

**Before the
National Telecommunications and Information Administration
Washington, D.C. 20230**

First Responder Network Authority,)	Docket No.150306226-5226-01
Further Proposed Interpretations of Parts)	
of the Middle Class Tax Relief and Job)	
Creation Act of 2012)	

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

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I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association¹ (“NTCA”) hereby submits comments in the above captioned proceeding,² in which the National Telecommunications and Information Administration (“NTIA”) seeks further comment on interpreting certain provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (“the Act”).³ NTCA represents rural service providers that use wireline and wireless networks, and other technical and operational assets, to serve the most sparsely populated and remotely located areas of our country.

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended.

² First Responder Network Authority, Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, Docket No. 150306226-5226-01, 80 Fed. Reg. 13336 (rel. March 13, 2015). (“Second Notice”).

³ Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, Title VI, 126 Stat. 156, codified at 47 U.S.C. § 1401, et seq. (2012).

NTCA's members are community-based service providers, and, as such, they share FirstNet's interest in, and commitment to ensuring that rural areas of the country gain access to the nationwide public safety broadband network ("NPSBN"). The NPSBN is intended to provide nationwide coverage, at comparable and affordable rates for both urban and rural first responders alike to benefit all citizens. Herein NTCA urges FirstNet to adhere to the letter and the spirit of the Act, and ensure that rural areas are not left behind as FirstNet seeks to clarify its legal authority.

Public safety personnel, regardless of their location, deserve access to an ever-present LTE network, and rural community-based service providers share in this vision. Toward this end, public-private partnerships are a foundational tenet of FirstNet's planning and operations. Given its limited construction budget and substantial rural coverage requirements, FirstNet should ensure that it preserves the ability for it to enter into creative network partnerships and roaming agreements with existing rural commercial service providers. In that regard, FirstNet should define the terms within Section 6206(b)(2)(B) of the Act as broadly as possible. For instance, NTCA urges FirstNet to expand the definition of "equipment" to include the hardware and software that will be used to constitute the network itself. An expanded definition will ensure that the equipment used within the FirstNet network is available and accessible to small, rural commercial operators, and is capable of interoperating with existing commercial networks. Likewise, FirstNet should define the phrases "backward compatible" and "existing commercial networks" as broadly as possible.

In addition, although Congress added provisions to the legislation to provide state governments with input into network planning and operations, Congress clearly intended the

NPSBN to function as an integrated “nationwide” operation, with the revenue and profit shared equally among all users. NTCA agrees with FirstNet that if an opt-out state is allowed to retain, and, thereby withhold material funding from other areas of the country, this could have a substantial impact on the operations and sustainability of the NPSBN, including adversely affecting the cost of service for public safety users nationwide. It could also create a two-tiered have/have-not structure, whereby a few opt-out states could benefit, while more rural states could be left without sufficient network coverage.

Given the economics associated with serving high-cost, low-density areas of the country with advanced telecommunications infrastructure and services, any excess revenues derived from more populous, urban areas of the country, including via opt-out states, will need to be shared equally among public safety users, and, therefore, reinvested into the continued operation of the FirstNet network on a nationwide basis. NTCA supports FirstNet in the assertion that FirstNet must require reinvestment of such fees into the network as a requirement of a spectrum lease agreement with an opt-out state.

Further, FirstNet, in crafting overarching policies, should establish clear, standardized, and enforceable principles to guide its review and evaluation of network proposals, including the plans from opt-out states. FirstNet should consider the revenue derived from potential Covered Leasing Agreements (“CLAs”) as only one input into a network proposal and it should seek to balance proposed finances with the requirement for ubiquitous coverage throughout the country, including in rural high-cost areas of the country. FirstNet should also ensure that in any given area where it decides to enter into a Public Private Partnership (“PPP”), it selects the best service provider, with the most reliable network, the highest quality of service, the most advanced

network technology, and, perhaps most importantly, the practical knowledge of how to serve the coverage area in question. Finally, as NTCA has stressed in previous proceedings, FirstNet should not use its limited funds to overbuild existing networks, thereby jeopardizing the financial sustainability of carriers already operating in those areas and the consumer's resultant ability to afford commercial broadband service.

II. IN DEFINING ITS LEGAL AND STATUTORY AUTHORITY, FIRSTNET SHOULD ADHERE TO THE SPIRIT OF THE ACT AND ENSURE THAT RURAL AREAS OF THE COUNTRY ARE NOT LEFT BEHIND

Substantial rural coverage is an important attribute of the NPSBN. Rural consumers have many of the same emergency and public safety needs as their urban counterparts, even as they may face unique challenges often not found in more populated urban areas. Rural areas are often the sites of devastating forest fires, tornadoes, floods, and other natural disasters, and oftentimes, rural citizens reside miles or even dozens of miles from the closest first responder, firehouse, police station, or health care institution. As with other communications needs, the availability of next-generation broadband network resources can help to overcome the challenges brought about by this remoteness, enabling first responders to communicate with one another and with their headquarters' locations and to respond to public safety emergencies in rural areas in a more coordinated and efficient manner than would otherwise be possible. In addition, just as in urban areas, rural first responders have the need to access criminal databases, transmit patients' medical data, and send information back to headquarters concerning the specifics of an incident scene, needs that can be met by the NPSBN. However, today, public safety officials in rural communities experience the same communications challenges as their urban counterparts, struggling to converse with other first responder entities and exchange data in real-time. This

disparity between rural public safety needs and present communications capabilities is at the heart of any discussion with respect to the NPSBN. Recognizing these facts, Congress wisely included provisions in the Act, such as the requirements that FirstNet have sufficient representation from rural interests and that, in carrying out its duties, FirstNet devise deployment phases with substantial rural coverage milestones.

In this proceeding, FirstNet is gathering stakeholder feedback as it prepares to clarify its legal and statutory authority, and its subsequent decisions will provide the foundation for its network plans and operations. As FirstNet evaluates its legal authority, it should adhere to the spirit and the letter of the Act to ensure that rural areas of the country will not be left behind.

A. FirstNet Should Define the Terms Within Section 6206(b)(2)(B) of the Act as Broadly as Possible to Preserve the Ability for it to Enter into Creative Network Partnerships and Roaming Agreements with Existing Network Operators

Section 6206(b)(2)(B) of the Act requires FirstNet to “promote competition in the equipment market, including devices for public safety communications, by requiring that equipment for use on the network be (i) built to open, nonproprietary, commercially available standards; (ii) capable of being used by any public safety entity and by multiple vendors across all public safety broadband networks operating in the 700 MHz band; and (iii) backward compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable.”⁴ FirstNet should interpret the authority conferred by this section as broadly as possible, thereby ensuring that it can utilize existing commercial assets, infrastructure, and networks to the maximum extent possible.

⁴ See the Act, §6206(b)(2)(B).

Although FirstNet has been granted a generous \$7 billion network construction budget, Congress understood that this endowment likely would not stretch to support the NPSBN in its entirety. Sue Swenson, FirstNet Board Chair, recently noted at a FirstNet board meeting that \$7 billion will not deploy the nationwide network that public safety needs.⁵ Further, the Government Accountability Office (“GAO”) recently testified before Congress that the cost to construct and operate the NPSBN is estimated from a low of \$12 billion to a high of \$47 billion over the first 10 years.⁶ GAO further stated that the actual cost of FirstNet’s network “will be influenced by FirstNet’s (1) business model, especially the extent of commercial partnerships; (2) use of existing infrastructure; (3) efforts to ensure network reliability; and (4) network coverage.”⁷

Given FirstNet’s limited construction budget and extensive coverage needs, it will need to partner with a variety of operators to access the assets and infrastructure required to deploy a ubiquitous, nationwide 4G LTE network. Indeed, the Act directs FirstNet to work with commercial service providers when feasible to speed network deployment,⁸ and, as a consequence, to avoid overbuilding existing networks. In addition, the Act grants FirstNet the authority to negotiate and enter into roaming agreements, as it deems appropriate, with

⁵ FirstNet board meeting, March 9, 2015.

⁶ See the U.S. Government Accountability Office, Testimony before the Committee on Commerce, Science, and Transportation, U.S. Senate, Public Safety Communications, Preliminary Information on FirstNet’s Efforts to Establish a Nationwide Broadband Network, Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues (rel. March 11, 2015), pg. 1, <http://www.gao.gov/assets/670/668933.pdf>.

⁷ *Id.*

⁸ Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156, Sections 6206(b)(3), (b)(1)(c) (2012) (Act).

commercial network providers to allow public safety to gain access to and priority over commercial networks in times of an emergency.⁹

Roaming is an important component of the NPSBN. If FirstNet's finances do not stretch to the furthest geographic corners of the country, it can (and indeed, must) establish partnerships with existing commercial networks for coverage. In addition, in the unlikely event that the FirstNet network encounters an outage, commercial networks can provide backup connectivity for voice and/or data service. Public safety personnel, regardless of their location, deserve access to an ever-present LTE network, and rural community-based service providers share in this vision. However, given the factors listed above, FirstNet should ensure that at this early stage in its development, FirstNet retains the flexibility to enter into roaming agreements with existing 2G, 3G, and 4G rural network providers.

FirstNet has preliminarily concluded that "equipment" within Section 6206(b)(2)(B) of the Act should narrowly refer to only end-user handsets. However, NTCA urges FirstNet to expand the definition of equipment to include the hardware and software that will be used to constitute the network itself. An expanded definition will ensure that the equipment used within the FirstNet network is available and accessible to small, rural commercial operators, and is capable of interoperating with existing commercial networks. Likewise, FirstNet should define the phrases "backward compatible" and "existing commercial networks" as broadly as possible, thereby ensuring that FirstNet preserves the ability to partner with existing rural 2G, 3G, and 4G networks. At this stage, FirstNet should refrain from restricting its potential partners and its type

⁹ Act, Section 6206(c)(5).

of partnership agreements. However, by expanding the definition FirstNet effectively leaves open the possibility to creative partnership agreements with a variety of network operators.

B. FirstNet Should Require Opt-Out States to Reinvest Excess Revenue into the Continued Operation of the NPSBN

Congress carefully constructed the Act to balance network interoperability and self-sustainment with the freedom for individual states to make decisions in regard to local implementation of coverage, capacity, and other network parameters. As such, Congress included a provision for a state to opt-out of the FirstNet plan for the construction of its RAN coverage and assume responsibility for local network planning, construction, and operation within the state's borders.

The Second Notice discusses a variety of items related to the rights of opt-out states and how FirstNet will evaluate the RAN network plans presented by opt-out states. In regard to many of the opt-out parameters and intricacies discussed within the Second Notice, NTCA is agnostic; for instance, NTCA takes no position on which entity, the opt-out state or FirstNet, should levy subscriber fees on public safety users. However, FirstNet, in crafting overarching policies, should ensure that any excess revenues derived from the network via opt-out states are reinvested into the NPSBN on a nationwide basis.

Congress did not intend for the opt-out provision to provide a mechanism for high-density populous states to profit from the FirstNet network within their boundaries, and thereby retain any ancillary revenues derived from the operation of the network for the state's singular – and perhaps even unrelated to public safety communications – use and benefit. Further, NTCA agrees with FirstNet that if an opt-out state is allowed to retain, and, thereby withhold material funding from other areas of the country, this could have a substantial impact on the operations

and sustainability of the NPSBN, including adversely affecting the cost of service for public safety users nationwide. It could also create a two-tiered have/have-not structure, whereby a few opt-out states could benefit, while more rural states could be left without sufficient network coverage.

Given the economics associated with serving high-cost, low-density areas of the country with advanced telecommunications infrastructure and services, any network profits derived from more populous, urban areas of the country, including via opt-out states, will need to be shared equally among public safety users, and, therefore, reinvested into the continued operation of the FirstNet network on a nationwide basis. NTCA supports the assertion that FirstNet must require reinvestment of such fees into the network as a requirement of a spectrum lease agreement with an opt-out state.

C. In Evaluating Network Proposals, Including Plans for Opt-Out States, FirstNet Should Establish Standards for Review that Balance Network Costs and Substantial Rural Coverage with User Fees and Excess Revenue Derived from CLAs

The Second Notice discusses the ability of FirstNet or opt-out states to enter into CLAs or PPPs. Implicit in this discussion is the conclusion that the negotiating entity (either FirstNet or the opt-out state) should seek to maximize the profit it can obtain from the 700 MHz spectrum allotted to public safety by leasing the spectrum to a secondary user on a statewide, regional, or national basis—whichever arrangement is most profitable.

Although CLAs and the revenue generated from these agreements are an important financial contribution into the construction and maintenance of the NPSBN, FirstNet should not allow the promise of secondary leasing agreements to single-handedly drive its strategic decisions. In other words, CLAs should not be considered in a vacuum.

Details related to the FirstNet request for proposal (“RFP”) process have yet to be determined and/or relayed to the public. However, in the Second Notice, FirstNet implies that it may negotiate and/or examine CLAs as it creates its network plan(s). In addition, FirstNet will evaluate CLAs as part and parcel when it examines the proposals for RAN coverage presented by opt-out states. In addition, it is possible that CLAs will be presented to or negotiated with FirstNet as part of a larger PPP agreement between an existing network operator and FirstNet, whereby other considerations, such as the use of existing network facilities, will be part of the same agreement.

NTCA understands the intricacies involved in planning for the NPSBN and negotiating with private entities. However, NTCA cautions FirstNet to establish clear, standardized, and enforceable principles to guide its review and evaluation of network proposals, including the plans from opt-out states. FirstNet should review, on a case-by-case basis, each partnership agreement and network proposal and objectively compare them to the pre-determined standards. FirstNet should consider the revenue derived from potential CLAs as only one input into a network proposal. FirstNet should seek to balance finances with the requirement for ubiquitous NPSBN coverage throughout the country, including in rural high-cost areas of the country.

In a related matter, FirstNet should ensure that in any given area where it decides to enter into a network PPP agreement, it selects the best service provider, with the most reliable network, the highest quality of service, the most advanced network technology, and, perhaps most importantly, the practical knowledge of how to serve the coverage area in question. In short, the criteria used to select a network partner, including a roaming agreement, should be based on an objective review of the operator’s real-world coverage footprint and its continued

ability to provide sufficient coverage and capacity, and reliable and resilient service in the local area. This is critically important to ensure that FirstNet creates a NPSBN that meets subscribers' needs.

Likewise, FirstNet should take all necessary precautions to ensure that it appropriately utilizes commercial assets and infrastructure, and, therefore, avoids overbuilding existing networks. FirstNet has a complicated governing structure, given the interplay between the FirstNet board, the FirstNet national office, the State Points of Contact, and the rights of individual states to opt-in or opt-out. As such, policing network plans and operations will be difficult and time consuming. However, overbuilding will significantly increase network costs, tying up FirstNet's limited financial capital that could be used in other areas of the country and/or portions of the network. Overbuilding also would undermine the economic viability of existing rural networks and the ability of rural consumers to access affordable, commercial broadband service.¹⁰ Given these dire consequences, FirstNet should ensure that it provides effective oversight with respect to each state and its plans for rural coverage associated with the NPSBN.

¹⁰ For a detailed discussion of NTCA's concerns with respect to overbuilding, please see the following: Request for Information LTE Network Build and Operate Partners, Joint Comments of NTCA–The Rural Broadband Association, INDATEL, AND NRECA, August 30, 2013; *Also see* Request for Information Comprehensive Network Solutions, Comments of NTCA–The Rural Broadband Association, October 27, 2014; *And see* First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, Comments of NTCA–The Rural Broadband Association, October 27, 2014.

III. CONCLUSION

NTCA herein urges FirstNet to create a ubiquitous communications network that meets first responders' capacity and coverage needs in both urban and rural areas of the country. All public safety personnel deserve modern communications services, enabled by an ever-present LTE network, and rural telecommunications providers share in this vision. Given FirstNet's limited budget and extensive coverage requirements, it should preserve the ability for it to enter into creative network partnership arrangements. As such, NTCA urges FirstNet to expand the definitions used within Section 6206(b)(2)(B) of the Act as broadly as possible. In addition, FirstNet should require opt-out states to reinvest excess revenues derived from local network operations into the NPSBN. Finally, FirstNet should establish clear and predefined standards to evaluate network proposals, partnerships, and leasing agreements. In evaluating each proposal, FirstNet should seek to balance network costs and substantial rural coverage with the profits derived from user fees and secondary CLAs.

Respectfully submitted,

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