

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

First Responder Network Authority) Docket No. 140821696-4696-01
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 hereby submits these comments in the above captioned proceeding,² in which the National Telecommunications and Information Administration (“NTIA”) seeks comment on interpreting certain provisions of the Middle Class Tax Relief and Job Creation Act of 2012.³ 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.

NTCA herein urges FirstNet to interpret the Middle Class Tax Relief and Job Creation Act with a mind towards the primary purpose of the Nationwide Public Safety Broadband Network (“NPSBN”) and the intent of Congress in drafting its various provisions. Specifically,

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, Docket No. 140821696-4696-01, 79 Fed. Reg. 57058 (rel. Sept. 24, 2014). (“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).

FirstNet should ensure that public safety entities and secondary users are not given license to offer commercial services in a manner that places existing providers at a competitive disadvantage or detracts from the core mission of public safety. Congress clearly did not contemplate that the NPSBN would disadvantage existing providers, and to the contrary envisioned public-private partnerships that would promote public safety while encouraging the collaborative use of existing providers' facilities to build and operate the network. In that regard, as demonstrated below, FirstNet is clearly directed to consider the use of existing networks as a *default* throughout the entire process of creating the NPSBN. NTCA herein also supports the proposed definition of rural – with one exception – and urges FirstNet to adopt enforceable yet realistic rural coverage milestones.

II. THE MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT CONTAINS SEVERAL PROVISIONS INTENDED TO ENSURE THAT EXISTING COMMERCIAL PROVIDERS ARE NOT COMPETITIVELY DISADVANTAGED, AND FIRSTNET SHOULD RESPECT THE UNAMBIGUOUS INTENT OF THOSE PROVISIONS

A. Section 6212 Prohibits FirstNet from Offering Commercial Services

The Notice is correct in its interpretation that Section 6212 prohibits FirstNet from offering commercial services to consumers.⁴ Section 6212(a) is unambiguously clear on that point. This clear statement demonstrates that Congress not only desired FirstNet to focus on its primary mission of public safety, it also represents a recognition that existing providers should not be disadvantaged should FirstNet use its spectrum and other resources generated by user fees to offer a commercial service in already served areas.

⁴ Notice, 79 Fed. Reg. at 57063.

Beyond that, the Notice seeks comment on the use of the NPSBN by public safety entities for the purposes of offering commercial services.⁵ There is no indication that Congress intended public safety entities of any kind to offer such commercial services. Indeed, it is clear that Congress was primarily focused on the construction of a nationwide public safety network and the means of financing such a large and expensive undertaking. While Congress may have intended user fees from public safety entities and secondary users to assist in financing such a network, there cannot be found anywhere in the statute or elsewhere an intent by Congress to create entirely new categories of communications service providers that would compete alongside existing operators. In fact, as noted below, it is clear that Congress contemplated that the network materialize in large part by using the assets of those existing providers. With that in mind, it makes little sense to encourage the use of these existing providers' facilities on the one hand, while at the same time exposing them to the disadvantage of competing against additional government funded or created entities.

B. FirstNet Should Require All “Secondary Users” to Enter Into Covered Leasing Agreements

The Notice seeks comment on Section 6208 of the Middle Class Tax Relief and Job Creation Act of 2012 and the definition of “secondary user.”⁶ Specifically, the Notice seeks comment on whether secondary users should be limited to those entering into covered leasing agreements (“CLA”).⁷

⁵ *Id.*

⁶ *Id.*, 79 Fed. Reg. at 57062-63.

⁷ *Id.*, 79 Fed. Reg. at 57063.

NTCA supports this proposal. By requiring an entity seeking access to the NPSBN to enter into a CLA – and if such CLAs contain the appropriate provisions as discussed below – FirstNet can ensure that such entities utilize the spectrum in a fair and efficient manner that benefits consumers and does not advantage one group of secondary users over others. Specifically, CLAs should require all secondary users to abide by a standard set of conditions as part of their access to the NPSBN. These conditions should include provisions to ensure that secondary users serve consumers on a “community-wide” basis. If secondary users in rural areas choose to serve only the most profitable consumers in the relatively more densely populated portions of rural service areas – including community anchor institutions such as schools, libraries, and government facilities and community centers – the extraction of those customers from rural carriers’ customer base will displace investment by private telecom providers, threaten higher costs for remaining consumers served by these private providers, undermine carrier of last resort obligations and place additional, unnecessary burdens on universal service programs.

In addition, secondary users’ fees should be assessed on a standardized basis that does not provide for “volume” or “size” discounts that disadvantage smaller, local operators that cannot achieve the same scale and scope as larger regional and national providers. Absent such a requirement, smaller providers could be placed at a competitive disadvantage relative to other carriers – both larger carriers and potentially new entrants – preventing them from utilizing the NPSBN to provide commercial services as a secondary user to rural consumers that larger carriers and new entrants may choose not to serve.

In short, CLAs must ensure that FirstNet resources are not being spent to confer competitive advantages on secondary users that threaten existing infrastructure/network providers whose networks Congress intended FirstNet to rely on.

III. CONGRESS CLEARLY INTENDED THAT FIRSTNET SHOULD MAXIMIZE IN ALL CASES ITS USE OF EXISTING COMMUNICATIONS INFRASTRUCTURE

The Notice seeks comment on Section 6206 of the Middle Class Tax Relief and Job Creation Act of 2012.⁸ Specifically, the Notice seeks comment on the extent to which FirstNet is statutorily required to make use of existing communications infrastructure as it creates the NPSBN. As the Notice and the plain text of the Act demonstrate, Congress intended FirstNet to take every opportunity to utilize network infrastructure already in place. Indeed, meeting the challenge of creating a nationwide public safety network leaves FirstNet with little choice but to do so.

The Notice is correct in several of its conclusions as to Section 6206. First, the Notice correctly concludes that Section 6206(b)(1)(C) can only be read to require *proposals* filed in response to FirstNet Requests for Proposals (“RFPs”) to leverage existing infrastructure. As the Notice states, any other conclusion would be based on the interpretation that FirstNet has no control over its RFPs, a conclusion belied by Section 6206(b)(1)(B) which requires them to issue such RFPs. The Notice is also correct that Section 6206(b)(3) requires FirstNet to seek out proposals that leverage existing infrastructure. And finally, the Notice points to Section 6206(c)(3) that FirstNet “shall enter into agreements to utilize, to the maximum extent economically desirable” existing infrastructure. Most importantly, each of these provisions,

⁸ *Id.*, 79 Fed. Reg. at 57065.

when taken together, clearly indicates that Congress intended the use of existing infrastructure to be a part of the process *at each and every step*, from the creation of RFPs by FirstNet to their submission by interested entities to the final selection of entities with which FirstNet enters into agreements. In other words, the use of existing infrastructure is a fundamental part of the process and its repeated mention throughout Section 6206 is a strong if not conclusive manifestation of congressional intent.

Beyond that, one need only consider the \$7 billion FirstNet budget when considering whether Congress did or did not assume that the use of existing infrastructure would be a fundamental part of the NPSBN. Congress understood that the construction of a nationwide interoperable public safety network, from scratch, would be difficult, if not impossible, to achieve on such a budget when a comparable sum for network deployment in the context of the American Reinvestment and Recovery Act – itself a tremendous undertaking – merely “filled in discrete gaps” in rural broadband coverage.

Beyond congressional intent, leveraging existing assets also makes sense from several other standpoints. For one, in sparsely-populated rural areas, rural carriers possess the knowledge and experience of building and operating in areas of the nation that pose cost of service, weather, density, and topographical challenges not found in urban areas. Rural carriers have a vast array of existing infrastructure assets that should be leveraged by FirstNet for the efficient construction of the public safety network in rural areas, including statewide fiber transport connectivity in 25 primarily rural states, extensive copper and fiber infrastructure, including last-mile networks suitable for the speeds that will be required by FirstNet’s network, wireless networks and towers, rights-of-way, and local operational and technical resources. Rural carriers also hold licensed spectrum and established customer bases, ensuring

that these companies are well positioned to sell a commercial wireless service and thereby enter into a Mobile Virtual Network Operator (“MVNO”) or network-sharing partnership agreement with FirstNet that is financially beneficial for the public safety community. Rural service providers continually re-invest in their networks, and can upgrade their infrastructure more cost effectively and efficiently than a new entrant into the service area, thereby mitigating another FirstNet policy concern: sustainability.

Moreover, it makes little sense to overbuild existing rural networks, which are often built and operated via a combination of private capital, U.S. Department of Agriculture financing, and Federal Universal Service Fund resources. Overbuilding raises the prospect of a “second network” in these areas that can be used by secondary users to remove anchor tenants and other more potentially profitable customers from rural carriers’ customer basis. “Cherry-picking” the most attractive, high-volume, lucrative customers consequently leaves the most costly-to-serve remnants of the serving area to the carrier of last resort, and thus threatens continued infrastructure investment and *increases* the existing service provider’s reliance upon and the burdens on High-Cost universal service support, as discussed, *supra*. Instead, consistent with good public policy, FirstNet should seek to utilize the existing assets and infrastructure of rural providers wherever possible.

In terms of leveraging existing infrastructure, the Notice seeks comment on the definition of “economically desirable.” Again, the \$7 billion budget allocated by Congress would seem to suggest that there are few if any situations in which the construction of new network facilities from scratch, as opposed to utilizing network assets *already in place*, would be economically desirable. Put another way, there simply is not enough funding available to build the NPSBN from scratch, as much as any individual state or groups of states may wish to do so. Thus, it

seems clear that the term “economically desirable” coupled with the budget was a policy directive included by Congress to ensure that FirstNet would look to the use of existing infrastructure as a default, as there would be no hope for completing the nationwide network otherwise.

Moreover, the Notice seeks comment on balancing the costs of deployment with the speed of deployment in rural areas. Again, utilizing existing assets makes the most sense in this regard. After all, it can hardly be argued that building a public safety network from scratch will speed up the deployment of the NPSBN in rural areas.

Given the limited budget discussed above – not to mention Congressional directive to leverage existing infrastructure – FirstNet, and the American public, would be best served by leveraging, at each and every turn, the expertise of existing providers with deep experience and already deployed network assets in place in costly-to-serve rural areas rather than creating a new network “out of whole cloth.”

IV. THE DEFINITION OF “RURAL” AND THE RURAL COVERAGE MILESTONES SHOULD ENSURE THAT THOSE RESIDING IN SPARSELY POPULATED RURAL AREAS HAVE ACCESS TO THE PUBLIC SAFETY BENEFITS OF THE NPSBN

The Notice seeks comment on the definition of “rural” for the purposes of implementing Section 6206, which requires FirstNet to adopt “substantial rural coverage milestones.”⁹ As a backdrop to this discussion, it must be emphasized that 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

⁹ *Id.*, 79 Fed. Reg. at 57064.

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 makes the establishment of enforceable rural coverage milestones vital to the health and safety of rural Americans.

Recognizing these facts, Congress wisely included provisions 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. Defining the scope of "rural" is therefore a critically important part of FirstNet's mission.

As an initial matter, NTCA supports the definition of "rural" based on the Rural Electrification Act, as proposed in the Notice. The Notice is correct that this definition is not only sufficiently "precise and granular," it is well known to many if not most of those providers and government entities that exist in, regulate, or interact with rural America. It also introduces a needed measure of consistency, as it makes little sense to have different definitions for

different programs and agencies. And of course, it saves FirstNet the time of creating an entirely new definition and finding and analyzing the data necessary to assess the overall effect of such a new definition.

On the other hand, FirstNet should reject the proposal to define the term “frontier” in relation to certain areas that bound rural areas. Specifically, the Notice seeks comment on separately defining areas with five or fewer persons per square mile as outside the definition of “rural” and therefore outside FirstNet’s duty to establish substantial rural coverage milestones.¹⁰ The rural landscape all across this nation is dotted with such sparsely populated areas – and NTCA members serve a large number of these areas – and those living in such areas have every right to the same level of emergency services as those living in more populated areas. Indeed, these Americans face even greater challenges in terms of access to reliable and timely emergency services and healthcare providers in times of emergency, and the NPSBN could be a literal lifesaver. In addition, a separate definition for such areas could lead to a “patchwork” deployment of the NPSBN, as such “frontier” areas are, in many cases, interspersed with more populated areas. It is also worth noting that many of these so-called “frontier” areas are the destinations of those living in other rural and urban areas, many of whom may be in dire need of emergency services to the extent accidents occur or calamities arise in state and national parks, other recreation areas, in fields where agricultural or energy production occurs, or along isolated stretches of road between more populous areas.

As to rural coverage milestones, NTCA urges FirstNet to ensure that such milestones are truly enforceable and designed to provide access to the NPSBN in rural areas as quickly as

¹⁰ *Id.*, 79 Fed. Reg. at 57065.

possible. These coverage milestones should be geographically-based; that is, they should require the creation of the public safety network to a significant percentage of rural census tracts on a rolling basis over a finite time period. Moreover, secondary user CLAs should include mandatory “partitioning” provisions that automatically partition unserved areas out to carriers willing to build out to rural consumers in the event that secondary users fails to meet build-out timelines.

At the same time, these milestones must also be realistic. Equipment manufacturers historically prioritize the needs of larger providers above those of rural telecom providers. As such, any rural timeline or milestones that are adopted should be realistic, providing rural carriers and first responders with the necessary time to gain access to the equipment.

Finally, the statutory requirement to ensure that rural areas of the country gain access to the NPSBN underscores the fundamental need for FirstNet to create partnerships with existing rural providers. Rural carriers are community-based and, therefore, invested in the health, safety, and vitality of their local areas. They have substantial technical expertise and experience with building and operating rural networks, and significant existing assets and infrastructure, which can be of service to FirstNet as it strives to achieve these rural milestones. In contrast, as evidenced by their current assets and infrastructure, large carriers historically concentrate their efforts on serving the urban population and city centers first, consequently bypassing the rural areas of the country served by NTCA members. Thus FirstNet should be vigilant at each and every turn in its effort to utilize the assets and expertise of rural carriers as it creates the NPSBN.

Respectfully Submitted,

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