

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., Office of Governmentwide Policy, telephone 202-501-4469.

SUPPLEMENTARY INFORMATION: FPMR interim rule F-1 was published in the **Federal Register** on August 7, 1996, 61 FR 41003. The expiration of the interim rule was August 8, 1998. A supplement published in the **Federal Register** on May 20, 1998, 63 FR 27682, extended the expiration date through August 8, 1999. A supplement published in the **Federal Register** on July 19, 1999, 64 FR 38588, extended the expiration date through August 8, 2000. This supplement further extends the expiration date through August 8, 2001.

List of Subjects in 41 CFR Part 101-35

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

PART 101-35—[AMENDED]

Therefore the expiration date for interim rule F-1 adding 41 CFR part 101-35 published at 61 CFR 41003, August 7, 1996, and extended until August 8, 2000 at 64 FR 38588, is further extended through August 8, 2001.

Dated: August 2, 2000.

David J. Barram,

Administrator of General Services.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WT Docket No. 96-86; FCC 00-242]

Priority Access Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allows 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, the Commission adopts rules to implement its decision. Specifically, the Commission determines that it will permit, but not require, commercial mobile radio service (CMRS) providers

to offer PAS 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.

DATES: Effective October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Bert Weintraub at (202) 418-0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, or Les Smith, AMD-PERM, Office of Managing Director at (202) 418-0217. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445-12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Commission's *Second Report and Order*, FCC 00-242 in WT Docket No. 96-86, adopted on July 3, 2000, and released on July 13, 2000. The full text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445-12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231-20th Street, NW., Washington, DC 20037. The full text also may be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

Summary of the Report and Order

2. The *Second Report and Order* implements another step of the Commission's responsibility to provide in the most efficient manner access to communications infrastructures in order to respond effectively to emergency and disaster situations. It documents the Commission's belief 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 24 MHz of additional spectrum recently provided to the public safety community. The *Second Report and Order* makes clear that the Commission will allow, but will not require, CMRS providers to offer PAS to NSEP. It provides that if carriers choose to offer PAS, they will be required to adhere to uniform operating protocols concerning the number of priority levels and the priority level for particular NSEP users.

The *Second Report and Order* establishes the reasoning for the Commission's belief 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. It also concludes 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) will have responsibility for the day-to-day administration of PAS, with oversight responsibilities residing with the Commission. The Commission, however, will not require carriers to adhere to particular technical standards to implement PAS. The *Second Report and Order* further provides that a carrier's provision of PAS in accordance with Commission Rules being implemented 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 202's anti-discrimination provisions. Otherwise, without such protection from liability, carriers are unlikely to offer PAS. Appendix C of the *Second Report and Order* contains the final PAS rules.

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the proposal of the Commission's rules regarding Priority Access Service, *Second Notice of Proposed Rulemaking*, (SNPRM) FCC 97-353, 62 FR 60199 (Nov. 7, 1997). The Commission sought written public comment on the proposals in the SNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

2. 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.

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

3. 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.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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." Nationwide, as of 1992, there were approximately 275,801 small organizations. "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." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. 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.

5. *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. 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. 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 data. 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*.

6. *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. 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. The SBA has approved these regulations defining "small entity" in the context of broadband PCS auctions. 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. 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.

7. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average 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.

8. 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.

9. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. 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.

10. 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. 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.

11. *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. 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 1,000 or more employees. 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.

12. *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. 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. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 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.

13. *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. 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 definition for paging services on December 12, 1999. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Carrier Locator data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data. We do not have data specifying the number of these carriers that meet this two-tiered definition, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 137 small paging carriers that may be affected by the decisions and rules adopted in the *Second Report and Order*.

14. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of

prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

15. *Air-to-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

16. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million. The Census report does not provide more precise data.

17. *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. 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.

18. *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 four of this FRFA, all governmental entities with populations

of less than 50,000 fall within the definition of a small entity.

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

19. 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.

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

20. 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 SNPRM believe they would have to spend large amounts of capital to upgrade their systems.

21. 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. In addition, the Commission 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**.

Paperwork Reduction Analysis. The *PAS Report and Order* does not contain either a proposed or modified information collection.

List of Subjects 47 CFR Part 64

Civil defense, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.401 is revised 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;
- (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.

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