

**THE PRESIDENT'S
NATIONAL SECURITY TELECOMMUNICATIONS
ADVISORY COMMITTEE**



***LEGISLATIVE AND REGULATORY
GROUP REPORT***

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EXECUTIVE SUMMARY

The National Security Telecommunications Advisory Committee's (NSTAC) Legislative and Regulatory Group (LRG) is charged with examining legislative, regulatory, and judicial actions for their possible impact on national security and emergency preparedness (NS/EP) telecommunications. Following NSTAC XXI, the LRG was tasked with addressing several key issues, including identifying and assessing the legal and regulatory obstacles to sharing outage and intrusion information. To that end, the LRG determined that identification and discussion of existing and proposed NS/EP-related outage and intrusion information sharing channels could provide additional insights to assist the Industry Executive Subcommittee (IES) in assessing critical information sharing issues, particularly those associated with the implementation of Presidential Decision Directive (PDD) 63 . To better understand the information sharing environment and the entities involved in the process, the LRG developed a report to illustrate the entities with whom telecommunications companies share outage and intrusion information, and to review the potential legal barriers that could inhibit the information sharing process.

The Fiscal Year 1999 Omnibus Spending Law (Public Law 105-277) passed in November 1998, includes a provision that directs the Office of Management and Budget (OMB) to revise Circular A-110 to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act (FOIA). At a practical level, Congress is requiring Federal agencies to proactively collect all data that meets the criteria of the legislation. As a result, information voluntarily provided by the telecommunications and/or information industry relating to protecting critical infrastructures (e.g., information pursuant to PDD-63), as well as background data supporting the voluntarily provided information, could be subject to FOIA requests. Thus, the proposed revision to Circular A-110 could impact information sharing between industry and Government by increasing industry concerns regarding the release of sensitive threat and vulnerability data. The LRG initiated review of the proposed revision and is assessing options for safeguarding against potentially increased exposure of the telecommunications and information industries to FOIA.

Per a request by the President's Council on Y2K Conversion, the IES tasked the LRG to look at relevant Year 2000 (Y2K) legal and regulatory issues, particularly the success of the Y2K Readiness and Disclosure Act in being a catalyst to information sharing within industry. The LRG sent a letter to the NSTAC's IES representatives seeking comments on the Y2K Act and any additional legislative or regulatory actions that could facilitate Y2K-related information sharing and remediation. While a limited number of companies responded and no consensus was achieved, valuable information was received from the participating NSTAC companies. A non-attributional summary of the responses was shared with the Council in February 1999.

Also, the IES charged the LRG to identify the barriers to the adoption of the wireless telecommunications priority access rules by the Federal Communications Commission (FCC) and to evaluate NSTAC's level of continued support of the Cellular Priority Access Service

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(CPAS). Although actions to establish CPAS are still under advisement by the FCC, the Commission has taken no final action on it since issuing its second Notice of Proposed Rulemaking (NPRM) on Public Safety which contained a section on priority access (FCC WT Docket No. 96-86) in October 1997. The LRG learned that, due to a number of factors, the NCS was addressing a new approach for providing wireless priority access based on channel reservation rather than the technology originally proposed for CPAS. The LRG will continue to monitor the implementation of a wireless priority access service (e.g., CPAS) as it evolves.

During the current NSTAC cycle, the LRG began to review convergence issues arising from legislative, regulatory, and judicial actions affecting existing and future public networks and their potential impact on NS/EP telecommunications. The LRG's preliminary analysis of convergence has revealed no significant implications for NS/EP telecommunications. Given the dynamic nature of the industry and the evolving regulatory environment, the LRG will continue monitoring telecommunications convergence issues for their potential effect on NS/EP telecommunications.

The LRG also continued to track the status of the Network Reliability and Interoperability Council's (NRIC) National Services recommendations. During the current NSTAC cycle, no FCC action to define National Services took place. Until such action occurs, the LRG's work in this area cannot progress further and will therefore remain on hold. The LRG will continue to monitor and contribute to the activities of the FCC (e.g., NRIC) and relevant industry organizations related to National Services planning and implementation.

1.0 INTRODUCTION

The dynamic pace of the telecommunications industry requires that policies and regulations be continually updated. As technology changes, Government must adapt. The Industry Executive Subcommittee (IES) charged the Legislative and Regulatory Group (LRG) to examine legislative, regulatory, and judicial actions for their possible impact on national security and emergency preparedness (NS/EP) telecommunications. Given that charge, implementation of the Telecommunications Act of 1996 (Telecom Act) was a major focus of the LRG's efforts. However, because many relevant Telecom Act issues currently are being considered by the courts (e.g., interconnection agreements, Regional Bell Operating Companies' applications for the provision of new services), the LRG has shifted its focus to address more critical and timely legislative and regulatory issues (e.g., Year 2000 [Y2K] technology problem, telecommunications outage and intrusion information sharing, and network convergence). The NSTAC XXII LRG members are listed in Annex A.

2.0 CHARGE

Following NSTAC XXI, the IES charged the LRG to—

- Work with other NSTAC subgroups as appropriate to help identify and assess legal and regulatory obstacles to information sharing.
- Assess legislative and regulatory activities associated with Y2K, as appropriate.
- Identify barriers to the passage of wireless telecommunications priority access rules (e.g., cost recovery) by the Federal Communications Commission (FCC) and evaluate NSTAC's level of continued support of Cellular Priority Access Service (CPAS).
- Analyze the change, complexity, and convergence issues arising from legislative, regulatory, and judicial actions affecting the existing public network and driving the next-generation public network for their potential impact on NS/EP telecommunications (e.g., continued implementation of the Telecom Act and Internet issues).
- Continue to assess Government and telecommunications industry actions regarding National Services for their potential effect on NS/EP telecommunications.

3.0 RESULTS

3.1 Telecommunications Outage and Intrusion Information Sharing

For some time, the NS/EP telecommunications community has recognized information sharing between industry and Government as a critical factor in responding to outages and intrusions into networks. Following NSTAC XXI, the LRG was charged to work with other NSTAC groups as appropriate to help identify and assess legal and regulatory obstacles to sharing outage and intrusion information. To that end, the LRG determined that identification and discussion of existing and proposed NS/EP-related outage and intrusion information sharing channels could provide additional insights to assist the IES in assessing critical information sharing issues, particularly those associated with the implementation of Presidential Decision Directive 63 (PDD-63).

3.1.1 Analysis

To better understand the information sharing environment and the entities involved in the process, the LRG developed a report to:

- illustrate the entities with whom telecommunications companies share outage and intrusion information, and
- review the potential legal barriers that could inhibit the information sharing process.

The existing and proposed entities examined by the report include:

- Agora
- Computer Emergency Response Team (CERT) Coordination Center
- Federal Bureau of Investigation (FBI)
- Federal Communications Commission
- Forum of Incident Response and Security Teams (FIRST)
- Information and Communications Sector Liaison Official (SLO)/Sector Coordinator
- Information Sharing and Analysis Centers (ISAC)
- National Coordinating Center for Telecommunications (NCC)
- National Infrastructure Protection Center (NIPC)
- Network Security Information Exchanges (NSIE).

In addition, the report examined information sharing within trade associations and described several individual industry trade associations as examples.

The document also addressed potential legal barriers that might affect the sharing of information between telecommunications companies and the entities examined. The LRG used the legal

impediments identified by the President's Commission on Critical Infrastructure Protection (PCCIP) in its report, *Critical Foundations: Protecting America's Infrastructures*, to explain some of the legal barriers that may influence the amount or type of information that is shared by companies. The LRG's Telecommunications Outage and Intrusion Information Sharing Report is attached as Annex B.

3.1.2 Conclusions

By identifying and discussing the industry and Government forums that participate in information sharing initiatives, the LRG observed that information sharing—

- occurs in a number of forums
- may be affected by legal barriers
- is mostly voluntary
- is dependent on receiving a benefit when voluntarily shared
- is based on trusted relationships
- may be dependent on the company and individual participant, and
- is content-focused.

The Telecommunications Outage and Intrusion Information Sharing Report is intended for use by other NSTAC subgroups to continue addressing critical information sharing processes and issues as they unfold. In addition, further analysis and understanding of the lessons learned by the entities examined in the report could provide the foundation for determining best practices for information sharing at the National level and could be beneficial to those entities responsible for implementing PDD-63.

3.2 Fiscal Year 1999 Omnibus Spending Law

The LRG has initiated a review of a proposed revision to OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Non-Profit Organizations*, that could impact the information sharing process.

The Fiscal Year 1999 Omnibus Spending Law (Public Law 105-277), passed in November 1998, includes a provision that directs the Office of Management and Budget (OMB) to amend OMB Circular A-110, to require Federal awarding agencies “to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act (FOIA).” According to supporting congressional floor statements, the provision is geared toward ensuring that the public has access to Federally funded research data that is used by the Federal Government in developing policy.

At a practical level, Congress is requiring Federal agencies to proactively collect all data that meets the criteria of the legislation. As a result, it is possible that under certain

conditions, information voluntarily provided by the telecommunications and/or information industry relating to the protection of critical infrastructures, pursuant to PDD-63 (e.g., vulnerabilities, intrusion and outages), could be subject to a FOIA request, as well as background data supporting the voluntarily provided information. Prior to passage of this new legislation, companies producing data pursuant to funding could sequester data and findings outside the control of the agencies. Further, FOIA submitters have not typically been able to obtain information that is not in the custody or control of a Federal agency.

Thus, the proposed Circular A-110 revision could impact information sharing between industry and Government by increasing industry concerns regarding release of sensitive threat and vulnerability data. The increased possibility of research data being released per a FOIA request could add to the reluctance of the telecommunications and/or information industry to share sensitive information with Government, or Government-related organizations (i.e., Information Sharing and Analysis Centers established by PDD-63).

Based on the above, LRG is going to conduct an in-depth analysis of revised Circular A-110 with a view toward: assessing its effect(s) on the telecommunications and information industries and on the implementation of PDD-63, and reporting its findings and, as appropriate, options for safeguarding against potentially increased exposure of the telecommunications and information industries to FOIA as a result of Public Law 105-277.

3.3 Year 2000 Technology Problem

The capability to freely disseminate and exchange Y2K readiness information to the public and with other companies, including competitors, is critical to the ability of public and private entities to address Y2K needs in a timely manner. Telecommunications companies and others are reluctant to disclose information related to their Y2K readiness because of legal complications that could result from inaccurate data. In recognition of the urgency of Y2K remediation efforts, in July 1998 the President proposed legislation to Congress entitled the Y2K Information and Readiness Disclosure Act (Y2K Act). The purpose of the proposed legislation was to guarantee that businesses which share information about their Y2K readiness with the public or with each other could not be held liable for the exchange of that information if it was inadvertently inaccurate.

At NSTAC XXI, Mr. John Koskinen, Assistant to the President and Chair of the President's Council on Y2K Conversion, addressed the NSTAC Principals during the Business Session. During his discussion, he highlighted the importance of the proposed Y2K Act and suggested that the NSTAC lend its support to the passage of the measure. Noting that the Administration would rely on the NSTAC for advice and feedback on Y2K issues, he also encouraged the NSTAC to continue Y2K outreach efforts with industry. As Mr. Koskinen suggested, the committee sent a letter to the President on September 18, 1998, with copies to numerous Congressional leaders, asking that he urge Congress to quickly pass the Y2K legislation. The

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Act was signed into law on October 19, 1998. Since that time, the LRG has remained focused on assessing legislative and regulatory initiatives affecting Y2K preparedness, particularly with regard to information sharing.

Per a request by the President's Council on Y2K Conversion, the IES tasked the LRG to look at relevant Y2K legal and regulatory issues, particularly the success of the Y2K Act in being a catalyst to information sharing within industry. The LRG sent a letter to the NSTAC's IES representatives seeking comments on the Y2K Act and any additional legislative or regulatory actions that could facilitate Y2K-related information sharing and remediation. While a limited number of companies responded and no consensus was achieved, valuable information was received from the participating NSTAC companies. A non-attributational summary of the responses was shared with the Council in February 1999.

3.4 Cellular Priority Access Service

Emergency responders rely significantly on wireless telecommunications services. In the wake of a disaster or crisis situation, wireless networks have the potential to become highly congested, thereby preventing responders from completing calls and delaying critical response efforts. Recognizing this, in 1995 the NSTAC recommended that the President support the development of a single nationwide priority access capability for NS/EP users, called Cellular Priority Access Service (CPAS).

Although actions to establish wireless priority access are still under advisement by the FCC, the Commission has taken no definitive action on CPAS since issuing its second Notice of Proposed Rulemaking (NPRM) on Public Safety which contained a section on priority access (FCC WT Docket No. 96-86) in October 1997.

Following NSTAC XXI, the LRG was charged with identifying the barriers to the adoption of wireless telecommunications priority access rules by the FCC. In addition, the LRG was tasked with evaluating NSTAC's level of continued support of CPAS as it was originally introduced by the FCC's 1996 Public Safety NPRM.

On January 12, 1999, a National Communications System (NCS) representative briefed the LRG on the barriers to the passage of CPAS and on the status of the FCC's CPAS rulemaking. It was reported that the Commission had not taken final action based on a number of factors including: technical and operational issues (e.g., the industry is transitioning from analog to digital technology), the lack of industry support due to the absence of market-driven demand, the absence of a funding mechanism, and liability concerns. As a result, and taking into account cost effectiveness, interoperability, and the need for no new equipment, the NCS has been addressing a new approach for providing adequate cellular services to NS/EP responders—channel reservation in analog cellular systems. Channel reservation would be nonpreemptive, may be

tailored to specific response requirements, and would be compatible with analog service.¹ The LRG will continue to monitor the implementation of a wireless priority access service (e.g., CPAS) as it evolves to meet the regulatory and technological environment of the future.

3.5 Convergence Issues

Spurred by dramatic technical developments (e.g., high-speed digital telephony, cable television, wireless technologies, and the Internet), new regulations, particularly those resulting from implementation of the Telecom Act of 1996, are breaking down the barriers that separated local and long-distance calling, cable TV, broadcasting, Internet, and wireless services. As the tremendous recent activity in mergers, acquisitions, and alliances illustrates, the lines between traditional common carrier telephone services and broadcast-based information and entertainment services are becoming increasingly blurred.

Given the dynamic pace of the telecommunications industry and the trend toward convergence, the IES charged the LRG with analyzing convergence issues arising from legislative, regulatory, and judicial actions affecting the existing public network (PN)² and driving the next generation PN for their potential impact on NS/EP telecommunications. The LRG's preliminary analysis of convergence to date has revealed no significant implications unique for NS/EP telecommunications. However, given the dynamic nature of the industry and the evolving regulatory environment, the LRG will continue monitoring telecommunications convergence issues for their potential effect on NS/EP telecommunications.

3.6 National Services

In July 1997, the Network Reliability and Interoperability Council (NRIC) provided the FCC with a series of recommendations aimed at improving the planning process for National Services. "National Service" designates a telecommunications service intended or required to be deployed on a national or widespread basis in the PN. The LRG assessed what actions should be taken to ensure that NS/EP requirements were considered during such a planning process. In its report to NSTAC XX, the LRG presented its findings and recommended that the IES continue to assess the development of the NRIC recommendations regarding National Services.

During NSTAC XXI, the LRG continued to track the status of the NRIC's National Services recommendations. To that end, the LRG formed a National Services Subgroup, which developed a forward-looking analytical approach to help the Government and the telecommunications industry, including the NSTAC and its subordinate groups, address the potential effects of

¹ The Cellular Priority Service (CPS) Implementation Strategy Report, OMNCS Programs Division (N2), September 30, 1998.

² The public network is defined as any switching system or voice, data, or video transmission that is used to provide communications services to the public (e.g. public switched networks, public data networks, private line services, wireless systems, and signaling networks).

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emerging National Services on NS/EP telecommunications. Initial work by the National Services Subgroup included the development of a white paper to facilitate public awareness of several NS/EP-critical telecommunications functions and capabilities. The objective of the white paper was to promote the continued consideration of NS/EP telecommunications service objectives by Government and the telecommunications industry during the future deployment of non-NS/EP National Services, and to encourage the Government and telecommunications industry to consider NS/EP-critical telecommunications services as potential National Services. During the current NSTAC cycle, no FCC action to define National Services took place. Until such action occurs, the LRG's work in this area cannot progress further and will therefore remain on hold. The LRG will continue to monitor and contribute to the activities of the FCC (e.g., NRIC) and relevant industry organizations related to National Services planning and implementation.

ANNEX A

LEGISLATIVE AND REGULATORY GROUP MEMBERS

President's National Security Telecommunications Advisory Committee

LEGISLATIVE AND REGULATORY GROUP MEMBERS

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ANNEX B

**TELECOMMUNICATIONS OUTAGE AND INTRUSION
INFORMATION SHARING REPORT**

