

APPENDIX A to Part 64 - Telecommunications Service  
Priority (TSP) System for National  
Security Emergency Preparedness (NSEP)

1. Purpose and Authority.

a. This appendix establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. The NSEP TSP System authorizes priority treatment to certain domestic telecommunications services (including portions of U.S. international telecommunication services provided by U.S. service vendors) for which provisioning or restoration priority (RP) levels are requested, assigned, and approved in accordance with this appendix.

b. This appendix is issued pursuant to Sections 1, 4(i), 201 through 205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201 through 205 and 303(r). These sections grant to the Federal Communications Commission (FCC) the authority over the assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunications services. Under Section 706 of the Communications Act, this authority may be superseded, and expanded to include non-common carrier telecommunication services, by the war emergency powers of the President of the United States. This appendix provides the Commission's Order to telecommunication service vendors and users to comply with policies and procedures establishing the NSEP TSP System, until such policies and procedures

are superseded by the President's war emergency powers. 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to implement responsibilities assigned in Section 6(b) of this appendix, or (2) for use in the event this appendix is superseded by the President's war emergency powers.

c. Together, this appendix and the regulations and procedures issued by the Executive Office of the President establish one uniform system of priorities for provisioning and restoration of NSEP telecommunication services both before and after invocation of the President's war emergency powers. In order that government and industry resources may be used effectively under all conditions, a single set of rules, regulations, and procedures is necessary, and they must be applied on a day-to-day basis to all NSEP services so that the priorities they establish can be implemented at once when the need arises.

\* In Sections 2(a)(2) and 2(b)(2) of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions" April 3, 1984 (49 Fed. Reg. 13471 (1984)), the President assigned to the Director, Office of Science and Technology Policy, certain NSEP telecommunication resource management responsibilities. The term "Executive Office of the President" as used in this appendix refers to the official or organization designated by the President to act on his behalf.

2. Applicability and Revocation.

a. This appendix applies to NSEP telecommunications services:

(1) For which initial or revised priority level assignments are requested pursuant to Section 8 of this appendix.

(2) Which were assigned restoration priorities under the provision of FCC Order 80-581; 81 FCC 2d 441 (1980); 47 CFR Part 64, Appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services"; and are being resubmitted for priority level assignments pursuant to Section 10 of this appendix. (Such services will retain assigned restoration priorities until a resubmission for a TSP assignment is completed or until the existing RP rules are terminated.)

b. FCC Order 80-581 will continue to apply to all other intercity, private line circuits assigned restoration priorities thereunder until the fully operating capability date of this appendix, 30 months after the initial operating capability date referred to in subsection d of this Section.

c. In addition, FCC Order, "Precedence System for Public Correspondence Services Provided by the Communications Common Carriers" (34 Fed. Reg. 17292 (1969)); (47 CFR Part 64, Appendix B), is revoked as of the effective date of this appendix.

d. The initial operating capability (IOC) date for NSEP TSP will be nine

months after release in the Federal Register of the FCC's order following review of procedures submitted by the Executive Office of the President. On this IOC date requests for priority assignments generally will be accepted only by the Executive Office of the President.

### 3. Definitions.

As used in this part:

a. Assignment means the designation of priority level(s) for a defined NSEP telecommunications service for a specified time period.

b. Audit means a quality assurance review in response to identified problems.

c. Government refers to the Federal government or any foreign, state, county, municipal or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., "Federal Government", "state government"). "Foreign government" means any sovereign empire, kingdom, state, or independent political community, including foreign diplomatic and consular establishments and coalitions or associations of governments (e.g., North Atlantic Treaty Organization (NATO), Southeast Asian Treaty Organization (SEATO), Organization of American States (OAS), and government agencies or organization (e.g., Pan American Union, International Postal Union, and International Monetary Fund)).

d. National Communications System (NCS) refers to that organization established by the President in Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 Fed. Reg. 13471 (1984).

e. National Coordinating Center (NCC) refers to the joint telecommunications industry-Federal government operation established by the National Communications System to assist in the initiation, coordination, restoration, and reconstitution of NSEP telecommunication services or facilities.

f. National Security Emergency Preparedness (NSEP) telecommunications services," or "NSEP services," means telecommunication services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories, Emergency NSEP and Essential NSEP, and are assigned priority levels pursuant to Section 9 of this appendix.

g. NSEP Treatment refers to the provisioning of a telecommunication service before others based on the provisioning priority level assigned by the Executive Office of the President.

h. Priority Action means assignment, revision, revocation, or revalidation by the Executive Office of the President of a priority level associated with an NSEP telecommunications service.

i. Priority Level means the level that may be assigned to an NSEP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunication services. Priority levels authorized by this appendix are designated (highest to lowest) "E," "1," "2," "3," "4," and "5" for provisioning and "1," "2," "3," "4," and "5" for restoration.

j. Priority Level Assignment means the priority level(s) designated for the provisioning and/or restoration of a particular NSEP telecommunications service under Section 9 of this appendix.

k. Private NSEP Telecommunications Services include non-common carrier telecommunications services including private line, virtual private line, and private switched network services.

l. Provisioning means the act of supplying telecommunications service to a user, including all associated transmission, wiring and equipment. As used herein, "provisioning" and "initiation" are synonymous and include altering the state of an existing priority service or capability.

m. Public Switched NSEP Telecommunications Services include those NSEP telecommunications services utilizing public switched networks. Such services may include both interexchange and intraexchange network facilities (e.g., switching systems, interoffice trunks and subscriber loops).

n. Reconciliation means the comparison of NSEP service information and the

resolution of identified discrepancies.

o. Restoration means the rejustification by a service user of a priority level assignment. This may result in extension by the Executive Office of the President of the expiration date associated with the priority level assignment.

p. Revalidation means the rejustification by a service user of a priority level assignment. This may result in extension by the Executive Office of the President of the expiration date associated with the priority level assignment.

q. Revision means the change of priority level assignment for an NSEP telecommunications service. This includes any extension of an existing priority level assignment to an expanded NSEP service.

r. Revocation means the elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NSEP service are revoked upon service termination.

s. Service Identification refers to the information uniquely identifying an NSEP telecommunications service to the service vendor and/or service user.

t. Service User refers to any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned pursuant to Section 8 or 9 of this appendix.

u. Service Vendor refers to any person, association, partnership,

corporation, organization, or other entity (including common carriers and government organizations) that offers to supply any telecommunications equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

v. Spare Circuits or Services refers to those not being used or contracted for by any customer.

w. Telecommunication Services means the transmission, emission, or reception of signals, signs, writing, images, sounds or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof. The term can include necessary telecommunication facilities.

x. Telecommunications Service Priority (TSP) System User refers to any individual, organization, or activity that interacts with the NSEP TSP System.

#### 4. Scope.

a. Domestic NSEP Services. The NSEP TSP System and procedures established by this appendix authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance



with this appendix:

(1) Common carrier services which are:

(a) Interstate or foreign telecommunications services.

(b) Intrastate telecommunication services inseparable from interstate or foreign telecommunications services, and intrastate telecommunication services to which priority levels are assigned pursuant to Section 9 of this appendix.

NOTE: Initially, the NSEP TSP System's applicability to public switched services is limited to (a) provisioning of such services (e.g., business, centrex, cellular, foreign exchange, Wide Area Telephone Service (WATS) and other services that the selected vendor is able to provision) and (b) restoration of services that the selected vendor is able to restore.

(2) services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to Section 9 of this appendix.

b. Control services and orderwires. The NSEP TSP System and procedures established by this appendix are not applicable to authorize priority treatment to control services or orderwires owned by a service vendor and needed for provisioning, restoration, or maintenance of other services owned by that service vendor. Such control services and orderwires shall have priority provisioning and restoration over all other telecommunication services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP

System and procedures established by this appendix are applicable to control services or orderwires leased by a service vendor.

c. Other Services. The NSEP TSP System may apply, at the discretion of and upon special arrangements by the NSEP TSP System users involved, to authorize priority treatment to the following telecommunication services:

(1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to Section 9 of this appendix.

(2) Portions of U.S. international services which are provided by foreign correspondents. (U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NSEP TSP System. If such arrangements do not exist, U.S. telecommunication service vendors should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which comes closest to meeting the procedures established in this appendix.)

## 5. Policy.

The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment, i.e., provisioning and restoration, of NSEP telecommunication services. As such, it establishes the framework for telecommunication service vendors to provision, restore, or

otherwise act on a priority basis to ensure effective NSEP telecommunication services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilizations. Attack/War, and Post-Attack/Recovery. Although priority levels normally will be assigned by the Executive Office of the President and retained by service vendors only for the current time period, they may be preassigned for the other two time periods at the request of service users who are able to identify and justify in advance, their wartime or post-attack NSEP telecommunication requirements. Absent such preassigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At all times, priority level assignments will be subject to revision by the FCC or (on an interim basis) the Executive Office of the President, based upon changing NSEP needs. No other system of telecommunication service priorities which conflicts with the NSEP TSP System is authorized.

6. Responsibilities.

a. The FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.

(2) Enforce NSEP TSP System rules and regulations, which are contained in this appendix.

(3) Act as final authority for approval, revision, or disapproval of priority

actions by the Executive Office of the President and adjudicate dispute regarding either priority actions or denials of requests for priority actions by the Executive Office of the President, until superseded by the President's war emergency powers under Section 706 of the Communications Act.

(4) Function (on a discretionary basis) as a sponsoring Federal organization.  
(See Section 6(c) below.)

b. The Executive Office of the President will:

(1) During exercise of the President's war emergency powers under Section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

(2) Until the exercise of the President's war emergency powers, administer the NSEP TSP System which includes:

(a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Department of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.

(b) Assigning, revising, revalidating, or revoking priority levels as

necessary or upon request of service users concerned, and denying requests for priority actions as necessary, using the categories and criteria specified in Section 12 of this appendix. Action on such requests will be completed within 30 days of receipt.

(c) Maintaining data on priority level assignments.

(d) Periodically forwarding to the FCC lists of priority actions by the Executive Office of the President for review and approval.

(e) Periodically initiating reconciliation.

(f) Testing and evaluating the NSEP TSP System for effectiveness.

(g) Conducting audits as necessary. Any Telecommunications Service Priority (TSP) System user may request the Executive Office of the President to conduct an audit.

(h) Issuing, subject to review by the FCC, regulations and procedures supplemental to and consistent with this appendix regarding operation and use of the NSEP TSP System.

(i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NSEP TSP System.

(j) Establishing and assisting a TSP System Oversight Committee to identify and review any problems developing in the system and recommend actions to

correct them or prevent recurrence. In addition to representatives of the Executive Office of the President, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to that Committee.

(k) Reporting at least quarterly to the FCC and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System, including:

(i) Numbers of requests processed for the various priority actions, and the priority levels assigned.

(ii) Relative percentages of services assigned to each priority level under each NSEP category and subcategory.

(iii) Any apparent serious misassignment or abuse of priority level assignments.

(iv) Any existing or developing problem.

(l) Submitting semi-annually to the FCC and TSP System Oversight Committee a summary report identifying the time and event associated with each invocation of NSEP treatment under Section 9(c) of this appendix, whether the NSEP service requirement was adequately handled, and whether any additional charges were incurred. These reports will be due by April 30th for the preceding July through December and by October 31st for the preceding January through June time periods.

(m) All reports submitted to the FCC should be directed to Chief, Domestic Services Branch, Common Carrier Bureau, Washington, D.C. 20554.

(3) Function (on a discretionary basis) as a sponsoring Federal organization.  
(See Section 6(c) below.)

c. Sponsoring Federal organizations will:

(1) Review and decide whether to sponsor foreign, state, and local government and private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Executive Office of the President. Recommendations will be based on the categories and criteria in Section 12 of this appendix.

(2) Forward notification of priority actions or denials of requests for priority actions from the Executive Office of the President to the requesting foreign, state, and local government and private industry entities.

(3) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(4) Comply with any regulations and procedures supplemental to and consistent with this appendix which are issued by the Executive Office of the President.

d. Service users will:

(1) Identify services requiring priority level assignments and request and

justify priority level assignments in accordance with this appendix and any supplemental regulations and procedures issued by the Executive Office of the President that are consistent with this appendix.

(2) Request and justify revalidation of all priority level assignments at least every three years.

(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end service operation by the service due date, and continued operation; and, for such services in the Emergency NSEP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.

(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.

(5) Pay vendors any authorized costs associated with services that are assigned priority levels.

(6) Report to vendors any failed or unusable services that are assigned priority levels.

(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise the Executive Office of the President thereof.



(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.

(9) When NSEP treatment is invoked under Section 9(c) of this appendix, within 90 days following provisioning of the service involved, forward to the National Coordinating Center (see Section 3(e) of this appendix) complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.

(10) Cooperate with the Executive Office of the President during reconciliation, revalidation, and audits.

(11) Comply with any regulations and procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President.

e. Non-federal service users, in addition to responsibilities prescribed above in Section 6(d), will obtain a sponsoring Federal organization for all requests for priority actions. If unable to find a sponsoring Federal organization, a non-federal service user may submit its request, which must include documentation of attempts made to obtain a sponsor and reasons given by the sponsor for its refusal, directly to the Executive Office of the President.

f. Service vendors will:

(1) When NSEP treatment is invoked by service users, provision NSEP telecommunication services before non-NSEP services based on priority level assignments made by the Executive Office of the President. Provisioning will require service vendors to:

(a) Allocate resources to ensure best efforts to provide NSEP services by the time required. When limited resources constrain response capability, vendors will address conflicts for resources by:

(i) Providing NSEP services in order of provisioning priority level assignment (i.e., "E", "1", "2", "3", "4", or "5");

(ii) Providing Emergency NSEP services (i.e., those assigned provisioning priority level "E") in order of receipt of the service requests;

(iii) Providing Essential NSEP services (i.e. those assigned priority levels "1", "2", "3", "4", or "5") that have the same provisioning priority level in order of service due dates; and

(iv) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.

(b) Comply with NSEP service requests by: (i) Allocating resources necessary to provide Emergency NSEP services as soon as possible, dispatching outside normal business hours when necessary;

(ii) Ensuring best efforts to meet requested service dates for Essential NSEP

services, negotiating a mutually (customer and vendor) acceptable service due date when the requested service due date cannot be met; and

(iii) Seeking National Coordinating Center (NCC) assistance as authorized under the NCC Charter (see Section 1.3, NCC Charter, dated October 9, 1985).

(2) Restore NSEP telecommunications services which suffer outage, or are reported as unusable or otherwise in need of restoration, before non-NSEP services, based on restoration priority level assignments. (NOTE: For broadband or multiple service facilities, restoration is permitted even though it might result in restoration of services assigned no or lower priority levels along with, or sometimes ahead of, some higher priority level services.) Restoration will require service vendors to restore NSEP services in order of restoration priority level assignment (i.e., "1", "2", "3", "4", "5") by:

(a) Allocating available resources to restore NSEP services as quickly as practicable, dispatching outside normal business hours to restore services assigned priority levels "1," "2," and "3" when necessary, and services assigned priority level "4" and "5" when the next business day is more than 24 hours away:

(b) Restoring NSEP services assigned the same restoration priority level based upon which can be first restored. (However, restoration actions in progress should not normally be interrupted to restore another NSEP

service assigned the same restoration priority level);

(c) Patching and/or rerouting NSEP services assigned restoration priority levels from "1" through "5," when use of patching and/or rerouting will hasten restoration;

(d) Seeking National Coordinating Center (NCC) assistance as authorized under the NCC Charter; and

(e) Referring any conflicts which cannot be resolved (to the mutual satisfaction of service vendors and users) to the Executive Office of the President for resolution.

(3) Respond to provisioning requests of customers and/or other service vendors, and to restoration priority level assignments when an NSEP service suffers an outage or is reported as unusable, by:

(a) Ensuring that vendor personnel understand their responsibilities to handle NSEP provisioning requests and to restore NSEP service; and

(b) Providing a 24-hour point-of-contact for receiving provisioning requests for Emergency NSEP services and reports of NSEP service outages or unusability.

(c) Seeking verification from an authorized entity if legitimacy of a priority level assignment or provisioning requests for an NSEP service is in doubt. However, processing of Emergency NSEP service requests will not be delayed for verification purposes.

(4) Cooperate with other service vendors involved in provisioning or restoring a portion of an NSEP service by honoring provisioning or restoration priority level assignments, or requests for assistance to provision or restore NSEP services, as detailed in Sections 6(f)(1), (2), and (3) above.

(5) All service vendors, including resale carriers, are required to ensure that service vendors supplying underlying facilities are provided information necessary to implement priority treatment of facilities that support NSEP services.

(6) Preempt, when necessary, existing services to provide an NSEP service as authorized in Section 7 or this appendix.

(7) Assist in ensuring that priority level assignments of NSEP services are accurately identified "end-to-end" by

(a) Seeking verification from an authorized Federal government entity if the legitimacy of the restoration priority level assignment is in doubt;

(b) Providing to subcontractors and/or interconnecting carriers the restoration priority level assigned to a service;

(c) Supplying, to the Executive Office of the President, when acting as a prime contractor to a service user, confirmation information regarding NSEP service completion for that portion of the service they have contracted to supply;

(d) Supplying, to the Executive Office of the President, NSEP service information for the purpose of reconciliation.

(e) Cooperating with the Executive Office of the President during reconciliation.

(f) Periodically initiating reconciliation with their subcontractors and arranging for subsequent subcontractors to cooperate in the reconciliation process.

(8) Receive compensation for costs authorized through tariffs or contracts by

(a) Provisions contained in properly filed state or federal tariffs; or

(b) Provisions of properly negotiated contracts where the carrier is not required to file tariffs.

(9) Provision or restore only the portions of services for which they have agreed to be responsible (i.e., have contracted to supply), unless the President's war emergency powers under Section 706 of the Communications Act are in effect.

(10) Cooperate with the Executive Office of the President during audits.

(11) Comply with any regulations or procedures supplemental to and consistent with this appendix that are issued by the Executive Office of the President and reviewed by the FCC.

(12) Insure that at all times a reasonable number of public switched network

services are made available for public use.

(13) Not disclose information concerning NSEP services they provide to those not having a need-to-know or might use the information for competitive advantage.

#### 7. Preemption of Existing Services.

When necessary to provision or restore NSEP services, service vendors may preempt services they provide as specified below. "User" as used in this Section means any user of a telecommunications service, including both NSEP and non-NSEP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level "E" or restore NSEP services assigned a restoration priority level from "1" through "5":

(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in this appendix and the service vendor's best judgment, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services are available for public use, based on the service vendor's best judgment, such services may be used to satisfy a requirement for provisioning or restoring NSEP services.

(2) NSEP services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP

services with higher priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

(3) Service vendors who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service vendors may, based on their best judgment, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority of "1" through "5". Preemption is not subject to the consent of the user whose service will be preempted.

#### 8. Requests for Priority Assignments.

All service users are required to submit requests for priority actions through the Executive Office of the President in the format and following the procedures prescribed by that Office.

#### 9. Assignment, Approval, Use, and Invocation of Priority Levels.

a. Assignment and Approval of Priority Levels. Priority level assignments will be based upon the categories and criteria specified in Section 12 of this appendix. A priority level assignment made by the Executive Office of the President will serve as that Office's recommendation to the FCC. Until the President's war emergency powers are invoked, priority level assignments must be approved by the FCC. However, service vendors are ordered to implement any



priority level assignments that are pending FCC approval. After invocation of the President's war emergency powers, these requirements may be superseded by other procedures issued by the Executive Office of the President.

b. Use of Priority Level Assignments.

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to vendors. Provisioning priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to vendors. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level assignments will also be transmitted to vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Executive Office of the President.

NOTE: Service vendors acting as prime contractors will accept assigned NSEP priority levels only when they are accompanied by the Executive Office of the President designated service identification, i.e., TSP Authorization Code. However, service vendors are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by the

Executive Office of the President when service vendor, user, and contracting activities are unable to communicate with either the Executive Office of the President or the FCC. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. Invocation of NSEP Treatment. To invoke NSEP treatment for the priority provisioning of an NSEP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user's organization must make a written or oral declaration to concerned service vendor(s) and the Executive Office of the President that NSEP treatment is being invoked. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of a military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental regulations or procedures issued by the Executive Office of the President. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member). Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental regulations or procedures issued by the Executive Office of the President. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental regulations or procedures issued by the Executive Office of the President.

10. Resubmission of Circuits Presently Assigned Restoration Priorities.

All circuits assigned restoration priorities must be reviewed for eligibility for initial restoration priority level assignment under the provisions of this appendix. Circuits currently assigned restoration priorities, and for which restoration priority level assignments are requested under Section 8 of this appendix, will be resubmitted to the Executive Office of the President. To resubmit such circuits, service users will comply with applicable provisions of Section 6(d) of this appendix.

11. Appeal.

Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Executive Office of the President within 30 days of notification to the service user. The appellant must use the form of format required by the Executive Office of the President and must serve the FCC with a copy of its appeal. The Executive Office of the President will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Executive Office of the President's decision on appeal. Additionally, the Executive Office of the President may appeal any FCC revisions, approvals, or disapprovals to the FCC. All appeals to the FCC must

be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on the Executive Office of the President and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to the Executive Office of the President that include a claim of new information that has not been presented before for consideration may be submitted at any time.

12. NSEP TSP System Categories, Criteria, and Priority Levels.

a. General. NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture. Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no subcategories.

(2) Priority levels of "1," "2," "3," "4," and "5" may be assigned for provisioning and/or restoration of Essential NSEP telecommunication services.

However, for Emergency NSEP telecommunications services, a priority level "E" is assigned for provisioning. A restoration priority level from "1" through "5" may be assigned if an Emergency NSEP service also qualifies for such a restoration priority level under the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP telecommunications service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized telecommunication resource managers within the Executive Office of the President based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign subpriorities to their services assigned priority levels. Receipt of and response to any such subpriorities is optional for service vendors.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. Emergency NSEP. Telecommunications services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) Criteria. To qualify under the Emergency NSEP category, the service must meet criteria directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. § 5122).

(b) State or local government activity responding to a Presidentially declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of Presidential war emergency powers under Section 706 of the Communications Act.)

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the telecommunications service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign

Intelligence Surveillance Act (50 U.S.C. § 1801 et seq. and 18 U.S.C. §§ 2511, 2518, 2519).

(2) Priority Level Assignment.

(a) Services qualifying under the Emergency NSEP category are assigned priority level "E" for provisioning.

(b) After 30 days, assignments of provisioning priority level "E" for Emergency NSEP services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

(c) For restoration, Emergency NSEP services may be assigned priority levels under the provisions applicable to Essential NSEP services (see Section 12(c)). Emergency NSEP services not otherwise qualifying for restoration priority level assignment as Essential NSEP may be assigned a restoration priority level "5" for a 30-day period. Such 30-day restoration priority level assignments will be revoked automatically unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

(c) Essential NSEP. Telecommunication services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority levels of "1", "2", "3", "4", or "5" for both provisioning and restoration, depending upon the

nature and urgency of the supported function, the impact of lack of service or of service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a telecommunications service must qualify under one of the four following subcategories: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety and Maintenance of Law and Order; or Public Welfare and Maintenance of National Economic Posture. (Note: Under emergency circumstances, Essential NSEP telecommunication services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(1) National Security Leadership. This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP telecommunication services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must be at least one of the following:

(i) Critical orderwire, or control service, supporting other NSEP functions.



(ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.

(iii) National Command Authority communications service for military command and control critical to national survival.

(iv) Intelligence communications service critical to warning of potentially catastrophic attack.

(v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned priority level "1" for provisioning and restoration during the Peace/Crisis/Mobilization time period.

(2) National Security Posture and U.S. Population Attack Warning. This subcategory covers those minimum additional telecommunication services essential to maintaining an optimum defense, diplomatic, or continuity-of-government postures before, during, and after crises situations. Such situations are those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Threat assessment and attack warning.

(ii) Conduct of diplomacy.

(iii) Collection, processing, and dissemination of intelligence.

(iv) Command and control of military forces.

(v) Military mobilization.

(vi) Continuity of Federal government before, during, and after crises situations.

(vii) Continuity of state and local government functions supporting the Federal government during and after national emergencies.

(viii) Recovery of critical national functions after crises situations.

(ix) National space operations.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned priority levels "2," "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(3) Public Health, Safety, and Maintenance of Law and Order. This subcategory covers the minimum number of telecommunication services necessary for giving civil alert to the U.S. population and maintaining law and order and the health and safety of the U.S. population in times of any national, regional, or serious local emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP functions.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Population warning (other than attack warning).

(ii) Law enforcement.

(iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).

(iv) Hospitals and distributions of medical supplies.

(v) Critical logistic functions and public utility services.

(vi) Civil air traffic control.

(vii) Military assistance to civil authorities.

(viii) Defense and protection of critical industrial facilities.

(ix) Critical weather services.

(x) Transportation to accomplish the foregoing NSEP functions.

(b) Priority Level Assignment. Service under this subcategory will normally be assigned priority levels "3," "4," or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

(4) Public Welfare and Maintenance of National Economic Posture. This subcategory covers the minimum number of telecommunications services necessary for maintaining the public welfare and national economic posture during any

national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Distribution of food and other essential supplies.

(ii) Maintenance of national monetary, credit, and financial systems.

(iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.

(iv) Control of production and distribution of strategic materials and energy supplies.

(v) Prevention and control of environmental hazards or damage.

(vi) Transportation to accomplish the foregoing NSEP functions.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned priority levels "4" or "5" for provisioning and restoration during Peacetime/Crisis/Mobilization.

d. Limitations. Priority levels will be assigned only to the minimum number of telecommunication services required to support an NSEP function. Priority levels will not normally be assigned to backup services on a continuing basis, absent additional justification, e.g., a service user specifies a requirement

for physically diverse routing or contracts for additional continuity-of-service features. The Executive Office of the President may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by the Executive Office of the President.

e. Non - NSEP services. Telecommunication services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.

#### Footnotes

<sup>1</sup> Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984 (49 Fed. Reg. 13471 (1984)), established the NCS. Section 1(e) of Executive Order No. 12472 designates the Secretary of Defense as Executive Agent for the NCS. By direction of the Executive Office of the President (EOP), the NCS member organizations are: Department of Agriculture, Central Intelligence Agency, Department of Commerce, Department of Defense, Department of Energy, Federal Emergency Management Agency, General Services Administration, Department of the Interior, Department of Justice, National Aeronautics and Space Administration, National Security Agency, National Telecommunications & Information Administration, Organization of the Joint Chiefs of Staff, Department of State, Department of Transportation, Department of Treasury, U.S. Information Agency, and the Veterans Administration. The Nuclear Regulatory Commission has been invited by the EOP and has elected to serve as an NCS member organization. The FCC, Federal Reserve System, and United States Postal Service also participate in the activities of the NCS.

<sup>2</sup> In its comments to the NPRM, NCS filed a revised proposal in response to some of the concerns discussed in the NPRM.

In this decision references are to the original proposal that constituted the appendix to the NPRM. References to NCS' revised proposal are indicated in brackets where appropriate.

<sup>3</sup> Comments were filed by Aeronautical Radio, Inc. (Arinc), Alarm Industry Communications Committee (AICC), American Telephone and Telegraph Company (AT&T), Ameritech Operating Companies (Ameritech), Association of American Railroads (AAR), Bell Atlantic Telephone Companies (Bell Atlantic), Bell Communications Research, Inc. (Bellcore), BellSouth Corporation (BellSouth), Cellular Telecommunications Industry Association (CTIA), Centel Corporation (Centel), Federal Executive Agencies (DoD or NCS), GTE Service Corporation (GTE), Nickolaus E. Leggett (Leggett), McCaw Cellular Communications, Inc. (McCaw), MCI Telecommunications Corporation (MCI), The Mountain States Telephone and Telegraph Company, Northwestern Bell Company and Pacific Northwest Bell Telephone Company (collectively, US West), National Association of Regulatory Utility Commissioners (NARUC), National Telephone Cooperative Association (NTCA), NYNEX Telephone Companies (NYNEX), Pacific Bell and Nevada Bell (collectively, Pacific Bell), Southwestern Bell Telephone Company (Southwestern Bell), Telocator Network of America (Telocator), Teltec Saving Communications Co. (Teltec), United States Telephone Association (USTA) and Utilities Telecommunications Council (UTC). Reply comments were filed by AT&T, Bellcore, BellSouth, CTIA, Cincinnati Bell Telephone (CBT), GTE, McCaw, MCI, NCS, Pacific Bell, Southwestern Bell, Telocator, USTA and US West.

<sup>4</sup> A priority System for the Use and Restoration of Leased Intercity Private Line Services, 6 F.C.C. 2d 344 (1967). These rules have been amended on three occasions. See 22 F.C.C. 2d 159 (1970); 77 F.C.C. 2d 114 (1980); 81 F.C.C. 2d 441 (1980). See also Declaratory Ruling, 104 FCC 2d 945 (1986), recon., FCC 86-592 (Jan. 8, 1987).

<sup>5</sup> Section 706, 47 U.S.C. § 706, provides, in part, that during war the President is authorized "to direct that such communications as in his judgment may be essential to the national defense and security shall have preference or priority with any carrier subject to this Act." The Executive Branch has promulgated rules parallel to the Commission's to accommodate the transfer of regulatory

authority over the RP system to the President in the event Section 706 is invoked.

<sup>6</sup> Under the current rules, federal and foreign government users' requests are submitted to the NCS; state and local government and private industry requests are submitted directly to the FCC.

<sup>7</sup> As used in this proceeding, the word "provisioning" refers to the initiation of a new service or line as opposed to the restoration of an existing service or line.

<sup>8</sup> NCS noted that as technology is changing it is becoming infeasible to physically identify specific circuits in a carrier's office and associate them with specific restoration priorities. The TSP system is designed to alleviate this problem by assigning priorities to services, and even users, when appropriate.

<sup>9</sup> The petition stated that in September of 1984, in light of these problems and the vast changes that have occurred in the telecommunications industry over the last five years, the Manager of NCS directed action to update and modernize the RP system. NCS asked each industry entity represented on the National Security Telecommunications Advisory Committee (NSTAC) to provide advice regarding the matters that needed to be addressed in provisioning and restoring NSEP services. The NSTAC Industry Executive Subcommittee (IES) subsequently established a TSP Task Force to assist the government in the development of the TSP system. NCS, in conjunction with the TSP Task Force, began work on drafting TSP System baseline requirements. The requirements were distributed to the telecommunications industry and the NCS Council of Representatives for review and comment and were approved by NSTAC's IES and the NCS Committee of Principals in June 1985. Next, a TSP System Concept, which was to describe the TSP System in sufficient detail to permit its subsequent design and implementation, and was drafted and approved by the NCS Committee of Principals and NSTAC in the spring of 1986. Subsequently, work was begun on the petition for Rule Making together with detailed procedures for implementing and operating the TSP System.

<sup>10</sup> *NARUC v. FCC*, 746 F.2d 1492, 1498-99 (D.C. Cir. 1984); *California v. FCC*, 567 F.2d 84, 86 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1010 (1978); *North Carolina Util. Comm'n v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S.

1027 (1976) (NCUC I); North Carolina Util. Comm'n v. FCC 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (NCUC II). See also C&P Tel. Co. of Maryland, 2 FCC Rcd 3528 (1987).

<sup>11</sup> In the NPRM, at para. 34, we discussed the argument raised by Bell Atlantic that the proposed rules would bar the restoration of any facility not a part of the TSP system, even if it were an important local service such as 911, prior to the restoration of all TSP services. NCS noted that Section 5 of the rules bars only conflicting priority systems. In response to the NPRM, Centel suggests that 911 and other vital local services be assigned priority status if they are not otherwise part of TSP, and NCS recommends that 911 service be given restoration priority status. We believe that the policy set forth herein, in conjunction with the language and intent of Section 5, offers adequate guidance on this matter.

<sup>12</sup> In a large scale failure it is possible that portions of the PSN will be restored before some NSEP priority private line services. We believe this kind of occurrence may be occasionally unavoidable and we would not rule now that such a result is *per se* not compliant with the TSP rules. See discussion, *infra*, on preemption.

<sup>13</sup> The term "sufficient number" in Section [7(a)(1)] is open-ended and may in some cases result in near normal PSN service or, in other cases, very few available PSN lines. At this time we will rely on the good faith of carriers to provide, to the extent possible, a reasonably sufficient array of PSN circuits. The change from "will remain" to "are" in Section [7(a)(1)] assures that consideration is given to PSN circuits in the event all circuits in an area are down. (Of course, NSEP priorities will take precedence).

<sup>14</sup> See existing Part 64 rules and Declaratory Ruling, 104 F.C.C. 2d 945 (1986).

<sup>15</sup> In this order we will delegate authority to the Chief, Common Carrier Bureau to decide the matter of disposition of the filing(s) to the Commission and to resolve, in the first instance, all related substantive and procedural issues. See para. 133, *infra*. See also note 41, *infra*.

<sup>16</sup> NCS cites *Burdick v. Southwestern Bell Telephone Company*, 9 Kan. App. 2d 182, 675 P.2d 922 (1984), reaching an opposite result on intent.



<sup>17</sup> In Declaratory Ruling, *supra*, at para. 23, we stated that

The procedures appear reasonable and it is important for national security reasons that carriers know that actions they take to meet NSEP requirements should not later be subject to potential liability. Accordingly, we find that carrier actions in response to requests made in accordance with the Procedures Manual are *prima facie* lawful. Any party challenging discriminatory treatment occasioned by a request made pursuant to the Manual would have a very heavy burden to demonstrate its unreasonableness.

<sup>18</sup> While consent will not be mandated, we would expect notification as a matter of normal business practice, where practicable. See Section [7(a)(3)].

<sup>19</sup> Our alternative language at para. 29 of the NPRM was:

(7) Receive compensation for costs through  
(a) Provisions contained in properly filed tariffs; or  
(b) Provisions of properly negotiated contracts where the carrier is not required to file tariffs.

<sup>20</sup> Moreover, in each case of TSP invocation a different set of general ratepayers may benefit and in many cases persons or entities that are not general ratepayers may benefit, such as private line service subscribers or even non-telephone subscribers.

<sup>21</sup> Section [3(t)] reads: *Service User* refers to any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned pursuant to Section 8 or 9 of this appendix.

<sup>22</sup> See Section 1(b) of TSP rules. We note, as did UTC in its comments, that Sections 3(k), 3(t), and 4(c) refer to services which are not strictly common carrier in nature and which, therefore, are not subject to Title II of the Act or the TSP rules. However, Section [4(a)(2), amended] provides that the scope of TSP includes

Services which are provided by government and/or noncommon carriers and [which] are interconnected to common carrier services assigned a priority level pursuant to section 9 of this appendix.

The extent to which non-common carrier services, systems or facilities are subject to or protected by pre-706 TSP

System rules is limited by the degree to which the common carrier vendor user uses those services, systems or facilities to provide its common carrier services, systems, and facilities. This does not preclude NCS from using an alternative interpretation in discussions or negotiations with parties not subject to Title II of the Act to establish analogous provisioning or restoration priorities. See, e.g., AAR Comments at pp. 3 and 6. This also resolves the question raised by AT&T concerning the Commission's authority over equipment vendors who sell equipment to others for direct connection to the network.

<sup>23</sup> Arinc also urges that the Commission not permit NCS to downgrade priorities already approved under RP. We reject this request. A critical reason for NCS proposing TSP is the skewed distribution of RP priority assignments. With TSP should come a review of all assignments, some of which may be upgraded or downgraded.

<sup>24</sup> Since NCS recommendations are considered interim assignments pending FCC review, and assignees (users or sponsoring agencies) are authorized to proceed on the basis of receipt of the interim assignments, FCC review time is not included in the 30 day limit. In other words, the 30 day requirement is solely applicable to NCS' response to priority requests.

<sup>25</sup> Upon sufficient showing, the 30 day period can be waived.

<sup>26</sup> In order to expedite resolution of disputes and other matters involving TSP that are submitted to the Commission, we will delegate all necessary authority to the Chief, Common Carrier Bureau to discharge, among other matters, the Commission's responsibilities under Section 6.

<sup>27</sup> The FCC Form 915 has been eliminated. Any new form will be developed in conjunction with NCS and the Office of Management and Budget.

<sup>28</sup> For example, if a service user files an appeal it must provide a copy to the service provider.

<sup>29</sup> Control services and orderwires as used in TSP refer to internal means used by carriers for network management purposes. Similar terms, not related to matters associated with this proceeding, have been used with regard to control channels for specialized data services such as ISDN.

<sup>30</sup> Resellers may secure special circuits, such as control or orderwire services, in order to manage the services and facilities they offer users. They are not responsible for

the integrity of the underlying physical plant and so would not benefit from TSP exemption for their leased internal management facilities or services. Their leased orderwire and control services could qualify, however, for priority treatment under the TSP System rules. Accordingly, the last sentence of Section 4(b) will be adopted as proposed.

<sup>31</sup> McCaw's revised Section 8 would read:

Certain telecommunications service vendors do not own any or all of the transmission facilities used to provide telecommunications services. They rely instead, in whole or in part, on facilities leased from other telecommunications vendors. These resale or interconnecting carriers may provide services that qualify for priority level assignment. In order for the priority level assignment to have practical value, it must also apply to the service leased by the resale or interconnecting carrier from another telecommunications service vendor, such that the highest priority level assigned to any service using the underlying facility will determine that facility's priority level assignment. Resale and interconnecting carriers must also ensure that telecommunications service vendors supplying underlying facilities are provided information necessary to implement any priority levels assigned to resale or interconnecting carrier services.

<sup>32</sup> While TSP focuses on services, it is facilities that are always actually provisioned or restored.

<sup>33</sup> "Non-disclosure" as a standard business practice would serve as a defense against an assertion of abuse.

<sup>34</sup> This information includes identification, priority, contracting activity and contract identification data which must be received by EOP directly from the prime service vendor.

<sup>35</sup> It has been suggested that charges incurred as a result of reconciliation and audits be borne by NCS as the cost causative user. See discussion, *supra*, concerning costs.

<sup>36</sup> It has been informally suggested that a different term be used, such as investigation, reconciliation procedure, problem review, etc. In view of our discussion herein, we believe the term audit is appropriate.

<sup>37</sup> The definition of "revalidation" in Section 3(o)[3(p)] in conjunction with the clarification of "audit" should alleviate Ameritech's concern regarding improper changing circuit designations through the recordkeeping process.

<sup>38</sup> NCS' changes in Sections 6(c)(3), 6(d)(10) and 6(f)(6)(e) [6(f)(7)(e)] as well as its addition of Section [6(f)(7)(f)] to require vendors to track their contractors' records, respond to suggestions and concerns expressed by AT&T, GTE, McCaw regarding reconciliation responsibilities. Further in response to McCaw, we interpret Section [6(f)(7)(f)] to require contractors, in turn, to be primarily responsible for their subcontractors' reconciliation activities. This institutionalized burden flow-through represents the most expedient means of assuring that reconciliation is conducted correctly by each succeeding subcontractor. We will modify the language of Section [6(f)(7)(f)] accordingly.

<sup>39</sup> NCS has indicated that it will maintain its MIS database of priority level assignments. See Section 6(b)(2)(c). Hence, the concern expressed by Pacific Bell to assure a source of information is moot. We are also satisfied that NCS' statement that in most cases verification will be obtained from EOP is responsive to Pacific Bell's concern regarding the identity of "authorized entity" in Sections 6(f)(3)(c) and 6(f)(6)(a) [6(f)(7)(a)].

<sup>40</sup> Southwestern Bell's suggestion to include a definition of "reconciliation" has been adopted by NCS. See Section 3[n].

<sup>41</sup> There are several references in the pleadings to the issuance of procedural guidelines by NCS. The guidelines are called, variously, vendor operating procedures, operational procedures, operational guidelines, operations manual, procedural guidelines, etc. All of these refer to the procedural guidelines that are currently under preparation by NCS for government and vendors. Our analysis applies equally to both, and for purposes of this discussion there is no decisional significance to any of the terms used for NCS' procedural guidelines, since, in whole or part, they will appear before us for review. Proposed Directive 3-1 is subsumed in this term as well.

<sup>42</sup> NCS apparently based its position in part on its predicate argument that the Commission should delegate EOP

authority to develop rules that implement TSP. See paras. 34-35, *supra*.

<sup>43</sup> The difference between the adoption date and Federal Register date will likely be only a matter of weeks. The Commission's decision is effective 30 days following the Federal Register date. (The Federal Register date also constitutes the official release date. If there is no Federal Register publication, the official release date is the day the order is released to the public at the Commission's main offices, 1919 M Street, N.W., Washington, D.C.). We also note that RP assignments may be issued until the IOC date, in order to preserve the availability of a priority procedure until TSP is initiated. This is codified in Section 2 of the TSP rules. With effectuation of the TSP rules (IOC date), however, the RP rules and the precedence rules will be deleted from the Code of Federal Regulations. Nevertheless, the extent to which RP remains viable, i.e., until the FOC date, will be by reference through Section 2 of the rules.

<sup>44</sup> Moreover, application of RP to cellular services would require a Rule Making proceeding, resolution of which would probably not occur prior to TSP IOC. The TSP NPRM did not contemplate any interim changes to the existing RP rules.

<sup>45</sup> Of course, the common carrier component may be subject to TSP if the common carrier provider of that component complies with the TSP procedures.

<sup>46</sup> Private system owners may be subject to antitrust action if they provide priority treatment to certain users. Collateral compliance by private users with TSP standards and procedures may not necessarily provide them with a defense to antitrust allegations.

<sup>47</sup> Section 0.314(g) of the Commission's rules delegates authority to the Engineer in Charge (EIC) at each installation to act on and make determinations on behalf of the Commission regarding requests for reassignment of restoration priority levels and assignment of new restoration priorities concerning the restoration in emergencies of common carrier-provided intercity private line service pursuant to Appendix A of Part 64 of the Commission's rules when, for any reason, the Commission's ROP processing staff cannot be contacted. This provision was predicated on the RP system, which involved assignment of priorities by either the Commission or NCS. The TSP

System, however, essentially reserves initial assignment (or reassignment) of all priorities to NCS. A general delegation to the EIC to issue priorities under TSP potentially could conflict with the process established under TSP. On the other hand, there may be exceptional circumstances under which an EIC, on-site and with authority to alter or grant priorities, would serve the purposes of TSP and the public interest. Those circumstances should be limited to cases where, in the judgment of the EIC, after reasonable effort neither NCS nor the logistics warrant immediate action. In any such case, the NCS and the Commission must be notified as soon as possible by the EIC, and the carrier involved must expeditiously seek priority in accordance with normal TSP procedures. We will amend Section 0.314(g) accordingly.