

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012	)	PS Docket No. 12-94
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Service Rules for the 698-746, 747-762 and 777- 792 MHz Bands	)	WT Docket No. 06-150

**REPORT AND ORDER**

**Adopted: September 7, 2012**

**Released: September 7, 2012**

By the Chief, Public Safety and Homeland Security Bureau.

**I. INTRODUCTION**

1. In this *Report and Order (Report and Order)* we implement certain provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (“Public Safety Spectrum Act” or “Act”)<sup>1</sup> governing deployment of a nationwide public safety broadband network in the 700 MHz band. The Public Safety Spectrum Act establishes the First Responder Network Authority (FirstNet) to oversee the construction and operation of this network as licensee of both the “existing public safety broadband spectrum” (763-769/793-799 MHz) and the spectrally adjacent “700 MHz D Block spectrum” (758-763/788-793 MHz).<sup>2</sup> The Act directs the Federal Communications Commission (FCC or Commission) to reallocate the D Block for public safety services,<sup>3</sup> to license the D Block and the existing public safety broadband spectrum to FirstNet<sup>4</sup> and to take other actions necessary to “facilitate the transition” of the existing public safety broadband spectrum to FirstNet.<sup>5</sup>

2. In this *Report and Order*, the Public Safety and Homeland Security Bureau (Bureau) acts to implement clear directives of Congress set forth in the Public Safety Spectrum Act.<sup>6</sup> We reallocate the D Block for “public safety services” and delete Commission rules that are plainly inconsistent with this revised allocation. We also delete the Commission rules establishing, providing license authority with

<sup>1</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

<sup>2</sup> See *id.* §§ 6201(a), 6202 and 6204(a); see also *id.* § 6001(2) (defining “700 MHz D Block spectrum”) and (14) (defining “existing public safety broadband spectrum”).

<sup>3</sup> See *id.* § 6101.

<sup>4</sup> See *id.* § 6201(a).

<sup>5</sup> See *id.* § 6201(c).

<sup>6</sup> See 47 C.F.R. §§ 0.191, 0.392.

respect to, and governing operations under the Public Safety Broadband License in the existing public safety broadband spectrum. We replace these with rules implementing the clear mandate of the Public Safety Spectrum Act to grant a license for this spectrum and the D Block to FirstNet. The rule changes adopted by the Bureau in this order are strictly limited to aspects of that mandate that leave no room for agency discretion, and thus fall within the Bureau's delegated authority and are consistent with the requirements of the Administrative Procedure Act.<sup>7</sup> As noted below, by eliminating any confusion or uncertainty about the new regulatory framework applicable to the public safety broadband network, our action facilitates the transition of this spectrum to FirstNet, the prospective licensee established by the Act.

## II. BACKGROUND

3. The D Block and the existing public safety broadband spectrum are part of the Upper 700 MHz Band (746-806 MHz), which was made available for wireless services as a result of the digital television transition (DTV transition).<sup>8</sup> Pursuant to the Balanced Budget Act of 1997,<sup>9</sup> the Commission designated twenty-four megahertz of Upper 700 MHz spectrum for public safety services and the remaining thirty-six megahertz for commercial services to be assigned through competitive bidding.<sup>10</sup> The public safety segment included two six-megahertz narrowband segments (764-767 MHz/794-797 MHz and 773-776 MHz/803-806 MHz) that abutted a twelve megahertz wideband segment (767-773 MHz/797-803 MHz) on either side.<sup>11</sup>

4. In the *Second Report and Order*, the Commission reconfigured the public safety segment of the Upper 700 MHz Band to eliminate the wideband segment, consolidate narrowband channels within a single band segment (769-775 MHz/799-805 MHz) at the upper end of the public safety spectrum, and establish at the lower end a ten megahertz broadband segment (763-768 MHz/793-798 MHz). Between the broadband and narrowband segments the Commission placed a two megahertz internal guard band (768-769 MHz/798-799 MHz).<sup>12</sup> The Commission also reconfigured the commercial segment of the Upper 700 MHz band, in part by establishing a ten megahertz commercial "D Block" of spectrum directly adjacent to the public safety broadband spectrum (758-763 MHz/788-793 MHz).<sup>13</sup>

5. These revisions to the Upper 700 MHz band plan were made to facilitate a public-private partnership for the development of a nationwide interoperable public safety broadband network in the 700 MHz band. The Commission established rules creating a single nationwide license for the public safety broadband spectrum to be granted to a Public Safety Broadband Licensee (PSBL).<sup>14</sup> The D Block was then designated for auction under the condition that its licensee enter into a Network Sharing Agreement

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<sup>7</sup> See *id.*; 5 U.S.C. § 553(b)(B). See also notes 55-56 *infra*.

<sup>8</sup> See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289, 15291 ¶ 1 (2007) (*Second Report and Order*).

<sup>9</sup> See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3004 (1997) (adding new Section 337 of the Communications Act).

<sup>10</sup> See Relocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket 97-157, *Report and Order*, 12 FCC Rcd 22953, 22955 ¶ 5 (1997) (*Upper 700 MHz Reallocation Order*).

<sup>11</sup> See *Second Report and Order*, 22 FCC Rcd at 15302 fig. 6. The narrowband channels were designated for "voice and low speed data" communications while the wideband channels were designated for "image/high speed data and slow scan video." *Id.* at 15301 ¶ 30.

<sup>12</sup> See *id.* at 15294-95 ¶ 10, fig. 2.

<sup>13</sup> See *id.* at 15316-17 ¶ 62, fig. 8.

<sup>14</sup> See *id.* at 15419 ¶ 366.

(NSA) with the PSBL to construct and operate a nationwide, interoperable broadband network across both the D Block and the 700 MHz public safety broadband spectrum.<sup>15</sup>

6. In order to effectuate this plan, the Commission established requirements concerning the nature of the shared wireless broadband network and the respective rights and obligations of the D Block licensee and the PSBL regarding their partnership and the network. The Commission adopted rules requiring the parties to execute the NSA prior to the award of the D Block license.<sup>16</sup> In addition, the Commission placed certain other conditions on the D Block license “to protect services to the public safety community and facilitate the success of the 700 MHz Public/Private Partnership, including requirements relating to the organization and structure of the partnership, reporting requirements, and a prohibition on the discontinuance of public safety operations.”<sup>17</sup> The Commission also put in place “a means for public safety entities to: (1) obtain an earlier build-out of broadband networks than provided for in the NSA; (2) build their own broadband networks in areas not included in the NSA; and (3) conduct wideband operations via a limited and conditioned waiver process.”<sup>18</sup>

7. Soon after the release of the *Second Report and Order*, the Commission selected the Public Safety Spectrum Trust (PSST) to serve as PSBL.<sup>19</sup> However, an auction of the D Block in early 2008 under the terms and conditions established in the *Second Report and Order* failed to produce a winning bid. Later in 2008 the Commission issued a *Second*<sup>20</sup> and *Third Further Notice of Proposed Rulemaking*<sup>21</sup> that re-examined various options for achieving an interoperable nationwide public safety network.<sup>22</sup> The D Block was never re-auctioned and remains unlicensed.

8. In January 2011, the Commission adopted a *Third Report and Order*, which codified the use of LTE technology for the public safety broadband spectrum and stayed certain Part 90 rules that were designed to implement the mandatory public-private partnership that never came to fruition.<sup>23</sup> An accompanying *Fourth Further Notice of Proposed Rulemaking* considered further technical rules for ensuring the operability and interoperability of the nationwide public safety broadband network.<sup>24</sup>

9. In February 2012, the Public Safety Spectrum Act became law. It prescribes a detailed plan for the development of this long-awaited network, and fundamentally altered the regulatory landscape for the 700 MHz band by providing a Congressionally developed long-term vision for using this spectrum to deploy a nationwide public safety broadband network. Among its other provisions, the

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<sup>15</sup> See *id.* at 15431-32 ¶¶ 395-402.

<sup>16</sup> See *id.* at 15447-49 ¶¶ 446-454.

<sup>17</sup> *Id.* at 15428 ¶ 387.

<sup>18</sup> See *id.* at 15295 ¶ 13.

<sup>19</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06-229, *Order*, 22 FCC Rcd 20453, 20453 ¶ 2 (2007).

<sup>20</sup> See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, 23 FCC Rcd 8047 (2008) (*Second Further Notice*).

<sup>21</sup> Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 (2008) (*Third Further Notice*).

<sup>22</sup> See Service Rules for the 698-746, 747-762 and 777-792 Bands Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket 06-150, PS Docket 06-229, *Order*, FCC 09-8 (2009).

<sup>23</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 26 FCC Rcd 733 (2011) (*Third Report and Order* and *Fourth Further Notice*, respectively).

<sup>24</sup> See *id.*

Act establishes FirstNet as an independent authority within the National Telecommunications and Information Administration (NTIA), and requires the Commission to grant a license to FirstNet for the use of both the existing public safety broadband spectrum and the spectrally adjacent D Block, which the Commission must reallocate for public safety use.<sup>25</sup> The Act charges FirstNet with the responsibility for establishing and overseeing “a nationwide, interoperable public safety broadband network,”<sup>26</sup> by taking “all actions necessary to ensure the building, deployment, and operation of the . . . network, in consultation with Federal, State, tribal, and local public safety entities, the Director of NIST, the Commission, and the public safety advisory committee [that section 6205 of the Act requires FirstNet to establish].”<sup>27</sup> Among its more specific duties, FirstNet is responsible for issuing Requests for Proposals (RFPs) and entering contracts for the construction, operation and management of the network on a nationwide basis, using funds allocated for these purposes under the Act.<sup>28</sup>

10. On August 20, 2012, NTIA announced the appointment of the twelve non-Federal members to the Board of Directors of FirstNet.<sup>29</sup> FirstNet’s Board is thus fully constituted.

### III. REPORT AND ORDER

11. The Public Safety Spectrum Act directs the Commission to reallocate the D Block for public safety services, to license the D Block and the existing public safety broadband spectrum to FirstNet, and to take other actions necessary to “facilitate the transition of the existing public safety broadband spectrum to [FirstNet].”<sup>30</sup> In this order, we implement two aspects of the Public Safety Spectrum Act that are clear mandates to the Commission. First, we reallocate the D Block for “public safety services” and eliminate those rules establishing, providing license authority with respect to, and governing operations of the PSBL, as well as the rules providing for the associated public-private partnership with a D Block licensee. All of these rules are now inconsistent with the spectrum use and allocation required by the Public Safety Spectrum Act. In their place we establish rules reflecting the Commission’s new statutory obligation to license both the D Block and existing public safety broadband spectrum to FirstNet. Our actions today help set the stage for the deployment of the nationwide public safety broadband network as contemplated by the Act.

#### A. Reallocation of the 700 MHz D Block Spectrum for Public Safety Services

12. The Public Safety Spectrum Act directs the Commission to reallocate the 700 MHz D Block spectrum (758-763 MHz/788-793 MHz) for “public safety services.”<sup>31</sup> We hereby adopt the rule changes necessary to implement this clear statutory directive.<sup>32</sup>

13. As noted above, to facilitate the goal of a nationwide interoperable public safety network, the Commission previously established a mandatory public-private partnership between the winning bidder of the 700 MHz D Block spectrum and the nationwide licensee of the public safety broadband

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<sup>25</sup> Public Safety Spectrum Act, §§ 6101(a), 6201(a), 6204(a).

<sup>26</sup> *Id.* § 6202(a). *See generally id.* § 6206 (setting out FirstNet’s powers, duties and responsibilities).

<sup>27</sup> *Id.* § 6206(b).

<sup>28</sup> *Id.* § 6206.

<sup>29</sup> *See* Acting U.S. Commerce Secretary Rebecca Blank Announces Board of Directors for the First Responder Network Authority, Press Release (Aug. 20, 2012) available at <http://www.commerce.gov/news/press-releases/2012/08/20/acting-us-commerce-secretary-rebecca-blank-announces-board-directors-> (last visited Aug. 31, 2012).

<sup>30</sup> Public Safety Spectrum Act, §§ 6101(a), 6201(a),(c).

<sup>31</sup> *See id.* § 6001(27) (defining “public safety services” as services covered by Section 337(f) of the Communications Act, 47 U.S.C. § 337(f), as well as services provided by emergency response providers, as defined in Section 2 of the Homeland Security Act of 2002, 6 U.S.C. § 101).

<sup>32</sup> The rule changes adopted in this *Report and Order* are set forth in Appendix A.

spectrum.<sup>33</sup> While the Commission's plans never came to fruition,<sup>34</sup> the Commission's rules governing the public-private partnership, the D Block licensee, and the Public Safety Broadband Licensee are still intact,<sup>35</sup> and are now inconsistent with the Public Safety Spectrum Act's mandate for a nationwide network established by FirstNet as nationwide licensee.

14. Accordingly, within Title 47 of the Code of Federal Regulations, we eliminate Subpart N of Part 27 and Subpart AA of Part 90, which define the parameters of the public-private partnership. We also eliminate Section 0.181(k) of the Commission's rules, which gives the Commission's designated Defense Commissioner the responsibility to determine, in response to a request from the PSBL, whether to permit emergency priority access by first responder public safety entities to the Upper 700 MHz D Block licensed spectrum.<sup>36</sup> The Public Safety Spectrum Act now requires that the Commission reallocate and grant a license to FirstNet for the D Block and existing public safety spectrum, and it provides that FirstNet is to be the "single public safety wireless network licensee."<sup>37</sup> Accordingly, these rules are plainly inconsistent with the Act.

15. In addition, we eliminate from Section 27.4 the following "Terms and definitions" that relate specifically to the now obsolete partnership: "700 MHz Public/Private Partnership," "Network Assets Holder," "Network Sharing Agreement," "Operating Company," "Shared Wireless Broadband Network," "Special Purpose Bankruptcy Remote Entity," and "Upper 700 MHz D Block licensee."<sup>38</sup> We also eliminate similar definitions from Section 90.7, including the following: "Network Assets Holder," "Network Sharing Agreement," "Operating Company," "Shared Wireless Broadband Network," "Special Purpose Bankruptcy Remote Entity," and "Upper 700 MHz D Block licensee."<sup>39</sup> We also add to Section 90.7 a definition for the term "First Responder Network Authority." Finally, we delete from Section 27.5(b) the references to the D Block as available WCS spectrum.

## **B. Spectrum Licensing Under the Public Safety Spectrum Act**

16. In this section we take necessary action to implement the spectrum licensing provisions of the Public Safety Spectrum Act. Specifically, we delete the rules granting authority to the Public Safety Broadband License (PSBL) and replace these rules with provisions reflecting the Public Safety Spectrum Act's directive to license spectrum to FirstNet.

### **1. Eliminating the Rules Governing the Public Safety Broadband License**

17. Section 6201(a) of the Public Safety Spectrum Act directs the Commission, "[n]otwithstanding any other provision of law," to grant FirstNet a license "for the use of" the D Block spectrum and existing public safety broadband spectrum.<sup>40</sup> Although the D Block spectrum has not been

<sup>33</sup> See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289, 15406 ¶ 322 (2007) (*Second Report and Order*); 26 FCC Rcd 733 (2011) (*Third Report and Order and Fourth Further Notice*).

<sup>34</sup> See Auction of 700 MHz Band Licenses Closes, *Public Notice*, DA 08-595 (rel. Mar. 20, 2008) (*700 MHz Auction Closing Public Notice*). [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=73](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73); Auction of the D Block License in the 758-763 and 788-793 Bands, AU Docket No. 07-157, *Order*, 23 FCC Rcd 5421, ¶ 5 (2008) (*D Block Post-Auction Order*).

<sup>35</sup> *But see Third Report and Order*, 26 FCC Rcd at 739 ¶ 13 (staying certain Part 90 Subpart AA rules that define core responsibilities of the PSBL).

<sup>36</sup> 47 C.F.R. § 0.181(k).

<sup>37</sup> See Public Safety Spectrum Act § 6201 (section heading). See also *id.* §§ 6202(b), 6206(b)(1).

<sup>38</sup> 47 C.F.R. § 27.4.

<sup>39</sup> 47 C.F.R. § 90.7.

<sup>40</sup> See Public Safety Spectrum Act § 6201(a).

licensed following the DTV transition, Section 27.5(b)(4) of the Commission's rules currently makes this 10 MHz available for assignment. Sections 90.18 and 90.528 of the rules currently provide for licensing the existing public safety broadband spectrum to the PSBL, the holder of which is required to enter a public-private partnership with the D Block licensee to establish a nationwide interoperable public safety broadband network.<sup>41</sup> The Commission granted the Public Safety Broadband License to the PSST in 2007 "in order to facilitate" this partnership,<sup>42</sup> and the PSST's duties as PSBL are expressly tied to "ensuring [the partnership's] success."<sup>43</sup> Among its duties under the rules, the PSST is charged with entering a network sharing agreement with the D Block licensee to establish a shared broadband network in the spectrum associated with both licenses.<sup>44</sup> Other responsibilities include "administer[ing] access to the 700 MHz public safety broadband network" and "assess[ing] usage fees."<sup>45</sup>

18. The Public Safety Spectrum Act requires the Commission to grant FirstNet a license "for the use of" the spectrum licensed under the PSBL, as well as the D Block, so that FirstNet can establish a nationwide public safety broadband network. The Act provides that FirstNet is to be "the single public safety wireless licensee" and requires "a single, national network architecture."<sup>46</sup> This statutory directive is plainly incompatible with the purpose of the PSBL and the functions assigned to it under the existing rules. Section 6206(b) of the Public Safety Spectrum Act directs FirstNet to "to take all actions necessary to ensure the building, deployment, and operation of the nationwide public safety broadband network."<sup>47</sup> These actions may include establishing terms of service for use of the network and assessing user fees.<sup>48</sup> By assigning these and other powers to FirstNet, the Public Safety Spectrum Act precludes the PSBL from exercising the powers and responsibilities assigned to it under current Commission rules. Preserving these rule provisions could create confusion or uncertainty regarding FirstNet's rights and responsibilities under its license.

19. Accordingly, consistent with the Commission's authority to "take any action necessary to assist [FirstNet] in effectuating its duties and responsibilities under" the Public Safety Spectrum Act and to "facilitate the transition" of spectrum to FirstNet as required under the Act,<sup>49</sup> we hereby delete those rules that provide license authority to and govern the operation of the PSBL, *i.e.*, Sections 90.18 and 90.528, effective on the date of issuance of a license to FirstNet, following the appointment of its Board as required by the Act. The Bureau will issue a public notice announcing this effective date once it occurs.

20. The action that we are taking here to delete rules that form the basis of the PSST's authority to hold its license and operate thereunder, along with the natural consequence of shortening the term of its license and eliminating any renewal expectancy, is required by the Public Safety Spectrum Act, "[n]otwithstanding any other provision of law."<sup>50</sup> Our use of the rulemaking process as the mechanism for carrying out this modification is appropriate, in that we are changing rules to reflect a

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<sup>41</sup> See 47 C.F.R. §§ 90.18, 90.528.

<sup>42</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06-229, Order, 22 FCC Rcd 20453, 20453 ¶ 2 (2007).

<sup>43</sup> See *id.* at 20455 ¶ 6.

<sup>44</sup> See *id.*

<sup>45</sup> *Id.* See also 47 C.F.R. § 90.528.

<sup>46</sup> See Public Safety Spectrum Act §§ 6201; 6202(b).

<sup>47</sup> See *id.* § 6206(b).

<sup>48</sup> See *id.* §§ 6206(c)(1)(D), 6208(a)(1).

<sup>49</sup> See *id.* §§ 6201(c), 6213.

<sup>50</sup> *Id.* § 6201(a).

clear statutory directive affecting the licensing regime for the public safety broadband spectrum, rather than basing our action on any concerns or other factors specific to the PSST or its administration of its license. Accordingly, once the elimination of the rules establishing the authority under the PSBL becomes effective, we will take the ministerial step of deleting the PSST's license from the Commission's database.

## 2. Licensing of Spectrum to FirstNet

21. The Public Safety Spectrum Act directs the Commission to grant FirstNet a license for use of both the D Block spectrum and the existing public safety broadband spectrum. Pursuant to that mandate, we adopt in this *Report and Order* additional rules to reflect FirstNet's statutory license for this spectrum. In an April 3, 2012, letter, NTIA requests that the Commission "work with dispatch to reallocate the D Block spectrum and prepare the 700 MHz spectrum license to grant to FirstNet."<sup>51</sup> While NTIA proposes to notify the Commission "when FirstNet is prepared to accept" its license,<sup>52</sup> we observe that since NTIA made its request FirstNet's Board has been appointed and it is now itself in a position to file a request on its own for the license to which it is entitled under the Public Safety Spectrum Act.<sup>53</sup> Accordingly, we are prepared to take the ministerial step of granting a new license to FirstNet under a new call sign as soon as possible after FirstNet informs the Bureau that it has been established in accordance with the terms of the Public Safety Spectrum Act and submits a request for the license specified by Section 6201 of the Public Safety Spectrum Act.<sup>54</sup>

### C. Legal Authority

22. We act pursuant to the clear statutory authority of the Public Safety Spectrum Act in this *Report and Order*. Section 6101 of the Public Safety Spectrum Act directs the Commission to reallocate the D Block for public safety services, and Section 6201(a) directs the Commission to license this spectrum and the existing public safety spectrum to FirstNet as the single public safety wireless network licensee. Because the rules we adopt in this *Report and Order* concern matters over which the Public Safety Spectrum Act leaves the Commission no discretion, there is good cause for finding notice and public procedure thereon to be unnecessary.<sup>55</sup> Accordingly, we find that the notice-and-comment requirements of Section 553(b) of the Administrative Procedure Act are not applicable to the rules adopted in this *Report and Order*.

23. The Bureau adopts this *Report and Order* pursuant to its delegated authority to "conduct[]

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<sup>51</sup> See Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, Department of Commerce, to Julius Genachowski, Chairman, Federal Communications Commission, PS Docket 06-229, PS Docket 12-94 (dated Apr. 3, 2012).

<sup>52</sup> See *id.*

<sup>53</sup> We note that the Public Safety Spectrum Act established FirstNet as "an *independent* authority with the NTIA." Public Safety Spectrum Act § 6204(a) (emphasis added).

<sup>54</sup> Although the Public Safety Spectrum Act requires that FirstNet submit to the Commission an application for renewal of its license demonstrating that it "has met the duties and obligations set forth under [the Spectrum] Act," that Act does not specify any specific terms and conditions to govern that license, other than its reference to "deployment phases with substantial rural coverage milestones" that are "consistent with the license granted" by the Commission. See Public Safety Spectrum Act §§ 6201(b)(2), 6206(b)(3). The Commission may seek comment in further proceedings on whether it can and should adopt rules imposing limited conditions on FirstNet's license, including service rules applicable to the network, pursuant to the Commission's authority under the Communications Act and the Public Safety Spectrum Act.

<sup>55</sup> See 5 U.S.C. § 553(b)(B). See also *Komjathy v. National Transp. Safety Bd.*, 832 F.2d 1294, 1296-97 (D.C. Cir. 1987) (notice and comment unnecessary where regulation "does no more than repeat, virtually verbatim, the statutory grant of authority"); *Gray Panthers Advocacy Comm. v. Sullivan*, 936 F.2d 1284, 1291-92 (D.C. Cir. 1991) (regulations "restate or paraphrase" the "detailed requirements" of the statute).

rulemaking proceedings” in matters pertaining to public safety and homeland security.<sup>56</sup>

#### IV. PROCEDURAL MATTERS

##### A. Regulatory Flexibility Act

24. Under Section 603(a) of the Regulatory Flexibility Act (RFA), the Commission is not required to prepare a final regulatory flexibility analysis relating to the *Report and Order* because we are not required to publish general notice of proposed rulemaking before effecting these rule changes.

##### B. Paperwork Reduction Act of 1995

25. *Paperwork Reduction Act of 1995*. This document contains no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

##### C. Congressional Review Act

26. The Bureau will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

##### D. Accessible Formats

27. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, *etc.*) by e-mail at [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by phone at 202-418-0530 (voice) or 202-418-0432 (TTY).

#### V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED pursuant to sections 1, 2, 4(i), 5(c), 7, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, and 337, as well as Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, that this *Report and Order* in WT Docket No. 06-150 and PS Docket Nos. 06-229 and 12-94 IS ADOPTED. This *Report and Order* will become effective thirty days after publication in the Federal Register, except for the deletion of sections 90.18 and 90.528 of the Commission’s rules. Following that date, the Commission will publish a separate notice in the Federal Register announcing the subsequent effective date of these rule deletions, which shall be the date of issuance of a license to the First Responder Network Authority pursuant to Section 6201(a) of the Middle Class Tax Relief and Job Creation Act of 2012.

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<sup>56</sup> See 47 C.F.R. §§ 0.191(e), 0.392; *see also id.* § 0.191(a). Because the rules adopted in this *Report and Order* do not “aris[e] from” a notice of proposed rulemaking, our adoption of them is not prohibited by Section 0.392(e). *See* 47 C.F.R. § 0.392(e).

29. IT IS FURTHER ORDERED that the Bureau SHALL SEND a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

David S. Turetsky  
Chief, Public Safety and Homeland Security Bureau

## APPENDIX A

### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 27 and 90 as follows:

#### **PART 0 – COMMISSION ORGANIZATION**

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.181 is amended by deleting subsection (k).

#### **PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

3. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

4. Section 27.1 is amended by revising paragraph (b)(2) to read as follows:

\* \* \* \* \*

(b) \* \* \*

(2) 746–758 MHz, 775–788 MHz, and 805-806 MHz.

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5. Section 27.4 is amended by deleting the following definitions:

#### **§ 27.4 Terms and definitions**

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*700 MHz Public/Private Partnership.* The public/private partnership established for the development and operation of a nationwide, shared interoperable wireless broadband network operating on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands in accordance with the Commission’s rules.

\* \* \* \* \*

*Network Assets Holder.* The Network Assets Holder is a Special Purpose Bankruptcy Remote Entity that is formed to hold the assets of the shared wireless broadband network associated with the 700 MHz Public/Private Partnership, in accordance with the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission’s rules.

*Network Sharing Agreement (NSA).* An agreement entered into between the winning bidder, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and any other related entities that the Commission may require or allow regarding the shared wireless broadband network associated with the 700 MHz Public/Private Partnership that will operate on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands.

*Operating Company.* The Operating Company is a Special Purpose Bankruptcy Remote Entity that is formed to build and operate the shared wireless broadband network associated with the 700 MHz Public/Private Partnership, in accordance with the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

\* \* \* \* \*

*Public Safety Broadband License.* The Public Safety Broadband License authorizes public safety broadband services in the 763-768 MHz and 793-798 MHz bands on a primary basis.

*Public Safety Broadband Licensee.* The licensee of the Public Safety Broadband License in the 763-768 MHz and 793-798 MHz bands.

\* \* \* \* \*

*Shared Wireless Broadband Network.* Wireless broadband network associated with the 700 MHz Band Public/Private Partnership that operates on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands pursuant to the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

*Special Purpose Bankruptcy Remote Entity.* A "special purpose entity" is a legal entity created for a special limited purpose, in this context primarily to hold the Upper 700 MHz D Block license or the network assets, or to conduct the construction or operation of the shared wireless broadband network associated with the 700 MHz Public/Private Partnership. A special purpose entity is "bankruptcy remote" if that entity is unlikely to become insolvent as a result of its own activities, is adequately insulated from the consequences of a related party's insolvency, and contains certain characteristics which enhance the likelihood that it will not become the subject of an insolvency proceeding.

\* \* \* \* \*

*Upper 700 MHz D Block license.* The Upper 700 MHz D Block license is the nationwide license associated with the 758-763 MHz and 788-793 MHz bands.

*Upper 700 MHz D Block licensee.* The Special Purpose Bankruptcy Remote Entity to which the Upper 700 MHz D Block license must be transferred upon execution of the Network Sharing Agreement. References herein to the rights and obligations of the Upper 700 MHz D Block licensee include the exercise or discharge of such rights or obligations, respectively, by related entities as are provided for in the NSA or otherwise as authorized by the Commission.

\* \* \* \* \*

6. Section 27.5 is amended by revising paragraph (b) to read as follows:

**§ 27.5 Frequencies.**

\* \* \* \* \*

(b) *746–758 MHz, 775–788 MHz, and 805-806 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 746-758 MHz, 775-788 MHz, and 805-806 MHz bands:

(1) Two paired channels of 1 megahertz each are available for assignment in Block A in the 757-758 MHz and 787-788 MHz bands.

(2) Two paired channels of 1 megahertz each are available for assignment in Block B in the 775-776 MHz and 805-806 MHz bands.

(3) Two paired channels of 11 megahertz each are available for assignment in Block C in the 746-757 MHz and 776-787 MHz bands. In the event that no licenses for two channels in this Block C are assigned based on the results of the first auction in which such licenses were offered because the auction results do not satisfy the applicable reserve price, the spectrum in the 746-757 MHz and 776-787 MHz bands will instead be made available for assignment at a subsequent auction as follows:

(i) Two paired channels of 6 megahertz each available for assignment in Block C1 in the 746-752 MHz and 776-782 MHz bands.

(ii) Two paired channels of 5 megahertz each available for assignment in Block C2 in the 752-757 MHz and 782-787 MHz bands.

7. Part 27 is amended by deleting Subpart N and by deleting Sections 27.1301 through 27.1340.

**PART 90 – PRIVATE LAND MOBILE RADIO SERVICES**

8. The authority citation for Part 90 is amended to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156.

9. Section 90.7 is amended by deleting the following definitions:

**§ 90.7 Definitions.**

\* \* \* \* \*

*700 MHz Public/Private Partnership.* The public/private partnership established for the development and operation of a nationwide, shared interoperable wireless broadband network operating on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands in accordance with the Commission's rules.

\* \* \* \* \*

*Network Assets Holder.* The Network Assets Holder is a Special Purpose Bankruptcy Remote Entity that is formed to hold the assets of the shared wireless broadband network associated with the

700 MHz Public/Private Partnership, in accordance with the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

*Network Sharing Agreement (NSA).* An agreement entered into between the winning bidder, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and any other related entities that the Commission may require or allow regarding the shared wireless broadband network associated with the 700 MHz Public/Private Partnership that will operate on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands.

\* \* \* \* \*

*Operating company.* The Operating Company is a Special Purpose Bankruptcy Remote Entity that is formed to build and operate the shared wireless broadband network associated with the 700 MHz Public/Private Partnership, in accordance with the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

\* \* \* \* \*

*Public safety broadband license.* The Public Safety Broadband License authorizes public safety broadband services in the 763-768 MHz and 793-798 MHz bands.

*Public Safety Broadband Licensee.* The licensee of the Public Safety Broadband License in the 763-768 MHz and 793-798 MHz bands.

*Public safety broadband network operator.* A Public Safety Broadband Network Operator is a public safety entity that is authorized by lease or other permitted mechanism under the Public Safety Broadband License to operate a public safety broadband network in the 763-768 MHz and 793-798 MHz bands.

\* \* \* \* \*

*Shared Wireless Broadband Network.* Wireless broadband network associated with the 700 MHz Band Public/Private Partnership that operates on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands pursuant to the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

\* \* \* \* \*

*Special Purpose Bankruptcy Remote Entity.* A "special purpose entity" is a legal entity created for a special limited purpose, in this context primarily to hold the Upper 700 MHz D Block license or the network assets, or to conduct the construction or operation of the Shared Wireless Broadband Network associated with the 700 MHz Public/Private Partnership. A special purpose entity is "bankruptcy remote" if that entity is unlikely to become insolvent as a result of its own activities, is adequately insulated from the consequences of a related party's insolvency, and contains certain characteristics which enhance the likelihood that it will not become the subject of an insolvency proceeding.

\* \* \* \* \*

*Upper 700 MHz D Block license.* The Upper 700 MHz D Block license authorizes services in the 758-763 MHz and 788-793 MHz bands.

*Upper 700 MHz D Block licensee.* The Special Purpose Bankruptcy Remote Entity to which the Upper 700 MHz D Block license must be transferred upon execution of the Network Sharing Agreement. References herein to the rights and obligations of the Upper 700 MHz D Block licensee include the exercise or discharge of such rights or obligations, respectively, by related entities as are provided for in the NSA or otherwise as authorized by the Commission.

\* \* \* \* \*

- 10. Section 90.7 is further amended by adding the following definition:

**§ 90.7 Definitions.**

\* \* \* \* \*

*First Responder Network Authority.* An entity established by the Middle Class Tax Relief and Job Creation Act of 2012 as an independent authority within the National Telecommunications and Information Administration and designated by that statute to hold a nationwide license associated with the 758-769 MHz and 788-799 MHz bands for use in deploying a nationwide public safety broadband network.

- 11. Section 90.18 is deleted
- 12. Part 90 is amended by adding new section 90.19 to read as follows:

**§ 90.19 Nationwide Public Safety Broadband Network**

Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), the 758-769 MHz and 788-799 MHz bands are allocated for use by the First Responder Network Authority to deploy a nationwide public safety broadband network as prescribed by statute.

- 13. Section 90.20 is amended by revising the table in paragraph (c)(3) and paragraph (d)(77) to read as follows:

**§ 90.20 Public Safety Pool.**

\* \* \* \* \*

(c) \* \* \*

(3) Frequencies.

Public Safety Pool Frequency Table

Frequency or band	Class of station(s)	Limitations	Coordinator
*	*	*	*
470 to 512	Base or mobile	68	
758 to 775	Base,	77	PX

	mobile		
788 to 805	Mobile	77	PX
806 to 817	do	69	
*	*	*	*

(d) \* \* \*

(77) Subpart R of this part contains rules for assignment of channels in the 758-775 MHz and 788-805 MHz bands.

14. Subpart R is amended by revising the subpart title to read as follows:

**Subpart R – Regulations Governing the Licensing and Use of Frequencies in the 758-775 and 788-805 MHz Bands**

15. The first sentence of Section 90.521 is amended to read as follows:

**§ 90.521 Scope.**

This subpart sets forth the regulations governing the licensing and operations of all systems operating in the 758-775 MHz and 788-805 MHz frequency bands. \* \* \*

16. Section 90.528 is deleted.

17. Section 90.531 is amended by revising the introductory paragraph and paragraph (g) as follows:

**§ 90.531 Band plan.**

This section sets forth the band plan for the 758-775 MHz and 788-805 MHz public safety bands.

\* \* \* \* \*

(g) *Broadband.* The 758-768 MHz and 788-798 MHz bands are allocated for broadband communications.

18. Part 90 is amended by adding new Section 90.532 to read as follows:

**§ 90.532 Licensing of the 758-769 MHz and 788-799 MHz Bands**

Pursuant to Section 6201 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), a nationwide license for use of the 758-769 MHz and 788-799 MHz bands shall be issued to the First Responder Network Authority for a initial license term of ten years from the date of the initial issuance of the license. Prior to expiration of the term of such initial license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under the foregoing Act. A renewal license shall be for a term not to exceed ten years.

19. Part 90 is amended by deleting Sections 90.1401 to 90.1440.