing the Wireless Priority Service (WPS), unless and until such policies and procedures are superseded by the war emergency powers of the President. This appendix is intended to be read in conjunction with executive orders, requirements and other guidance that the Executive Office of the President (EOP) issues, as well as operational procedures issued by the Department of Homeland Security (DHS):

(1) To implement responsibilities assigned in section 3 of this appendix, or

(2) For use in the event this appendix is superseded by the war emergency powers of the President. Together, this appendix and the regulations and procedures and other guidance issued by the Executive Office of the President establish one uniform system of wireless priority service before invocation of the President's war emergency powers, unless and until such policies and procedures are superseded by the war emergency powers of the President.

### **2. BACKGROUND**

a. Purpose. This appendix establishes regulatory authorization for WPS to support the needs of national security and emergency preparedness (NS/EP) users of services provided by CMRS licensees.

b. Applicability. This appendix applies to the provision of WPS by CMRS licensees to users of CMRS services who qualify under the provisions of section 5 of this appendix.<sup>1</sup>

c. Description. WPS provides the means for NS/EP users to obtain end-to-end priority treatment on and access to available CMRS network resources and services. WPS includes voice, data, and video telecommunications and information services, both secure and non-secure. WPS is to be used during situations when conditions in CMRS networks block NS/EP users from accessing network resources, or impair the transmission or completion of NS/EP communications. WPS is to be available to authorized NS/EP users at all times in equipped mobile service networks where the CMRS provider has voluntarily decided to provide such service. Authorized users currently activate WPS on a per call basis by dialing Vertical Service Code \*272. Enhancements to the service may allow additional forms of invocation, e.g., per-application. Additionally, the manner

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<sup>1</sup> Section 332(d) of the Communications Act specifies that, to be considered CMRS, a mobile service must be provided for a profit to the public, 47 U.S.C. 332(d)(1). The term does not include, for example, mobile radio services provisioned directly by the Department of Defense.

of invocation may evolve to include explicit, e.g., Vertical Service Code prefix, and implicit, e.g., secure mobile NS/EP phone or “always-on” priority. WPS users are provided priority signaling to ensure the network is able to detect WPS invocation. WPS Priority Levels 1 through 5 are reserved for qualified and authorized NS/EP users, and those users are provided access to network resources before public callers. Priority Level 1 & 2 WPS user voice calls can degrade or preempt in-progress public communications, except for public safety emergency (911) communications, if necessary to initiate or complete critical priority communications.

d. Definitions. As used in this appendix:

1. *Authorizing agent* refers to a Federal, state, local, tribal, territorial (FSLTT) or other sponsored NS/EP entity point of contact (POC) that authenticates, evaluates and makes recommendations to DHS regarding the assignment of WPS subscriptions and priority levels (1-5).

2. *Service provider* means a Commission-licensed CMRS provider that elects to participate in WPS. The term does not include agents of such licensees.

3. *Service user* means an individual or organization (including a service provider) to whom or to which a WPS subscription and priority level assignment has been made.

4. *Emergency Communications Division (ECD)* refers to the DHS office that leads the Nation’s operable and interoperable public safety and NS/EP communications efforts. The ECD is the responsible U.S. Government organization for contracting for WPS with service providers.

5. The following terms have the same meaning as in Appendix A to Part 64:

(a) Assignment;

(b) Government;

(c) National Coordinating Center for Communications (NCC);

(d) National Security and Emergency Preparedness (NS/EP) Telecommunications Services (excluding the last sentence);

(e) Reconciliation;

(f) Revalidation;

(g) Revision; and

(h) Revocation.

### **3. RESPONSIBILITIES**

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

b. The *Executive Office of the President* will provide policy oversight of the WPS system unless and until such oversight is superseded by the war emergency powers of the President:

1. The EOP will administer the WPS system during the exercise of the emergency war powers of the President under Section 706 of the Communications Act; and

2. Establish minimum requirements for Federal Executive Branch Continuity Communications Capabilities including WPS.

c. The *Department of Homeland Security*, in administering the WPS system, will:

1. Receive, process, and evaluate requests for priority actions from authorizing agents on behalf of service users or directly from service users;
2. Assign priorities or deny requests for priority within 30 days of receipt using the priorities and qualifying criteria specified in section 5 of this appendix;
3. Convey priority assignments to the service provider and the authorizing agent;
4. Notify service users directly or authorizing agents on behalf of service users of any priority level denial, revision or revocation;
5. Revise, revalidate, reconcile, and revoke priority level assignments with service users and service providers as necessary to maintain the viability of the WPS system;
6. Contract, directly or indirectly, with CMRS providers for WPS service and for NS/EP enhancements to CMRS networks;
7. Maintain a database for WPS related information;
8. Issue new or revised procedures and instructional material supplemental to and consistent with this appendix regarding the operation, administration, and use of WPS;
9. Provide training on WPS to affected entities and individuals;
10. Enlarge the role of the Government Emergency Telecommunications Service (GETS)/WPS User Council to include oversight of the WPS system;
11. Report periodically to the Commission on the status of WPS performance, readiness and usage; and
12. Disclose content of the NS/EP WPS database only as required by law.

d. An *Authorizing agent* will:

1. Identify itself to DHS as an authorizing agent and its community of interest, e.g., Federal, state, local, tribal, territorial, or other sponsored NS/EP entity;
2. Serve as a point of contact to receive priority requests from users within its community of interest;
3. Authenticate, evaluate, and make recommendations to DHS to establish WPS subscriptions and priority level assignment requests using the priorities and qualifying criteria specified in section 5 of this appendix. As a guide, WPS authorizing agents should request the lowest priority level that is applicable and the minimum number of CMRS services required to support an NS/EP function. When appropriate, the authorizing agent will recommend approval or deny requests for WPS;
4. Ensure that information is complete and accurate before forwarding it to DHS;

5. Serve as a conduit for forwarding WPS information from DHS to the service user and vice versa. Information will include WPS requests and assignments, training, reconciliation and revalidation notifications, and other information;
6. Participate in annual reconciliation and revalidation of WPS information at the request of DHS;
7. Comply with any WPS procedures supplemental to and consistent with this appendix that are issued by DHS; and
8. Disclose content of the NS/EP WPS database [GETS-WPS Information Distribution System (GWIDS)] only to those having a need-to-know.

e. *Service users* will:

1. Determine the need for and request WPS assignments;
2. Request WPS assignments for the lowest applicable priority level necessary to provide NS/EP telecommunications management and response functions during emergency/disaster situations;
3. Initiate WPS requests through the appropriate authorizing agent. DHS will make final approval or denial of WPS requests and may direct service providers to remove WPS if appropriate. (Note: Federal, state, local, tribal, territorial and other sponsored NS/EP entities will apply for WPS through their designated authorizing agent. Other NS/EP entities will be sponsored by the Federal organization responsible for the emergency function as set forth in Executive Order 13618. If no organization is determined using these criteria, DHS/ECD will serve as the sponsoring organization.);
4. Submit all requests for changes regarding WPS assignments and priority levels to the authorizing agent;
5. Invoke WPS (e.g., use Vertical Service Code \*272) only when the user must establish communications to fulfill an NS/EP mission and conditions exist that impair access to a service provider's network resources, or as part of an organization's test and/or exercise program;
6. Participate in reconciliation and revalidation of WPS information at the request of the authorizing agent or DHS;
7. Request discontinuance of WPS when their NS/EP qualifying criteria used to obtain WPS is no longer applicable;
8. As applicable, pay service providers as billed for WPS;
9. Comply with procedures that are issued by DHS which are supplemental to and consistent with this appendix; and
10. Authorize service providers to collect and provide to DHS information regarding the user's WPS usage for the purposes of service performance and effectiveness assessment.

f. *Service providers* will provide WPS in accordance with this appendix. DHS has established functional requirements for service providers that operate GSM, UMTS, CDMA, and LTE networks within their enterprise architectures. These functional requirements are based on industry-driven, consensus-based standards from standards development organizations, e.g., ATIS. Service providers looking to offer WPS over one of these protocols will implement WPS

in a manner that complies with current DHS functional requirements. Service providers contemplating offering WPS in 5G networks – or any evolutionary/follow-on network architecture – will implement WPS in a manner that complies with DHS guidance developed specifically for those architectures. In addition, service providers will:

1. Provide WPS priority levels 1, 2, 3, 4, or 5 only upon receipt of an authorization from DHS and remove WPS for specific users at the direction of DHS;
2. Ensure that WPS system priorities supersede any other priority service offerings which may be offered by the service provider;
3. Provide DHS sufficient WPS implementation and performance data to enable DHS to assess WPS performance, readiness, and usage. (Note: DHS requires service providers to provide information for WPS calls commonly provided in the telecommunications industry, e.g., Call Detail Records (CDR) and Operational Measurements (OM). DHS acknowledges that the CDR information collected for multi-media priority services, e.g., data and video telecommunications and information services may be different from that provided for priority voice CDRs, because those future multi-media CDRs and OMs are still to be determined.);
4. Designate a point of contact to coordinate with DHS regarding WPS;
5. Participate in reconciliation and revalidation of WPS information at the request of DHS;
6. As technically and economically feasible, provide WPS roaming service for users of the same grade of WPS provided to local service users;
7. Disclose content of the NS/EP WPS database only to those having a need-to-know;
8. Comply with guidance and procedures supplemental to and consistent with this appendix that are issued by DHS;
9. Ensure that at all times a reasonable amount of spectrum is made available for public use; and
10. Notify DHS and the service user if WPS is to be discontinued as a service.

g. The *GETS/WPS User Council* will:

1. Identify and review any systemic problems associated with WPS and recommend actions to correct them or prevent their recurrence; and
2. Provide an annual report on the status of the WPS program to the NS/EP Executive Committee or any successor entity assigned responsibility for NS/EP priority services oversight.

#### **4. APPEAL**

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

## **5. WPS PRIORITY LEVELS AND QUALIFYING CRITERIA**

The following WPS priority levels and qualifying criteria apply equally to all users and will be used as a basis for all WPS assignments. There are five levels of NS/EP priorities, priority one being the highest. The WPS user population should be limited only by the bona fide role of users in conduct of an NS/EP mission and the capacity of the infrastructure to support the population of qualified WPS users with effective service while not materially compromising the infrastructure capacity for public service. The five priority levels are:

1. President of the United States, Senior National Leadership Team, Executive Leadership and Policy Makers;<sup>2</sup>
2. Disaster Response/Military Command and Control;
3. Public Health, Safety and Law Enforcement;
4. Public Services/Utilities, Public Welfare, and entities performing Critical Infrastructure Protection functions; and
5. Disaster Recovery.

These priority levels were selected to meet the needs of the emergency response community and provide priority 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 be allocated broadly to any users with a bona fide role in support of an NS/EP mission.

### **A. Priority 1: President of the United States, Senior National Leadership Team, Executive Leadership and Policy Makers.**

Priority 1 is the highest priority level in the nation, and service providers are forbidden from offering services that prioritize user traffic ahead of Priority 1 WPS users. Qualified users will be assigned priority one. Examples of those eligible include:

- (i) The President of the United States, the Secretary of Defense, the Senior National Leadership Team, 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;
- (iii) Mayors, county commissioners, and the minimum number of senior staff to support these officials; and

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<sup>2</sup> Section 5.1 of Executive Order No. 13618, “Assignment of National Security and Emergency Preparedness Communications Functions” July 6, 2012 (77 Fed. Reg. 40779, 40781-82), assigned to the Secretary of Defense the responsibility of overseeing the development, testing, implementation, and sustainment of NS/EP communications that are directly responsive to the national security needs of the President, Vice President, and senior national leadership.

(iv) A limited number of technicians who are essential to restoring the mobile service networks shall also receive this highest priority treatment.

**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 needed to manage 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 Communications, National Interagency Fire Center, Federal Coordinating Officer, National Continuity Coordinator, Director of Military Support;
- (ii) State emergency services director, National Guard and Reserve, State and Federal Damage Assessment Teams;
- (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**

Users who qualify for the Public Health, Safety, and Law Enforcement priority will be assigned priority three. Eligible for this priority are individuals who are involved in operations critical to life, property, and maintenance of law and order immediately following an event. Examples of those eligible include:

- (i) Federal law enforcement;
- (ii) State police;
- (iii) Local fire and law enforcement;
- (iv) Emergency medical service and hospital personnel;
- (v) Search and rescue team members; and
- (vi) Emergency communications coordinators.

**D. Priority 4: Public Services/Utilities, Public Welfare and entities performing Critical Infrastructure Protection or Emergency Support functions**

Users who qualify for the Public Services/Utilities, Public Welfare, Critical Infrastructure Protection, or Emergency Support Function priority will be assigned priority four. Eligible for this priority are those users whose responsibilities include managing public works, utility infrastructure damage assessments and restoration, transportation to accomplish emergency response activities, or entities from any of the critical infrastructure sectors identified in Presidential Policy Directive – 21 whose assets, systems, and networks, whether physical or

virtual, are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof. Examples of those eligible include:

- (i) Army Corps of Engineers personnel;
- (ii) Power, water and sewage and telecommunications utility personnel;
- (iii) Transportation and logistics personnel;
- (iv) Financial services personnel;
- (v) Chemical sector personnel and responders; and
- (vi) Defense industrial base personnel.

#### **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 disaster field office personnel may be included. Examples of those eligible include:

- (i) Medical recovery operations personnel;
- (ii) Detailed damage assessment teams;
- (iii) Disaster shelter coordination and management; and
- (iv) Joint Field Office support personnel.

#### **6. LIMITATIONS**

DHS may establish limitations upon the relative numbers of NS/EP services that may be assigned WPS or the total number of WPS users in a serving area. These limitations will not include users designated by the Executive Office of the President or the Federal Communications Commission, nor take precedence over laws or executive orders. Limitations established shall not be exceeded.