

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

First Responder Network Authority,) Docket No.140821696-5400-03
Further Proposed Interpretations of Parts)
of the Middle Class Tax Relief and Job)
Creation Act of 2012)

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

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 The Third Legal Notice seeks comment on proposed interpretations of the terms “public safety entity” and “public safety services” as they appear in the Act.

The term “public safety entity” should be properly tailored to ensure that the public safety network is being used as intended, consistent with the legal framework and the policy goals of FirstNet. To that end, any individual or organization with priority access to the National Public

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. 140821696-5400-03, 80 Fed. Reg. 25663 (rel. May 5, 2015). (“Third Legal 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).

Safety Broadband Network (“NPSBN”) must be, in every instance that it accesses the network, performing functions related to or in conjunction with first responders and consistent with the definition of “public safety service,” as that term is defined by Section 337(f) of the Communications Act (47 U.S.C. 337(f)) and Section 2 of the Homeland Security Act (6 U.S.C. 101). In other words, to adhere to its overarching statutory framework, FirstNet should narrow its definition of “public safety entity” to ensure that those select individuals, when accessing the NPSBN, are thereby engaged in a “public safety service.” Narrowing the definition of the term “public safety entity” also serves several important policy goals. As the Third Legal Notice correctly states, FirstNet has a duty under the Act to ensure that the NPSBN provides seamless, interoperable, and reliable communications to first responders. Further, FirstNet must provide an independent, financially sustainable network, while also efficiently allocating the use of finite spectrum. Achieving each these goals also requires a narrow definition of “public safety entity” consistent with the core responsibilities of first responders and public safety.

II. CONSISTENT WITH THE ACT, THE TERM “PUBLIC SAFETY ENTITY” SHOULD BE NARROWLY TAILORED TO ENSURE THAT ENTITIES WITH PRIORITY ACCESS TO THE NPSBN ARE, IN FACT, PERFORMING FUNCTIONS RELATED TO OR IN CONJUNCTION WITH “PUBLIC SAFETY SERVICE”

Consistent with its authorizing legislation, the term “public safety entity” under discussion should be properly tailored to ensure that entities with priority access to the NPSBN are, in fact, performing functions related to or in conjunction with first responders and the provision of a “public safety service.”

As an initial matter, the Third Legal Notice inquires whether “public safety entity” status should be conferred upon a third-party organization as a whole, when it provides “public safety service” in only certain instances or when only a subset of that organization’s employees

provides a “public safety service.”⁴ NTCA agrees with FirstNet that the refined legal interpretation of the term “public safety entity” contained in the Third Legal Notice is correct that such an organization, *as a whole*, does not *de facto* qualify as a “public safety entity.”⁵ The Third Legal Notice is correct that the specific language, context, and purpose of the Act support such a conclusion. For instance, sales and marketing personnel employed by a public utility company would not be engaged in communications with traditional first responders, or associated with providing “public safety service” wherein the sole or principal purpose of which is to protect the safety of life, health, or property.⁶ However, what remains to be settled is the question of when some subset of an organization should be considered a “public safety entity” when engaged in activities of or related to “public safety service.”

As an example, the Third Legal Notice discusses a private utility company employee removing an electrical wire touching a vehicle at the scene of an accident.⁷ In that particular instance, the utility company employee is performing a public safety function, most likely alongside and in communication with traditional first responders. Thus it makes sense, from a public safety standpoint, for such an employee to have priority access to the NPSBN to ensure that vital communications with first responders and other utility employees are allowed to take place which are necessary to the safe removal of the power line remain.

What must then be considered is the scope or duration of such status, *i.e.* the employee’s authorized priority access to the NPSBN, as that has a bearing on the “proper functioning of the

⁴ Third Legal Notice, 80 Fed. Reg. 25666.

⁵ *Id.*

⁶ *See* 47 U.S.C. 337(f).

⁷ 80 Fed. Reg. at 25668.

network, in addition to FirstNet’s economic self-sustainability for the benefit of public safety.”⁸ Certainly, the private utility should not be considered as a “public safety entity” for each and every activity it undertakes otherwise as an enterprise simply because it may happen, from time to time, to play such a role. Indeed, the long-term financial stability of the NPSBN will depend on a diverse set of revenue streams, fees from “secondary users” among them. An improperly tailored definition of “public safety entity” could undermine the “secondary users” revenue stream, as potential secondary users would be erroneously incorporated into the first responder primary user base and thereby allowed to access the network at a lower subscriber rate. More importantly, authorizing a broad FirstNet primary user base that strays from the core first responder, public safety definition, could also undermine existing commercial networks by removing key anchor tenants from commercial networks, and thus creating competitive pressures in many high-cost, rural areas that cannot sustain multiple service providers. In addition, FirstNet’s spectrum is a finite and highly valuable resource, and therefore must always be carefully managed to constantly ensure that its use is the most efficient and effective at all times.

FirstNet will strike a proper balance if the definition of “public safety entity” is faithful to the definition of “public safety service,” as discussed in the Third Legal Notice. In other words, an organization or subset thereof should, in every case, be engaged in an activity falling within the definition of “public safety service” as that term is defined by Section 337(f) of the Communications Act and Section 2 of the Homeland Security Act (6 U.S.C. 101). Again returning to the example used in the Third Legal Notice, removing an electrical wire touching a vehicle at the scene of an accident seemingly falls within the definition of a “public safety service.” However, routine communications by that employee, or by other non-related

⁸ *Id.*, at 25664.

employees are not considered “public safety service,” and therefore would not meet the definition and should not be granted priority status on the NPSBN.

The Third Legal Notice is correct that FirstNet possesses the discretion under the Act as to which entities would have priority access to the NPSBN.⁹ More specifically, the Third Legal Notice is correct that FirstNet is required to consult with state, local, and tribal entities as to the “assignment of priority and selection of entities seeking access to of use of the [NPSBN].”¹⁰ If it were not permitted to define the class of entities with priority access to the network, those consultation provisions in Act would fail to have any meaning. Finally, Section 1426 of the Act clearly states that among FirstNet’s many duties is the responsibility to develop and monitor the “practices and procedures of the entities operating on and the personnel using [the NPSBN].”¹¹ This section of the Act—and the Act as a whole—demonstrate that Congress intended FirstNet to provide public safety entities with the priority network access they need in times of crisis or emergency. The proper tailoring of the term “public safety entity” as discussed above will achieve this critical objective.

⁹ *Id.*, at 25664-665.

¹⁰ *Id.*, at 25664. Citing 47 U.S.C. § (c)(2)(A)(vi).

¹¹ 47 U.S.C. § 1426 (c)(1)(E)(ii).

III. CONCLUSION

For the reasons discussed above, the term “public safety entity” should be properly and narrowly tailored to ensure that entities with priority access to the NPSBN are performing functions related to or in conjunction with first responders and “public safety service,” as that term is defined by Section 337(f) of the Communications Act (47 U.S.C. 337(f)) and Section 2 of the Homeland Security Act (6 U.S.C. 101).

Respectfully Submitted,

NTCA–THE RURAL BROADBAND ASSOCIATION

By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

Brian Ford
Regulatory Counsel
bford@ntca.org

Jesse Ward
Industry & Policy Analysis Manager
jward@ntca.org

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

June 4, 2015