

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

In the Matter of)	
)	
Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network)	PS Docket No. 16-269
)	
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
)	

ORDER

Adopted: October 23, 2018

Released: October 23, 2018

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, we dismiss, without prejudice, a Request for Clarification filed by the Colorado Public Safety Broadband Governing Body (CPSBGB). Specifically, in light of a subsequent filing by the Colorado Governor’s Office of Information and Technology, Broadband Office (Colorado Broadband Office), on behalf of the CPSBGB, we find that the Request is premature.

II. BACKGROUND

2. Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act) provides for the deployment of a nationwide public safety broadband network (NPSBN) in the 700 MHz band.¹ The Act established FirstNet as an independent authority within the National Telecommunications and Information Administration (NTIA),² and required the Commission to grant a license to FirstNet for the 758-769/788-799 MHz band.³ The Act charges FirstNet with responsibility for establishing and overseeing “a nationwide, interoperable public safety broadband network” operated in this spectrum.⁴ Among its more specific duties, FirstNet is responsible for issuing requests for proposals

¹ See generally Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457), 126 Stat. 156, 201-222, 235-236 (Public Safety Spectrum Act).

² *Id.* § 6204(a).

³ *Id.* §§ 6101(a), 6201(a), 6204(a).

⁴ *Id.* § 6206(b).

and entering into contracts for the construction, operation and management of the network on a nationwide basis, using funds allocated for these purposes under the Act.⁵

3. On July 6, 2018, CPSBGB filed a “Request for Clarification” (Request) in the above captioned dockets,⁶ asking that the Commission issue a declaratory ruling to “clarify that ensuring interoperability is a fundamental responsibility of FirstNet, and that FirstNet must ensure that interoperability is supported at all levels, including network, services, applications, and devices.”⁷ In addition, CPSBGB asked that the Commission initiate a rulemaking proceeding to “establish rules for all roaming arrangements to ensure interoperability, and . . . that such rules accommodate the bidirectional nature of such roaming arrangements.”⁸ CPSBGB also requested that the Commission, as part of that rulemaking proceeding, specifically “address the critical issue of roaming and prioritization as it applies to applications such as [push-to-talk] and [mission critical push-to-talk], as well as to other applications that will face the same issues.”⁹ On July 12, 2018, Verizon filed a letter in support of the Request, and asked that the Commission place the Request on public notice.¹⁰

4. In a letter filed on July 13, 2018, the Colorado Broadband Office now requests, on behalf of CPSBGB, that the Commission “not take any further action on this matter at this time.”¹¹ The Colorado Broadband Office states that it “will work collaboratively with the CPSBGB and FirstNet to resolve the concerns raised regarding interoperability and ensure that the Colorado first responder community has access to a state of the art communications system.”¹² Subsequently, several additional parties filed letters in support of the original Request by CPSBGB, and in support of placing the Request on public notice.¹³

III. DISCUSSION

5. Section 1.401 of the Commission’s rules requires, in pertinent part, that “[a]ny interested person may petition for the issuance, amendment or repeal of a rule or regulation,” and that such “petition

⁵ *Id.* §§ 6206(a)-(c).

⁶ The Colorado Public Safety Broadband Governing Body’s Request for Commission Clarification on Guidelines for Commercial Network Interoperability for the Nationwide Public Safety Broadband Network (NPSBN), PS Docket Nos. 16-269, 12-94 and 06-229, WT Docket No. 06-150 (filed July 6, 2018) (Request). The Request was signed by Brian Shepherd of the Colorado Broadband Office.

⁷ *Id.* at 8-9.

⁸ *Id.* at 9.

⁹ *Id.*

¹⁰ Letter from Robert G. Morse, Assistant General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269, at 1 (filed July 12, 2018).

¹¹ Letter from Brian Shepherd, Chief Operating Officer, Colorado Broadband Office, Colorado Governor’s Office of Information Technology, Letter to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269, 12-94 and 06-229, WT Docket No. 06-150, at 1 (filed July 13, 2018) (Colorado Broadband Office Letter).

¹² *Id.*

¹³ See Letter from Benjamin M. Moncrief, Vice President, Government Relations, Cellular South, Inc. d/b/a C Spire, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269, 12-94 and 06-229, WT Docket No. 06-150, at 1-2 (filed July 26, 2018); Letter from Michael D. Rosenthal, Director, Legal and External Affairs, Southern Linc, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269, 12-94 and 06-229, WT Docket No. 06-150, at 1-3 (filed Aug. 7, 2018); Letter from Rebecca Murphy Thompson, EVP and General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269, 12-94 and 06-229, WT Docket Nos. 06-150 and 12-69, at 1-2 (filed Aug. 20, 2018).

shall set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.”¹⁴ Section 1.401(e) provides that “[p]etitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration . . . may be denied or dismissed without prejudice to the petitioner.”¹⁵ Although Section 1.2—the provision in the rules that addresses declaratory rulings—does not expressly provide for the dismissal of petitions for declaratory ruling,¹⁶ the Commission has dismissed such petitions on grounds similar to those it invokes when dismissing petitions for rulemaking.¹⁷ Moreover, the Commission recently indicated that “petitions for declaratory ruling should be handled in a similar manner to petitions for rulemaking.”¹⁸

6. In its letter to the Commission, the Colorado Broadband Office states that the interoperability concerns expressed in the Request are not ripe for Commission consideration. Specifically, the Colorado Broadband Office states that it “will work collaboratively with the CPSBGB and FirstNet to resolve the concerns raised regarding interoperability.”¹⁹ This collaboration may result in further steps to address Colorado’s interoperability concerns without the need for the Commission to consider the Request. Furthermore, this ongoing collaboration indicates that the interoperability issues identified in the Request have not crystallized into a controversy or uncertainty that warrants Commission resolution through a declaratory ruling. Thus, we dismiss the Request as premature because ongoing events may alter Colorado’s interest in, and asserted need for, the requested relief.

7. In light of our dismissal of the Request, we also find the filings by other parties supporting the Request to be moot.²⁰ If other parties have concerns that they believe warrant Commission action, they may petition accordingly.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 4(j), and 5(c) of the

¹⁴ 47 CFR § 1.401(a), (c).

¹⁵ 47 CFR § 1.401(e); *see, e.g.*, Amendment of 47 CFR Part 90 of the Commission’s Rules to Allow an Additional Frequency and Emission to Be Designated for Travelers’ Information Stations, *Order*, 32 FCC Rcd 3049, 3051, paras. 8-9 (PSHSB 2017) (dismissing a rulemaking petition as premature because ongoing events could render the proposed rule changes unnecessary).

¹⁶ 47 CFR § 1.2.

¹⁷ *See, e.g.*, Guam Telephone Authority, *Order*, 12 FCC Rcd 13938, 13940-41, paras. 9-11 (1997) (dismissing a petition for declaratory ruling on mootness grounds (to the extent petitioner sought the ruling to prevent Guam from enjoining petitioner’s participation in a spectrum auction), on grounds that the ruling would be premature (insofar as petitioner sought the ruling to avoid the possible application in the future of an unknown law that might prevent it from offering service), and for failure to identify a controversy or uncertainty that had crystallized enough to warrant issuance of a declaratory ruling); *see also Yale Broad. Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973) (holding that the Commission’s refusal to grant a declaratory ruling was not an abuse of discretion and noting that the Commission’s decision was in accord with its “long standing policy of refusing to issue interpretative rulings or advisory opinions whenever the critical facts are not explicitly stated or there is a possibility that subsequent events will alter them”).

¹⁸ Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization, *Report and Order*, 26 FCC Rcd 1594, 1598, para. 12 (2011).

¹⁹ Request at 1.

²⁰ *See* Wireless Telecommunications Bureau Mobility Division Approves Withdrawal of Petition for Declaratory Ruling, *Public Notice*, 21 FCC Rcd 5917, 5917 (WTB 2006) (dismissing a petition for declaratory ruling and noting that “[a]ll other pleadings filed in that matter are hereby deemed moot”).

Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(c), and Sections 1.2 and 1.401(e) of the Commission's rules, 47 CFR §§ 1.2, 1.401(e), this ORDER in PS Docket Nos. 16-269, 12-94 and 06-229, and WT Docket No. 06-150 is ADOPTED.

9. IT IS FURTHER ORDERED that the Request for Clarification filed by the Colorado Public Safety Broadband Governing Body on July 6, 2018, is DISMISSED, without prejudice.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Fowlkes
Chief, Public Safety and Homeland Security Bureau