

§ 202.0

§ 202.0 Objectives.

(a) During, or in anticipation of, a non-wartime emergency or natural disaster, a telecommunications capacity must exist to provide temporary telecommunications service to State and local government officials and other persons deemed appropriate by the President.

(b) In the event of a general war and attack upon the Nation, a national telecommunications capability must exist that will support telecommunications requirements with respect to national security, survival and recovery. The development of survivable telecommunications to support essential functions (including an emergency broadcasting system), and technical compatibility of signaling methods, transmission modes, switching facilities, and terminal devices to permit exchange of communications over the surviving media of all systems, government or commercial, are crucial elements of such a national capability. In addition, a survivable national telecommunications management structure is necessary to manage initiation, coordination and restoration of telecommunications services. The management structure must include the following:

(1) Legal authority for telecommunications management.

(2) A control mechanism to manage the initiation, coordination and restoration of telecommunications services.

(3) Procedures to ensure timely damage assessment and allocation of residual resources and controlled restoration of services based on national policy/direction.

(4) The capability to execute a telecommunications recovery plan based on national policy/guidance.

(c) Notwithstanding any provision regarding NS/EP Planning and Execution, nothing in this part shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended, or under any other law, or

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any function vested by law in the Federal Communications Commission.

§ 202.1 Policies.

(a) The telecommunications resources of the Nation will be available for government use during crises and emergencies, wartime and non-wartime, and to satisfy the needs of the public welfare and safety.

(b) The National Plan for Telecommunications Support in Non-Wartime Emergencies provides procedures for planning and using National telecommunications assets and resources in support of non-wartime emergencies, including those covered by the Disaster Relief Act of 1974, in Presidentially declared Emergencies and Major Disasters, Extraordinary Situations, and other emergencies.

(c) An NS/EP Telecommunications Service Priority (TSP) System will provide procedures to authorize priority treatment for the provisioning and restoration of NS/EP telecommunications services for wartime and non-wartime emergencies.

(d) In wartime emergencies, facilities management will remain decentralized to the extent feasible to assure continued flexibility of operational response to critical needs, subject to the management direction and overriding authority of those officials delegated to act for and with the consent of the central point of authority within the Federal Government.

(1) Federally owned, leased, and/or operated telecommunications facilities, systems, and networks will be managed during such an emergency by the agency normally controlling the facility, system, or network except that all operations will be subject to the management direction and authority of the officials delegated overall management responsibility for Federal Government systems.

(2) Facilities other than those of the Federal Government, with the exception of radio stations in the Aviation Services and certain classes of radio stations in the Maritime Services, will be managed by the authorized common carrier or other person owning and operating such facilities subject to Federal Communications Commission

(FCC) guidance and direction or in accordance with State or local plans if not subject to FCC jurisdiction.

(3) Radio stations in the Aviation Services and those aboard vessels in the Maritime Service will be subject to the control of the Secretary of Defense during a national emergency.

(e) The Director of the Office of Science and Technology Policy is the single point of authority within the Federal Government for the wartime emergency functions under section 706 of the Communications Act (47 U.S.C. 606) with respect to the allocation and use of surviving resources in support of national objectives enunciated by the President. Authority may be redelegated as necessary and when it can be exercised within boundaries established by Presidential authority.

(f) Radio frequency utilization during a wartime emergency will be in accordance with authorizations, assignments, and mobilization plans in existence at the onset of the emergency. Subject to the overriding control of the Director, OSTP, under the President's War Emergency Powers, spectrum management regarding the authorization and assignment of radio frequencies will be made by the National Telecommunications and Information Administration (NTIA) for the Federal Government, and the Director, OSTP, through the FCC, for all other entities subject to the Commission's jurisdiction. Radio stations are subject to closure if considered a threat to national security.

(g) Section 706 of the Communications Act of 1934, as amended, confers authority to the President in the matter of suspension of all rules and regulations pertaining to the use and operation of telecommunications facilities, public or private during wartime emergencies.

§ 202.2 Criteria and guidance.

NS/EP planning in government and industry with respect to effective conservation and use of surviving telecommunications resources in a disaster, emergency or postattack period must provide for orderly and uninhibited restoration of services by the carriers and authoritative control of services allocation which will assure that

priority will be afforded the most critical needs of government and the private sector with respect to these objectives.

(a) The preservation of the integrity of characteristics and capabilities of the Nation's telecommunications systems and networks during wartime or non-wartime emergencies is of the utmost importance. This can best be accomplished by centralized policy development, planning, and broad direction. Detailed operations management will remain decentralized in order to retain flexibility in the use of individual systems in responding to the needs of national security, survival and recovery. Each Federal agency responsible for telecommunications systems operations, and the carriers, are responsible for planning with respect to emergency operations. Guidance in this matter has been issued from a number of sources and contained in:

(1) Annex C-XI (Telecommunications), Federal Emergency Plan D (Classified).

(2) National Plan for Telecommunications Support in Non-wartime Emergencies.

(3) The National Communications System Management Plan for Annex C-XI (Telecommunications) Federal Emergency Plan D (Classified).

(b) The continuity of essential communications services will be maintained through the use of controls and operational procedures to assure that priority is given to vital services. NS/EP telecommunications services entail policies, procedures and responsibilities as described in parts 211 and 213 of this chapter.

(c) The Nation's telecommunications systems facilities are vulnerable to physical and radiological damage. Planning factors with respect to the resumption of services in a disaster or postattack period must consider the probable loss of facilities which formerly provided direct and/or alternate intercity services among surviving population centers. Since surviving areas and population centers would serve as the sources of support to crippled areas of the Nation, the resumption of services between and among surviving metropolitan areas will be a high priority with the carriers.

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§ 202.3 Plans preparation and execution.

Federal authority, substantive provisions, and functional responsibilities of the executive office are summarized in the following:

(a) *Wartime emergency functions.* (1) The Assistant to the President for National Security Affairs (the National Security Advisor) shall provide general policy direction for the exercise of the war power functions of the President under section 706 of the Communications Act (47 U.S.C. 606), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under section 706(a), (c)–(e) of the Communications Act (47 U.S.C. 606), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) *Non-wartime emergency functions.* (1) The National Security Advisor shall:

(i) Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal Government for the identification, allocation and use of the Nation's telecommunications resources by the Federal Government, and by State and local governments, private industry and volunteer organizations, upon request, to the extent practicable and otherwise consistent with the law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(ii) Provide policy oversight and direction of the activities of the NCS.

(2) The Director of the Office of Science and Technology Policy shall:

(i) Provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management or allocation of telecommunications resources during those crises or emergencies in which the exercise of

the President's war power functions is not required or permitted by law.

(ii) Establish a Joint Telecommunications Resources Board (JTRB) to assist the Director in providing information, advice, guidance and assistance, as appropriate, to the President and to those Federal Departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(c) *Planning and oversight responsibilities.* (1) The National Security Advisor shall advise and assist the President in:

(i) Coordination and development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources to meet national security and emergency preparedness telecommunications requirements.

(ii) Providing policy oversight and direction of the activities of the NCS; and

(iii) Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by Executive Order 12472.

(2) The Director of the Office of Science and Technology Policy (or a designee) shall:

(i) Advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security and emergency preparedness telecommunications functions.

(ii) Certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities under all conditions or crisis or emergency.

(3) The National Security Advisor, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the

NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(4) The Director of the Office of Management and Budget, in consultation with the National Security Advisor and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies.

(d) Performance of essential government and public services during a national emergency, as defined in section 706 of the Communications Act (47 U.S.C. 606), as amended, will require a means for communications between government and the private sector, communications essential to operations of elements of the national economy, and communications for national defense and civil defense purposes. The needs of the private sector and those of government should be properly coordinated to ensure that responses to each of these communities of interest, government and private sector, are appropriately balanced. For this reason, with regard to wartime emergency functions, the Director, Office of Science and Technology Policy (OSTP), has delegated the responsibility for the private sector to the Chairman, Federal Communications Commission (FCC), and responsibility for the needs of government to the Executive Agent, National Communications System (NCS). A parity of level of authority of these officials is established. They will coordinate and negotiate telecommunications conflicts with respect to the allocation and use of the Nation's telecommunications resources, reporting to the Director on unresolved issues which are within the domain of their respective responsibilities and authorities.

(e) In order to support the NS/EP telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances, including those of crisis or emergency, the following functions shall be performed:

(1) The Secretary of Commerce, for all conditions of crisis or emergency, shall:

(i) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(ii) Develop, maintain and publish policy, plans and procedures for the control and assignment of radio frequencies, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum allocated to the Federal Government.

(2) The Director of the Federal Emergency Management Agency shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities.

(ii) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their NS/EP telecommunications requirements.

(iii) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive of and consistent with the planning of the Federal Government.

(iv) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(v) Act as sponsor for State and local governments' requests for telecommunications service priority (TSP) in accordance with the Federal Communications Commission's regulations and with procedures in approved NCS issuances.

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(3) The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications Service, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security and emergency preparedness responsibilities.

(4) The Secretary of Defense shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute responsibilities assigned by Executive Order 12333, December 4, 1981 (46 FR 59941; 3 CFR, 1981 Comp., p. 200).

(ii) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(iii) Provide protection for interstate or foreign communication as directed by the President when the public interest requires under section 706(b) of the Communications Act (47 U.S.C. 606(b)).

(iv) In consultation with the Secretary of Transportation, develop policy, plans and procedures adequate to enable a transfer of control over radio stations in the Aviation Service and aboard vessels in the Maritime Service to the Department of Defense during a national emergency pursuant to § 202.1(b)(3) of these regulations.

(5) The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the anti-trust laws, all policies, plans or procedures developed pursuant to these regulations.

(6) The Director, Central Intelligence Agency, shall plan for and provide, operate and maintain telecommunications services adequate to support the Agency's assigned responsibilities, including the dissemination of intelligence within the Federal government.

(7) Except as otherwise assigned pursuant to these regulations, the Administrator of General Services shall en-

sure that Federally owned or managed domestic communications facilities and services meet the NS/EP requirements of Federal civilian departments, agencies and entities. The Administrator shall perform these responsibilities consistent with policy guidance of the Director of the Office of Management and Budget.

(8) The Secretary of the Interior shall develop and execute emergency plans with respect to the administration of telecommunications activities in the territorial and trusteeship areas under the jurisdiction of the United States and within the responsibility previously assigned to him by appropriate laws and other authority.

(9) The Federal Communications Commission, consistent with its statutory authority, shall:

(i) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security and emergency preparedness telecommunications services to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity.

(ii) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions.

(iii) Develop policy, plans and procedures adequate to execute the responsibilities assigned pursuant to these regulations under all conditions of crisis or emergency.

(iv) Consult as appropriate with authorized officials of the NCS to ensure continued coordination of their respective NCS activities.

(10) The National Communications System (comprised of the Executive Agent for the NCS, the NCS Committee of Principals, and the Manager, NCS)