

**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 |
| |) | |
| Service Rules for the 698-746, 747-762 and 777- 792 MHz Bands |) | WT Docket No. 06-150 |
| |) | |
| Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band |) | PS Docket No. 06-229 |
| |) | |

ORDER

Adopted: July 30, 2012

Released: July 31, 2012

By the Commission: Chairman Genachowski and Commissioners Clyburn and Rosenworcel issuing separate statements; Commissioner McDowell concurring and issuing a statement; Commissioner Pai approving in part, concurring in part, and issuing a statement.

1. The Middle Class Tax Relief and Job Creation Act of 2012 (“Public Safety Spectrum Act” or “Act”),¹ enacted February 22, 2012, fundamentally altered the regulatory landscape for the 700 MHz band, providing a Congressionally developed long-term vision for using this spectrum to deploy a nationwide public safety broadband network. The Act establishes the First Responder Network Authority (FirstNet) to develop this network, under an FCC license for both the existing public safety broadband spectrum (763-769 MHz/793-799 MHz) and the spectrally adjacent D Block (758-763 MHz/788-793 MHz). FirstNet will have a formidable task in front of it. The ultimate success of FirstNet will require the expertise of its appointed board members and each of the Federal agencies charged with its support. Once established, we recognize that FirstNet will need time to consider its plan for the network, develop the details of the nationwide architecture, and implement a deployment schedule. At the same time, it is important that the Commission take all action necessary to keep Americans safe in the intervening time period. Under the Public Safety Spectrum Act, the Commission has been tasked with facilitating the transition of the spectrum so that FirstNet, once it is fully formed and operational, will be able to proceed in an environment that fosters the fundamental vision of Congress to promote a truly interoperable nationwide public safety broadband network.²

2. We also recognize, however, that prior to the enactment of the Public Safety Spectrum Act some public safety jurisdictions were on the verge of implementing statewide or regional networks designed ultimately to support such nationwide interoperability. In this Order, we adopt an approach to allow limited deployment of public safety broadband services to first responders in the existing public

¹ Pub. L. No. 112-96, 126 Stat. 156 (2012).

² See Public Safety Spectrum Act § 6201(c) (requiring Commission to “take all actions necessary to facilitate the transition of the existing public safety broadband spectrum to the First Responder Network Authority”).

safety broadband spectrum (763-768/793-798 MHz) pursuant to our existing Special Temporary Authority (STA) rules.³ We expect that this will be the case in very few instances, and only where we can conclude that such deployment clearly serves the public interest and will not be detrimental to the Public Safety Spectrum Act's goals or likely to jeopardize FirstNet's mandate to deploy a nationwide interoperable public safety broadband network. We believe that the public interest might be strongly served where, among other things, a project is near completion in terms of development and has been the subject of sustained investment over time, where it will address a significant and specific public-safety need, and where it is consistent with the "recommended minimum technical requirements" for nationwide interoperability recently developed by the Interoperability Board. We discuss below in more detail the instances where the Commission might be inclined to find extraordinary circumstances have been demonstrated.

I. BACKGROUND

3. The Commission first developed a framework for a nationwide public safety broadband network in 2007 under a "public-private partnership" regulatory model. The Commission adopted rules requiring the eventual commercial licensee of the 700 MHz D Block spectrum (758-763/788-793 MHz) to enter a partnership with the licensee of the existing public safety broadband spectrum (763-769/793-799 MHz) to construct and operate a shared wireless broadband network in the spectrum associated with both licenses.⁴ The Commission auctioned the D Block under these terms in 2008 but did not receive a winning bid.⁵ As the Commission revisited its policies in light of the auction failure,⁶ a number of states and localities filed waiver petitions to deploy and operate 700 MHz public safety broadband networks within their jurisdictions in advance of nationwide deployment.⁷ In May 2010 the Commission granted early deployment waivers to twenty-one public safety jurisdictions (Waiver Recipients),⁸ seven of which were later granted a total of approximately \$382 million under the Broadband Technology Opportunities Program (BTOP) to construct their networks.⁹ These waivers were premised, in part, on the Commission's determination that it would be able to "advance the goal of nationwide interoperability by

³ See 47 C.F.R. § 1.931(b). We also recognize that there is an existing process under Part 5 of our rules for experimental licenses and STAs. This approach we adopt today does not displace Part 5 authorizations under the standards set forth in those rules. We will continue to entertain applications for such authorization so long as such requests satisfy those standards and do not undermine the considerations articulated here.

⁴ 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 (2007) (*Second Report and Order*).

⁵ See Auction of 700 MHz Band Licenses Closes, *Public Notice*, DA 08-595, at 2 (Mar. 20, 2008).

⁶ 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*, 22 FCC Rcd 8047 (2008); *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 (2008).

⁷ See, e.g., Public Safety and Homeland Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks, DA 09-1819 (rel. Aug. 14, 2009).

⁸ See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 25 FCC Rcd 5145 (2010) (*Waiver Order*). A list of pending narrowband deployment waiver petitions can be found in the Appendix.

⁹ See, e.g., National Telecommunications and Information Administration, Broadband Technology Opportunities Program, Quarterly Report at 1 (Sept. 2011), available at <http://www.ntia.doc.gov/files/ntia/publications/10th-btop-quarterly-congressional-report-sept-2011.pdf> (last visited May 15, 2012).

granting the waiver requests with appropriate conditions.”¹⁰

4. The *Waiver Order* authorizes the Waiver Recipients to deploy in the public safety broadband spectrum under long term *de facto* spectrum transfer leases from the Public Safety Spectrum Trust (PSST), the current public safety broadband licensee.¹¹ A Standard Lease appended to the *Waiver Order* provided that the PSST would grant each Waiver Recipient spectrum lessee “maximum usage rights [over the public safety broadband spectrum]” within the lessee’s geographic area of operation.¹² The *Waiver Order* also imposed on the Waiver Recipients a number of technical and operational conditions, including requirements to adhere to the 3GPP Long Term Evolution (LTE) technology platform and the obligation to submit an “interoperability showing” to the Public Safety and Homeland Security Bureau (Bureau) detailing plans for achieving interoperability.¹³ In May 2011, the Bureau granted a waiver under the same conditions to the State of Texas (Texas),¹⁴ whose constituent jurisdiction, Harris County, had obtained a grant for its network from the Federal Emergency Management Agency in the Department of Homeland Security.¹⁵

5. The Public Safety Spectrum Act became law on February 22, 2012. It provides a statutory framework for the deployment of a nationwide public safety broadband network based on a single, nationwide network architecture. That framework differs from the one on which the waiver authorizations were based. The Act directs the Commission to reallocate the D Block for public safety services and to assign a license for both the D Block and the existing public safety broadband spectrum to FirstNet,¹⁶ an independent authority to be formed within the National Telecommunications and Information Administration (NTIA) at the Department of Commerce.¹⁷

6. FirstNet will be the primary architect of the nationwide network. It will be responsible for taking “all actions necessary to ensure the building, deployment and operation of the nationwide public safety broadband network.”¹⁸ Among other things, these tasks include developing requests for proposals (RFPs) with appropriate construction timelines, coverage areas, service levels, performance criteria and similar matters, and consulting with regional, State, tribal and local jurisdictions on matters such as build out, tower placement, coverage areas and other local issues.¹⁹ As noted above, the Commission is required to “take all actions necessary to facilitate the transition” of the existing public

¹⁰ *Waiver Order*, 25 FCC Rcd at 5150 ¶ 14.

¹¹ *See id.* at 5153 ¶ 24.

¹² *See id.* at 5173 app. B.

¹³ *See id.* at 5157, 5164 ¶¶ 38, 55. The Public Safety and Homeland Security (PSHSB) supplemented the requirements of the *Waiver Order* with further technical requirements it developed in consultation with its Emergency Response Interoperability Center (ERIC). *See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, PS Docket No. 06-229, *Order*, 25 FCC Rcd 17156 (PSHSB 2010) (*Interoperability Waiver Order*).

¹⁴ *See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, PS Docket 06-229, *Order*, 26 FCC Rcd 6783 (PSHSB 2011) (*Texas Waiver Order*). For purposes of this order, the term “Waiver Recipients” encompasses the State of Texas.

¹⁵ *Id.* at 6783 ¶ 1.

¹⁶ Public Safety Spectrum Act §§ 6101(a), 6201(a).

¹⁷ *Id.* §§ 6101(a); 6201(a); 6206(b)(1).

¹⁸ *Id.* § 6206(b)(1)

¹⁹ *Id.* § 6202(c).

safety broadband spectrum to FirstNet.²⁰ The Public Safety Spectrum Act also prescribes a process by which a state may opt out of participation in the nationwide network, subject to Commission approval.²¹ Finally, the Public Safety Spectrum Act established within the Commission a Technical Advisory Board for First Responder Interoperability (Interoperability Board) charged with developing and submitting to the Commission recommended minimum technical requirements for nationwide interoperability.²² These recommended requirements, as approved for transmittal to FirstNet by the Commission, must be incorporated without material change into FirstNet's RFPs for network construction and operation.²³

7. On April 6, 2012, the Bureau released a public notice (*Transition Public Notice*) that sought comment on the disposition of Waiver Recipient deployments in light of the Public Safety Spectrum Act.²⁴ The *Transition Public Notice* asked questions about whether preserving these deployments, either under renewed leases or special temporary authority (STA), would be appropriate. The notice also sought comment on the possibility of terminating them.²⁵ Finally, the notice asked whether Waiver Recipients with stated plans for entering service in the near term, including Texas and the City of Charlotte, North Carolina (Charlotte), may be capable of delivering short-term public safety benefits that merit special consideration.²⁶

8. The majority of comments on the *Transition Public Notice* assert that the Commission should preserve and extend existing waiver deployments in conjunction with the licensing of FirstNet, either under renewed spectrum leases or under STAs.²⁷ The PSST Operator Advisory Committee (OAC), which comprises all twenty-one Waiver Recipients, recommends transferring the leases to FirstNet and extending them for two years, or at least until FirstNet is "up and running" and "in a position to make a decision on continuing the leases."²⁸ The OAC does not support the use of STAs as a mechanism for extending their deployments, contending that such authorizations "would not provide sufficient certainty" to stakeholders. Alcatel-Lucent, Motorola Solutions and other equipment manufacturers also

²⁰ *Id.* § 6201(c).

²¹ *Id.* § 6302(e).

²² *Id.* § 6203(c).

²³ *Id.* § 6206(b)(1)(B). The Interoperability Board submitted its recommendations to the Commission on May 22, 2012. *See* Public Safety and Homeland Security Bureau Filing, PS Docket 12-74 (May 23, 2012). The Commission transmitted the recommendations to NTIA on June 21, 2012, as required by statute. Recommendations of the Technical Advisory Board for First Responder Interoperability, PS Docket No. 12-74, *Order of Transmittal*, FCC 12-68 (June 21, 2012) (*Transmittal Order*).

²⁴ *See* Public Safety and Homeland Security Bureau Seeks Comment on Transition Process for 700 MHz Public Safety Broadband Waiver Recipients, PS Docket No. 12-94, *Public Notice*, DA 12-555 (PSHSB Apr. 6, 2012).

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See, e.g.*, Comments of the Public Safety Spectrum Trust Operator Advisory Committee, PS Docket 12-94 at 1 (filed Apr. 19, 2012) (PSST-OAC Comments); Comments of Public Safety Spectrum Trust, PS Docket 12-94 at; Comments of Alcatel-Lucent, PS Docket 12-94 at 3-4; Comments of Ericsson, PS Docket 12-94 at 2 (filed Apr. 20, 2012); Comments of General Dynamics C4 Systems, PS Docket 12-94 at 1 (filed Apr. 20, 2012); Comments of IPWireless, PS Docket 12-94 at 1 (filed Apr. 20, 2012); Comments of Motorola Solutions, PS Docket 12-94 at 2-3 (filed Apr. 20, 2012); Comments of the Telecommunications Industry Association, PS Docket 12-94 at 2 (filed Apr. 20, 2012); Comments of Utilities Telecom Council, PS Docket 12-94 at 1 (filed Apr. 20, 2012).

²⁸ PSST-OAC Comments at 3.

filed comments in support of continued deployment, under either leases or STAs.²⁹ Alcatel-Lucent explains that “the Commission has many mechanisms available to allow the current and new waiver recipients to continue with deployment” and that any of these mechanisms could serve the objectives of the Public Safety Spectrum Act.³⁰ Motorola Solutions contends that “nothing in the Public Safety Spectrum Act requires the Commission to terminate the waivers” and that Waiver Recipient deployments “would provide significant benefits to the public safety broadband network initiative.”³¹ It further supports continued authority for the waiver jurisdictions under an STA process with appropriate safeguards, for 180 days or longer in order to “give these jurisdictions some reasonable expectation that they will be able to make full use of the spectrum.”³² In addition, some commenters recommend that Waiver Recipient authorizations be expanded to permit operation in the D Block, which the Public Safety Spectrum Act directs the Commission to reallocate for public safety services and to assign to FirstNet.³³ OAC explains that the Public Safety Spectrum Act “envisions construction of a single network using [both the D Block and the public safety broadband spectrum].”³⁴

9. Commenters that support continued deployment cite a number of potential benefits in enabling the waiver deployments to continue for some period after FirstNet is licensed. The OAC explains that the deployments are “providing a wealth of valuable information about best practices and lessons learned for broadband wireless deployments—information that will be critical to the success of FirstNet.”³⁵ The PSST further observes that “it could be years before FirstNet will be ready to begin deployment” and that Waiver Recipient deployment in the meantime “could contribute valuable real-world experience to assist in the development of the eventual nationwide network.”³⁶ The State of Texas identifies concrete public safety benefits its network could provide, such as “higher quality telemetry, on-sight analysis” and other tools to assist emergency response during the 2012 hurricane and tropical storm season, which commenced June 1.³⁷ The network could also provide capabilities to protect “rural areas from wildfires and floods” and to improve communications in the city of Baytown, home of “the largest oil refinery” in the United States.³⁸ In explaining the unique benefits that deployment of its own network could bring, Charlotte emphasizes that the services offered by commercial broadband networks are incapable of meeting its public safety requirements, as such networks suffer from “unpredictable network performance” and can even become “unavailable due to congestion” during major events. Charlotte further insists that commercial networks do not provide the ability “to prioritize traffic” or “allow modification of traffic priorities and User Equipment (UEs) access during critical incidents” and that they fail to provide “sufficient visibility into network management.”³⁹

²⁹ See generally Alcatel-Lucent Comments; Motorola Solutions Comments; IPWireless Comments; General Dynamics Comments; TIA Comments; see also, Motorola Solutions Ex Parte Filing, PS Docket No. 12-94 at 1 (June 29, 2012) (Motorola Solutions June 29 Ex Parte).

³⁰ Alcatel-Lucent Comments at 13.

³¹ Motorola Solutions Ex Parte Filing, PS Docket 12-94 at 1 (filed May 25, 2012) (Motorola Solutions May 25 Ex Parte).

³² Motorola Solutions June 29 Ex Parte at 1.

³³ See OAC Comments at 4; Alcatel-Lucent Comments at 23-24; General Dynamics Comments at 1.

³⁴ OAC Comments at 4.

³⁵ OAC Comments at 7.

³⁶ PSST Comments at 4.

³⁷ See State of Texas Filing, PS Docket 12-94 at 4 (filed June 1, 2012).

³⁸ See *id.* at 5-6.

³⁹ See City of Charlotte Filing, PS Docket 06-229 at 1 (filed June 1, 2012).

10. A number of commenters also warn that significant investment would be wasted were the Waiver Recipient deployments precipitously halted.⁴⁰ The City of Charlotte, a Waiver Recipient with an approximately \$17 million BTOP grant, explains that it “has already incurred all the costs associated with [its first phase of deployment]” and that failure to complete its network implementation on schedule would create millions of dollars in additional costs to be paid for in “taxpayer dollars.”⁴¹ Charlotte further believes that permitting the most advanced Waiver Recipient deployments to continue would not “impose any additional cost on FirstNet.”⁴² Charlotte explains that its network is “being built with the same equipment and to the same specifications as FirstNet itself would utilize” and that its network could be “easily integrated” into the FirstNet system once it is developed.⁴³

11. Motorola Solutions also considers and rejects the argument that extending early deployments might jeopardize the long-term interoperability of the network, explaining that “there is already a broad understanding of what ultimate requirements for interoperability will look like, and this understanding has been integrated from the start into the development of the [Waiver Recipients’] networks.”⁴⁴ Alcatel-Lucent suggests that the Commission could further safeguard interoperability by requiring Waiver Recipient deployments to adhere to the Interoperability Board’s recommended requirements as transmitted to FirstNet.⁴⁵ Harris Corporation also supports “discreet” [sic] deployments, but suggests that the Commission must further condition such deployments, by STA or otherwise, on “conclusive proof” of interoperability including requiring testing and certifications beyond that which was required by the *Waiver Order*, consisting of “Phase 3” multi-vendor interoperability testing through the Public Safety Communications Research Program (PSCR) at the National Institute for Science and Technology (NIST).⁴⁶

12. The Association of Public-Safety Communications Officials-International (APCO), on the other hand, contends that the Public Safety Spectrum Act vests FirstNet with “the decisions concerning the use of [the public safety broadband spectrum], including whether to permit spectrum leases.”⁴⁷ APCO urges the Commission to deny all pending waiver requests and replace the existing waivers with STAs that expire sixty days after FirstNet receives its license, with any further deployment by Waiver Recipients left “solely . . . to the discretion of FirstNet.”⁴⁸

⁴⁰ See, e.g., Comments of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the National League of Cities, and the United States Conference of Mayors, PS Docket 12-94 at 3 (filed Apr. 20, 2012) (NATOA *et al.* Comments); OAC Comments at 9; Charlotte Comments at 11.

⁴¹ Charlotte Comments at 11; see also Comments of the State of Mississippi, PS Docket 12-94 at 8 (filed Apr. 20, 2012) (Mississippi Comments).

⁴² Charlotte Comments at 10.

⁴³ *Id.* On May 11, 2012, NTIA sent letters to the seven BTOP recipients announcing a partial suspension of their awards “to determine the best course forward for [the grants] that ensures, as best we can, that the equipment and facilities built with taxpayer funds will be incorporated into the new national public safety broadband network.” See, e.g., Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, Department of Commerce, to Charles Robinson, City of Charlotte (dated May 11, 2012), available at <http://www2.ntia.doc.gov/files/grantees/20120511095904533.pdf>.

⁴⁴ Motorola Solutions Comments at 11.

⁴⁵ See Alcatel-Lucent Comments at 21.

⁴⁶ See Ex Parte filing of Harris Corporation, PS Docket No. 12-94 (July 17, 2012).

⁴⁷ Comments of the Association of Public-Safety Communications Officials, PS Docket 12-94 at 3 (filed Apr. 20, 2012) (APCO Comments).

⁴⁸ *Id.*

13. NTIA, the federal agency in which FirstNet will be housed as an independent authority, argues that the Public Safety Spectrum Act requires the Commission “to dismiss any pending 700 MHz public safety waiver applications and to terminate existing leases in the public safety broadband spectrum.”⁴⁹ The Public Safety Spectrum Act “made no provision for [the] continuation” of Waiver Recipient deployments, NTIA explains, and FirstNet’s license is to be granted “with no encumbrances specified.”⁵⁰ NTIA further contends that enabling these deployments to continue “jeopardizes nationwide interoperability and ultimately could increase the cost of the nationwide network,” as “[s]ystems separately designed and sourced by each [Waiver Recipient] . . . create obvious technical challenges for harmonious communications.”⁵¹ Moreover, they argue, “[f]or FirstNet to be successful, it must avoid the balkanization that has plagued earlier efforts at interoperable public safety communications and must find ways to lower costs by the economies of scale that ensue from consolidated procurement.”⁵² NTIA further argues that continuation of the waiver deployments would be at odds with “the considerable flexibility” granted FirstNet “to make nimble, cost-effective, and rational business decisions” that “avoid the balkanization that has plagued earlier efforts at interoperable public safety communications.”⁵³

14. NTIA further observes that it recently announced a partial suspension of the seven BTOP awards granted to Waiver Recipient jurisdictions, an action taken to ensure that the funds “are spent on facilities and equipment that will be incorporated into FirstNet’s single, nationwide public safety broadband network.”⁵⁴ BTOP projects are permitted to continue, NTIA explains, but grantees are directed to “avoid ‘high-risk’ investments that are likely to require replacement if they are incompatible with [the nationwide network].”⁵⁵

II. DISCUSSION

15. Commenters recognize the important role of FirstNet and many of them argue that early deployments could deliver public safety benefits in the near term and provide FirstNet with valuable information before FirstNet develops and executes a plan to provide service within any particular jurisdiction. In this Order, we adopt an approach for short-term early deployment for public safety jurisdictions where the public interest strongly supports the grant of an STA, based on an individual showing of extraordinary circumstances. We also provide guidance on the types of circumstances that we might conclude compels a finding that an STA would be in the public interest. In doing so, we are seeking to identify those projects that are sufficiently advanced such that they provide significant public-safety benefits and, at the same time, will not impede FirstNet’s task of establishing a nationwide interoperable network.

16. The Commission found in the *Waiver Order* that granting public safety jurisdictions’ requests for waiver relief would allow them “to begin deployment and speed services to the public safety community” and to “take advantage of available or potential funding, either through grants or planned

⁴⁹ Comments of the National Telecommunications and Information Administration, PS Docket 12-94 at 1 (filed May 17, 2012) (NTIA Comments).

⁵⁰ *Id.* at 4.

⁵¹ *Id.* at 4.

⁵² *Id.* at 5.

⁵³ *Id.* at 5.

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*

budgetary expenditures, as well as to take advantage of economies of scale and other cost saving measures for deployments that are already planned.”⁵⁶ As a number of commenters observe, it may be several years before FirstNet commences deployment of the nationwide network pursuant to the Public Safety Spectrum Act in a particular location.⁵⁷ In the interim, early deployers could take advantage of time-critical funding opportunities to deploy networks that fulfill time-sensitive public safety needs for broadband services and that vastly expand the emergency communications capabilities of first responders. They may also be able to capitalize on expenditures and efforts to date to avoid unduly stranding investment, where abandoning a project might be costlier in terms of money, effort and risk of non-integration than it would be to finish the job. The Public Safety Spectrum Act does not preclude the Commission from exercising its authority to pursue these objectives so long as they are consistent with the Commission’s duty to facilitate the transition of the spectrum to FirstNet. Moreover, Section 4.1.4 of the Recommended Minimum Technical Requirements provides a path for integrating and leveraging systems that are deployed prior to the installation of the FirstNet authority.⁵⁸

17. The OAC recommends that the Commission extend all of the Waiver Recipients’ deployments by requiring a “transition” of their spectrum leases from the PSST to FirstNet along with the FirstNet license, in effect making FirstNet the lessor of spectrum to Waiver Recipients.⁵⁹ To accomplish this transition, Alcatel-Lucent suggests that the Commission could impose on FirstNet’s license the condition that it negotiate and enter into lease agreements with Waiver Recipients under appropriate terms.⁶⁰ Both Alcatel-Lucent and Motorola Solutions argue that the Commission could exercise its traditional authority under Title III of the Communications Act to impose conditions of this sort on FirstNet’s license.⁶¹ Motorola Solutions explains that the Public Safety Spectrum Act places no affirmative limitations on the Commission’s ability to “adopt appropriate conditions and restrictions for [FirstNet’s] license,” such as the condition that FirstNet accept its license subject to the continuation of waiver deployments in its licensed spectrum.⁶²

18. We have not been persuaded, however, that a “transition” and extension of the PSST’s obligations as spectrum lessor in the form of a mandatory condition on FirstNet’s license would best serve the public interest. While we agree that the Public Safety Spectrum Act designates FirstNet as a Commission licensee subject to the Commission’s traditional licensing authority, spectrum leasing policies for such licensees have been premised on the efficiencies that a *voluntary* secondary market can achieve through lease of spectrum. We are also mindful of FirstNet’s unique statutory role in deploying a nationwide network that promotes public safety access to broadband communications and interoperability among disparate jurisdictions. The Act charges FirstNet with specific tasks and responsibilities that serve the larger objective of establishing this network on a nationwide basis. Requiring FirstNet to assign Waiver Recipients “maximum [usage] rights”⁶³ or similar rights in its licensed spectrum as a condition of the license the Commission grants to FirstNet might constrain

⁵⁶ *Waiver Order*, 25 FCC Rcd at 5150 ¶ 14.

⁵⁷ See OAC Comments at 3; PSST Comments at 4; NPSTC Comments at 5.

⁵⁸ *Transmittal Order* at Appx. A Section 4.1.4

⁵⁹ OAC Comments at 3.

⁶⁰ See Alcatel-Lucent Comments at 13-15.

⁶¹ See Alcatel-Lucent Comments at 7-8; Motorola Solutions May 25 Ex Parte at 1-3.

⁶² Motorola Solutions May 25 Ex Parte at 3.

⁶³ See *Waiver Order*, 25 FCC Rcd at 5173 app. B (providing as a term of the Standard Lease that the PSST assign “maximum usage rights” to each Waiver Recipient spectrum lessee).

FirstNet's ability to determine how to deploy and operate the network and address requests for access to or use of it by third parties⁶⁴ and may undercut the Commission's obligation to "facilitate the transition" of this spectrum to FirstNet.⁶⁵ At the very least, FirstNet is not yet in position to negotiate and enter spectrum lease agreements with Waiver Recipients and has had no opportunity to consider how and under what terms and conditions such leases might fit, if at all, within its broader deployment plans. Although voluntarily leasing spectrum to early deploying jurisdictions could potentially factor into these plans, this is a matter that appears premature for consideration until FirstNet is in a position to consider those issues.

19. The Waiver Recipients' spectrum leases with the PSST are necessary to give effect to their waiver authorizations, as the leases provide them the means of accessing and using the spectrum. Given our determination not to mandate the transfer of these leases to FirstNet, we find no reason to permit the underlying waivers to remain in effect once spectrum rights are transitioned to FirstNet from the PSST. Rather, we find that establishing a date certain for the termination of all waiver authorizations would help "facilitate the transition" of spectrum to FirstNet by eliminating any potential confusion regarding the respective rights and interests of each party in the spectrum. Accordingly, we will hold all waiver authorizations ineffective as of September 2, 2012, the date the majority of the Waiver Recipients' leases will expire of their own terms. Consistent with this approach, we also dismiss all pending requests to deploy either public safety broadband or narrowband networks in this spectrum under Commission waiver,⁶⁶ as well as the request filed by the City and County of San Francisco, City of Oakland and the City of San Jose, Calif. (Bay Area Cities), for an extension of the sixty-day deadline for entering a lease agreement with the PSST.⁶⁷

20. With the termination of Waiver Recipients' spectrum leases and underlying waivers imminent, we must contemplate alternative mechanisms of enabling early deployments to proceed into operation under appropriate circumstances. One possible mechanism identified in the *Transition Public Notice* is the issuance of STAs. This well-established form of Commission authorization permits temporary operations on a secondary, non-interference basis in specified circumstances, such as transitional periods when traditional licensing is not a viable option.⁶⁸ In the 800 MHz band reconfiguration proceeding, for example, public safety licensees have been granted STAs to support necessary system expansion during the period immediately prior to rebanding of their frequencies.⁶⁹

⁶⁴ Public Safety Spectrum Act §§ 6206, 6208.

⁶⁵ *Id.* § 6201(c).

⁶⁶ These petitions are listed in Appendix A. Because grant of any of these petitions would frustrate the policies articulated in this order, designed to implement the transition of this spectrum to FirstNet under that Act, and in accordance with the public interest requirements of the Communications Act, we find that none of these petitions can satisfy the requirements for a Commission waiver. *See* 47 C.F.R. § 1.925(b)(3). *See also id.* § 1.3.

⁶⁷ *See* Request for Waiver filed by the City and County of San Francisco, the City of Oakland and the City of San Jose, Calif., PS Docket 06-229 (filed Dec. 23, 2011). The Bay Area Cities request that the Commission "waive the 60-day time limit for entering into a *de facto* transfer spectrum lease with the Public Safety Spectrum Trust ("PSST") established in the Commission's May 2010 *Waiver Order* and expeditiously authorize a new *de facto* transfer spectrum lease between the PSST and the Petitioners, the Bay Area Cities, because the original lease was not authorized by the Bay Area Cities and should be deemed invalid." *Id.* at ii. Given the impending termination of the Bay Area Cities' underlying waiver authority, we find no justification for granting their waiver request.

⁶⁸ *See* 47 C.F.R. § 1.931(b).

⁶⁹ *See* Public Safety and Homeland Security Bureau Provides Guidance for Public Safety Licensees With Regard to License Application and Special Temporary Authorization Procedures and Payment of Frequency Relocation Costs for Public Safety Facilities Added During 800 MHz Band Reconfiguration, WT Docket 02-55, *Public Notice*, 21 FCC Red 14658 (PSHSB 2006).

STA are also contemplated under the Commission's secondary markets rules as a mechanism to allow for the transition of spectrum lessee operations when a lessor's license is revoked or cancelled.⁷⁰

21. The OAC opposes reliance on STAs to extend the Waiver Recipient deployments, contending that STAs cannot provide the requisite certainty to the Waiver Recipients to justify further investment in these projects. They explain that the provision of service to public safety agencies "will require a more definite arrangement than is afforded under STA" and that "Waiver Recipients cannot formulate business plans if issued STAs as there would be instability in the reissuance of STAs every six months."⁷¹ Alcatel-Lucent, on the other hand, suggests that STA could support temporary operations for "an appropriate transitional time period to facilitate a long term solution."⁷²

22. We find that our well-established STA process presents the best option for permitting early deployment in the public safety broadband spectrum when circumstances warrant, consistent with the Commission's obligation to "facilitate the transition" of spectrum by license to FirstNet and consistent with FirstNet's unique statutory charges. Moreover, we observe that the risks OAC associates with STAs are not unique to this form of authorization, as the Waiver Recipients' authority to operate under spectrum leases pursuant to waiver has always been contingent on the Commission's rulemaking determinations and has always been at the Waiver Recipients' own risk.⁷³ Also, these deployments have always been subject to the possibility that legislation such as the Public Safety Spectrum Act would be passed by Congress and become law, thus altering the legal and regulatory requirements for the spectrum. That Act now imposes new obligations on the Commission to address the most appropriate way to facilitate the transition of this spectrum to FirstNet, and it emphasizes the need to base the network to be established under that regime on "a single, national network architecture."⁷⁴ We are confident, however, based on our previous experience with STAs, that such authority can allow for critical public safety broadband operations in this spectrum on a transitional basis as FirstNet gains its footing, if carefully tailored to permit only limited incremental investments that are needed to allow the realization of the substantial amount of effort and deployment to date, that will deliver near-term public safety benefits that cannot be substantially achieved by existing services, and that do not jeopardize the interoperability goals for FirstNet that form the centerpiece of the Public Safety Spectrum Act regime.

23. We emphasize that in discharging our new statutory obligation to facilitate the transition of this spectrum for use by FirstNet, we will hold applicants to a rigorous standard "involving circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest."⁷⁵ STA applications will be considered and evaluated on a case-by-case basis, based on the detailed facts and circumstances unique to each applicant and the needs of its jurisdiction, as is our normal practice with STAs. Any public safety entity, including Waiver Recipients and jurisdictions that filed waiver requests dismissed in this Order, may apply for an STA to operate in the existing public safety broadband spectrum consistent with our current rules. However, we discourage potential applicants from seeking relief on the basis of vague or speculative plans or those

⁷⁰ See 47 C.F.R. 1.9030(j)(2). Section 1.9030 of the Commission's rules governs the spectrum leasing the PSST carried out pursuant to the *Waiver Order* and was incorporated by reference into the Standard Lease agreement. See *Waiver Order*, 25 FCC Rcd at 5172 app B.

⁷¹ OAC Comments at 6.

⁷² Alcatel-Lucent Comments at 15.

⁷³ See *Waiver Order*, 25 FCC Rcd at 5165 ¶ 62.

⁷⁴ Public Safety Spectrum Act § 6202(b).

⁷⁵ 47 C.F.R. § 1.931(b)(2)(v).

that have not already achieved several stages of important deployment milestones such as ordering, receipt and deployment of equipment, completion of site preparation, and other similar activities. Such applications would not be sufficient to support a finding that the public interest would benefit from such a grant, and that an STA would be necessary in facilitating the transition to FirstNet. A pattern of sustained investment, both monetary and in terms of planning and construction, will provide the most compelling basis for a positive evaluation, particularly that which was completed prior to the February 22, 2012 enactment of the Public Safety Spectrum Act. Early-stage preparatory efforts such as developing a site plan or selecting a vendor will not be sufficient to meet the public interest, nor will sporadic activity or “ramped up” recent activity designed solely to seek an STA. Recognizing the paramount importance of the broad goals of the Public Safety Spectrum Act to ensure a nationwide interoperable public safety broadband network, we anticipate granting an STA only to jurisdictions with concrete and viable plans for delivering vital broadband services to public safety customers in the near term that have already been substantially executed, and which have the funding to be completed in a timely fashion in a manner that will satisfy pressing public safety needs.

24. We will examine each STA application on a case-by-case basis based upon whether the applicant’s unique facts and circumstances satisfy the requirements of our current STA rules. We note at the outset that our intention is not to over-burden those entities seeking an STA and that time is of the essence. For this reason, we will consider previously-filed materials incorporated by reference in the STA application. In so doing, filers should be specific about what previously-filed information we should consider, and how it addresses the considerations outlined in this order.

25. In determining whether to grant such applications, we will seek to advance the immediate needs of public safety users in particular jurisdictions for innovative broadband services that are not otherwise available so long as we can preserve the important long-term objectives of the Public Safety Spectrum Act for the deployment of a nationwide interoperable public safety broadband network. We also seek to identify those projects for which a limited additional investment will provide the ability to capitalize on substantial completed efforts to date, thus avoiding stranded investment in the near term and providing cognizable public safety benefits. We also attempt to maximize the likelihood that such equipment may be used by FirstNet in support of its mission, by requiring that deployments meet the minimum interoperability standards recommended by the Interoperability Board and transmitted by the Commission to FirstNet. To ensure that these complementary policies are achieved, we set forth guidance to STA applicants as to factors we would likely find to be supportive of a public interest finding favorable to merit a grant of an STA.

- Substantial Deployment Prior to Enactment of the Act. In “facilitat[ing] the transition” of the public safety broadband spectrum to FirstNet, we recognize that some jurisdictions may have substantially accomplished network deployment in this spectrum prior to the Public Safety Spectrum Act’s enactment. The quarterly reports filed by the Waiver Recipients pursuant to the requirements of the *Waiver Order* concerning planning, funding, and deployment, and the additional comments filed in this proceeding, suggest that certain jurisdictions may have already purchased and received delivery of equipment and are already substantially advanced with respect to their deployments. As such, they are poised to bring their networks into service in the near term with only a limited expenditure of additional resources.⁷⁶ Such jurisdictions would be capable of providing broadband services quickly, substantially prior to when FirstNet might reach the point of planning and implementing its deployment in a particular area. We are not persuaded that enabling the most advanced deployments to proceed into operation under such

⁷⁶ See, e.g., Charlotte Comments at 5; Texas Comments at 10.

circumstances would pose a significant risk of undercutting the Public Safety Spectrum Act's long-term goals for the nationwide network, particularly given the public interest considerations we outline in this Order. Accordingly, a pattern of sustained investment, both monetary and in terms of planning and construction, including whether applicants have significantly deployed their network prior to the Public Safety Spectrum Act's enactment on February 22, 2012, will be a consideration in determining whether an STA is warranted. As with our review of planning, funding, and deployment progress of the Waiver Recipients, we will give careful consideration to what substantive and sustained steps STA applicants have taken over time to accomplish their deployments, such as any funding obtained, contracts entered into for network construction and deployment, equipment purchased and delivered, sites identified and towers placed, engineering analyses performed, infrastructure actually deployed in the field, and coordination carried out at the statewide or regional level among prospective user groups.

- Ability to Deliver Timely Service. We find it in the public interest to grant STA relief only to the extent that jurisdictions are actually capable of delivering public safety broadband services on an expedited basis, significantly in advance of FirstNet's ability to consider deployment in a particular area or to evaluate a request for such deployment. Thus, important additional factors in our continuing review of planning, funding, and deployment will be whether funding is readily available to support network deployment and operation of the scope contemplated in the application (including whether any federal agency that administers the funds upon which an STA applicant intends to rely supports the application), and whether deployment is reasonably likely to commence for the benefit of public safety users well in advance of FirstNet's offering service.
- Specific Public Safety Need. We do not contemplate authorizing service based merely upon a generalized desire to expand or enhance public safety communications capabilities. We believe that it is appropriate to approve applications only to satisfy a specific compelling public safety need for near-term service that cannot otherwise be substantially achieved. While the needs of each jurisdiction may vary widely, we would expect that these needs would likely be reflected in specific past problems with the adequacy of alternative public safety, private or commercial service offerings, or clearly anticipated and quantifiable deficiencies in the same.
- Compliance With "Minimum Technical Recommendations." The Public Safety Spectrum Act contemplates deployment of a "nationwide, interoperable public safety broadband network."⁷⁷ This policy has been reflected in the requirements in our *Waiver Order* for interoperability showings, which all seek to ensure interoperability at this level. With respect to any STA deployments, we remain committed to facilitating integration of these facilities to the greatest extent possible in order to support FirstNet's mission. As noted earlier, Section 4.1.4 of the Recommended Minimum Technical Requirements also provides a path for integrating and leveraging systems that are deployed prior to the installation of the FirstNet authority.⁷⁸ Accordingly, while we cannot predict the architecture that FirstNet will adopt, adherence to the "recommended minimum technical requirements" for nationwide interoperability developed by the Interoperability Board and transmitted to FirstNet under Section 6203 of the Public Safety Spectrum Act will be critical in determining whether a proposed STA will serve the public interest.⁷⁹ As these recommendations must be incorporated "without material change" into

⁷⁷ Public Safety Spectrum Act § 6202(a).

⁷⁸ *Transmittal Order* at Appx. A Section 4.1.4

⁷⁹ *See Transmittal Order.*

FirstNet's RFPs for network construction and operation,⁸⁰ they provide the baseline of interoperability against which any STA deployments are most appropriately measured.⁸¹ In addition, to the extent these minimum requirements are modified by FirstNet, the public interest would also compel us to consider as part of our analysis to what extent a proposed STA applicant's proprietary equipment may be incompatible with equipment deployed by FirstNet.

- State-Level Coordination. In the *Waiver Order*, we expressed a preference for granting waiver relief at the state level, reasoning that “[s]tates offer a reasonable delineation, both geographically and politically, to ensure that deployments are undertaken with sufficient authority, planning and coordination among all state and local public safety agencies within the state.”⁸² We observe that the Public Safety Spectrum Act also designates an important role for states in implementing the nationwide network.⁸³ Accordingly, a significant consideration will be whether we can conclude that a non-state STA applicant has the State's concurrence for the applicant's plans for deployment within the state, as this is also one way to maximize the chances that an STA deployment may ultimately be usable by FirstNet. Coordination with any official or government body designated under Section 6302(d) of the Public Safety Spectrum Act to administer state and local implementation grant funding within the state would be a factor in this regard.⁸⁴

26. We recognize that, in extremely few cases, a circumstance may arise after the Act became law which nonetheless creates an acute need for short term public safety broadband deployment. A national security event, for example, may arise unexpectedly in an area where FirstNet is not yet offering service. In such circumstances, jurisdictions unable to satisfy the “sustained investment and deployment” consideration set forth above may still warrant grant of an STA based on an extraordinary public safety need. We delegate authority to the Bureau to consider requests that rely on these circumstances, provided that the Bureau consider whether an extraordinary need to enter service exists that otherwise satisfies these considerations, and why such need could not have been anticipated. We do not anticipate that requests would be routinely granted by the Bureau in these situations.

27. *Eligible Spectrum.* Commenters have not offered a compelling rationale for extending the scope of early deployments to permit operations in the D Block. Confining STA operations to the public safety broadband spectrum (763-768/793-798 MHz) band will preserve the existing scope of any planned deployments and avoid unnecessary encumbrance of the D Block spectrum prior to its being licensed to FirstNet. Accordingly, we will consider granting these STAs to operate in the existing public safety broadband spectrum only.

28. *Timing, Term and Renewal of STAs.* We will begin accepting applications for STAs immediately. Although we cannot guarantee action on any request by a date certain, we would expect quick action on such requests, within 30 days of receiving a complete application. We delegate authority to the Bureau to review any applications received and to grant applications that present a

⁸⁰ See Public Safety Spectrum Act § 6206(b)(1)(B).

⁸¹ We recognize that the Interoperability Board has recommended LTE Release 9 as the baseline for FirstNet. *Transmittal Order* at Appx. A Section 3.3.1. To the extent an STA applicant has deployed equipment at Release 8 we would expect to consider what plans they had to meet Release 9.

⁸² See *Waiver Order*, 25 FCC Rcd at 5162 ¶ 50.

⁸³ See Public Safety Spectrum Act §§ 6206(b)(1); 6206(c)(2); and 6302(d).

⁸⁴ See *id.* § 6302(d).

compelling basis for relief as articulated in this Order within the 30-day timeframe, based on the specific facts and circumstances identified in these applications.

29. Consistent with FCC rules, we contemplate granting STA for up to 180-day periods. Recipients would be eligible to apply for renewal. It is our expectation that we would renew any STAs that continue to satisfy our renewal and public interest criteria. However, we would anticipate granting considerable weight to FirstNet's preferences, if any, regarding continued early deployment in its licensed spectrum. To that end, we would advise STA renewal applicants that concurrence or objection from FirstNet will be highly probative of whether our public interest criteria are met. Alternatively, STA recipients seeking greater security may consider pursuing spectrum leases from FirstNet as a means of extending their deployments, subject to FirstNet's willingness to enter such agreements.

30. *Interim Approval for Charlotte and Texas.* We observe that two Waiver Recipients, Charlotte and Texas, have interoperability showings that have been pending before the Bureau for several months.⁸⁵ Each of these showings represents a deployment plan that substantially complies with the interoperability requirements of the *Waiver Order* and *Interoperability Waiver Order*.⁸⁶ These plans also contemplate the provision of service prior to September 2,⁸⁷ which may not be possible to accommodate under STA given the timetable we have established above. Accordingly, we hereby approve the interoperability showings of Charlotte and Texas, thereby authorizing them to provide service from the release date of this Order until September 2, when their previously granted waiver authorizations terminate.⁸⁸ Charlotte and Texas may seek to extend their deployments beyond this date by applying for

⁸⁵ See City of Charlotte, North Carolina Filing, PS Docket 06-229 (filed Jan. 27, 2012) (Charlotte Amended Showing); See State of Texas Filing, PS Docket 06-229 (Jan. 13, 2012) (Texas Amended Showing). A third Waiver Recipient, Adams County, CO, filed an interoperability showing on June 25, 2012, after previously withdrawing a showing. See Adams County, CO Filing, PS Docket No. 06-229 (June 25, 2012).

⁸⁶ Charlotte and Texas have each sought a limited waiver of requirements the Bureau imposed in its *Interoperability Waiver Order*. In particular, Texas seeks permission for a "variance of 10%" from the required seventy-percent sector loading, see State of Texas Filing, PS Docket 06-229 (Feb. 21, 2012) (February 21 Waiver Request), while Charlotte seeks to implement an alternative to the interference mitigation technique specified in the Bureau order. See City of Charlotte, North Carolina Filing, PS Docket 06-229 at 3 (filed Mar. 14, 2012) (March 14 Waiver Request). In consultation with ERIC, we have determined that neither of these proposed minor variances from the Bureau's interoperability requirements as set forth for the Waiver Recipients would undermine interoperability as contemplated under the *Waiver Order*. Accordingly, we grant both requests.

⁸⁷ See Charlotte Amended Showing at 5; Texas Amended Showing at 54.

⁸⁸ Harris Corporation has made a number of ex parte filings urging the Commission to decline to approve the Texas interoperability showing, absent proof that the Texas system implements "a full and open competitive multi-vendor environment." See, e.g., Harris Corporation Ex Parte Filing, PS Docket 12-94 (filed June 18, 2012). Texas renewed its request for approval of its interoperability showing in a July 6, 2012 filing in response to Harris, in which it states that it "has never asserted or believed any of the [public safety] LTE technology would be proprietary or allowed to be deployed in a manner which would compromise interoperability in any way." See State of Texas Filing, PS Docket 12-94 (filed July 6, 2012). Motorola Solutions asserts that allegations by Harris that Motorola is using technology that is proprietary and non-interoperable are "wholly unfounded and totally baseless." See Motorola Solutions Ex Parte Filing, PS Docket Nos. 12-94, 06-229, p. 1 (filed July 10, 2012). Motorola further asserts that the equipment it has deployed in Texas meets the letter and spirit of the Recommendations of the Technical Advisory Board for First Responder Interoperability. *Id.* at p.2. Our *Waiver Order* interoperability requirements were designed to permit equipment from different jurisdictions to work together, even if procured from different vendors. See, e.g., *Waiver Order* ¶¶ 37-40, 45. However, we have neither prohibited nor endorsed a particular type of procurement, and we do not intend to involve ourselves in disputes over state government procurement requirements. While as noted above our policies are designed to promote interoperability, in light of the responses from the State of Texas and Motorola, we find that Harris Corp. has not presented persuasive evidence in support of this claim of non-interoperability, which appears to be based on a hearsay account of a statement made by a competing vendor with regard to service in or around DFW Airport. Regardless, our grant of interim approval for Texas's limited deployment extends only to Harris County, and is without prejudice to our action on any STA application by Texas. We further note that under that Act, FirstNet has the authority to require additional protections for ensuring interoperability and is directed to take steps to "promote competition in the (continued....)

an STA.

III. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, and 332, and Section 6201(c) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), THIS ORDER in PS Docket No. 12-94, WT Docket No. 06-150, and PS Docket No. 06-229 is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

(Continued from previous page) _____
equipment market.” See Public Safety Spectrum Act § 6206(b)(2)(B). For these reasons, we also decline to require the additional testing that Harris requests in its July 17, 2012 ex parte.

APPENDIX

Pending Narrowband Deployment Waiver Petitions

| Petitioner | Date Filed | Docket No. |
|--|-------------------------------------|-------------------------------|
| City of Anchorage, Alaska | 9/5/07 | Informal Request ¹ |
| Bannock County, Idaho | 10/18/07 | WT Docket No. 06-150 |
| Bingham County, Idaho | 10/18/07 | WT Docket No. 06-150 |
| Consolidate Communication Network of Colorado | 10/22/07 | PS Docket No. 06-229 |
| State of Colorado | 10/29/07 | WT Docket No. 06-150 |
| Las Vegas Metro Police Department | 8/31/07, and subsequent amendments | Informal request |
| State of Louisiana | 8/30/07, and subsequent amendments | WT Docket No. 06-150 |
| City of Mesa, Arizona | 9/10/07, and subsequent amendments | Informal request |
| State of Nebraska | 8/31/07 | WT Docket No. 06-150 |
| North Carolina Department of Crime Control and Public Safety | 10/22/07 | PS Docket No. 06-229 |
| City of Stamford, Connecticut | 9/24/07 | WT Docket No. 06-150 |
| City of Virginia Beach ² | 10/19/07, and subsequent amendments | PS Docket No. 06-229 |

¹ Each of the informal requests listed here were submitted to Commission staff by email.

² The City of Virginia Beach filed a certification on October 19, 2007, in which they certified certain equipment deployment through December 31, 2007. Although it is not clear from the filing, we treat this as a request for waiver and deny it as we do the others.

Pending Broadband Deployment Waiver Petitions⁴

| Petitioner | Date Filed |
|--|-------------------------|
| Las Vegas Met. Police, Washoe County Sheriff, Washoe Regional Comms. System; Nevada Dept. of Transportation, and NV Energy on behalf of the State of Nevada 700 MHz Broadband Wireless Network | 5/13/10 |
| Nassau County, NY | 5/14/10 |
| State of Maryland | 5/21/10 |
| County of Delaware, PA | 5/26/10 |
| South Central Task Force (Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry and York Counties, PA) | 5/28/10 |
| Louisiana Statewide Interoperability Executive Committee | 6/16/10 |
| City of Chicago, IL ³ | 6/25/10 |
| Georgia Broadband Alliance | 6/25/10, amended 8/2/10 |
| Lackawanna County Department of Emergency Services, PA | 6/28/10 |
| County of Fairfax, VA | 6/29/10 |
| County of Bucks, PA | 7/7/10 |
| City of Philadelphia, PA | 7/8/10 |
| State of Florida | 8/3/10 |
| Counties of King, Snohomish, Pierce and Thurston, the Cities of Seattle, Tacoma, the Eastside Public Safety Communications Association, Valley Communications and the State of Washington | 8/5/10 |
| Harris County, TX | 8/11/10 |
| New Orleans Urban Area Security Initiative Region 1 | 8/17/10 |
| State of Oklahoma | 8/18/10 |
| City of Baton Rouge, LA | 8/18/10 |
| Chester County, PA | 8/23/10 |
| Southeastern Pennsylvania Regional Task Force | 8/24/10 |
| Commonwealth of Pennsylvania | 8/27/10 |
| City of Tucson, AZ | 8/27/10 |
| Miami-Dade County, FL | 9/21/10 |
| Consolidated City of Indianapolis and County of Marion, IN | 10/6/10 |
| State of West Virginia | 11/9/10 |
| North Central Pennsylvania Regional Task Force | 11/30/10 |
| City of LaGrange, Troup County, Columbus Consolidate Government, Muscogee County, Coweta County, Fayette County, Harris County and Heard County, GA (West Georgia Consortium) | 12/14/10 |
| | |
| | |

³ In dismissing the petition by the City of Chicago, we also dismiss its "Interoperability Showing" (filed July 15, 2010).

⁴ Waivers were filed in PS Docket No. 06-229.

| | |
|--|----------|
| Nashville-Davidson-Murfreesboro-Franklin Metropolitan Statistical Area, Nashville Electric Service, city of Belle Meade, City of Berry Hill, City of LaVergne, and Metro Nashville Airport Authority, TN | 12/14/10 |
| Tennessee Valley Region Communications System | 3/18/11 |
| State of Arkansas Department of Information Systems | 4/5/11 |
| City of Yuma, AZ | 8/9/11 |
| State of Michigan | 9/16/11 |
| County of Madison, KY Emergency Management Agency | 1/3/12 |
| City of Casper, WY | 1/20/12 |
| State of Tennessee | 2/16/12 |
| State of Georgia | 3/21/12 |
| State of Ohio | 3/29/12 |
| City of Pueblo, CO | 4/12/12 |

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

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

In the Middle Class Tax Relief and Job Creation Act of 2012, Congress provided a vision and direction for developing a nationwide interoperable public safety broadband network. Today's action is another important step in the Commission's ongoing implementation of the recent law. This order provides a well-defined path for obtaining Special Temporary Authority (STA) where it is warranted and consistent with the statute. The articulated criteria for evaluating STA requests provide applicants with needed guidance and clarity. They also establish the Commission's clear expectations for the Public Safety and Homeland Security Bureau, which will use its authority judiciously and promptly and in accordance with this order. Given the importance of these requests, if any applicant requests review of a Bureau decision, I will work with my colleagues to ensure that the Commission completes its review within 30 days.

I thank the staff of the Public Safety Bureau for their hard work on this order and my colleagues for their careful consideration.

**CONCURRING STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

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

Ideally, the Commission would have addressed the existing public safety build-out waivers, as well as the pending requests for waiver, on a case-by-case basis back in March, immediately following passage of the Public Safety Spectrum Act. Acting quickly would have allowed the stakeholders a meaningful opportunity to socialize the legislation and its effect – internally with their management teams, their lenders, and their equipment vendors – and externally, with local government officials and Commission staff. Instead, given the significant passage of time, the Commission has found itself in an untenable position: It can only sweep away all of the waivers, along with the pending requests, and establish a process to obtain a “limited” Special Temporary Authorization (STA) only “in very few instances” where the highly subjective criteria set forth in the order are met.

Even though the First Responder Network Authority (FirstNet) is not yet formed and, therefore, has not yet held a meeting, developed any additional network details or published its highly-anticipated build-out schedule, today’s action renders FirstNet perfectly poised to begin from scratch what everyone agrees will be a time-consuming and formidable task. Yet, the Public Safety Spectrum Act requires no such result. The legislation says nothing as to when the Commission must turn the broadband public safety spectrum over to FirstNet, nor does it require the Commission to convey the spectrum all at once. The Public Safety Spectrum Act only requires interoperability. In this regard, however, the Commission’s experts have already acknowledged that networks deployed prior to FirstNet’s arrival can be “leveraged into” the new nationwide network while still meeting interoperability requirements.

I thank the Chairman for taking my suggestion to allow STA applicants to incorporate by reference previously-filed materials. There is no reason to further burden these entities especially now that time is of the essence.

Looking ahead, Congress passed the law and of course we will work together to ensure its implementation. On the other hand, I am disappointed with the one-size-fits-all approach set forth here. Local jurisdictions know their terrain, their citizens and their outstanding needs best. Long ago, I had expressed a desire for greater flexibility for waiver recipients and requesting parties. We should have addressed these matters earlier and provided greater certainty rather than establish another procedural hurdle at this late date. I fear that today’s action severely curtails, if not blocks outright, the ability of local jurisdictions to keep their citizens safe in what will end up being many intervening years before FirstNet reaches them.

For these reasons, I must respectfully concur.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

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

This proceeding presented the Commission with the difficult task of: (1) complying with Congress's specific mandates in the public safety spectrum provisions in the Middle Class Tax Relief and Job Creation Act of 2012 that, among other things, direct the Commission to "take all actions necessary to facilitate the transition" of the existing public safety broadband spectrum to the First Responder Network Authority; and (2) determining which public safety jurisdictions, who were on the verge of implementing statewide or regional network, should be permitted to continue building their networks. Today's Order successfully meets this challenge by identifying factors the Public Safety and Homeland Security Bureau should consider, on delegated authority, when a local jurisdiction files a request for Special Temporary Authority (STA). Those factors are: substantial deployment prior to enactment of the Act; ability to deliver timely service; specific compelling public safety need for immediate near-term service; and adherence to the "recommended minimum technical requirements" for nationwide interoperability developed by the Interoperability Board; and State level government coordination. In my opinion, properly applying these factors to STA requests should ensure that the Bureau complies with both the language and spirit of this bi-partisan Act.

While I respect that some of my colleagues, as noted in their concurring statements, would have preferred substantively different language in the factors applied to STA requests, I commend them for offering other constructive edits that improve the Order. I also thank them for timely voting to approve this Order early enough, so that the City of Charlotte and the State of Texas can receive the approvals of their interoperability showings approved early enough to meet their deployment goals to offer service prior to September 2, 2012. I congratulate David Turetsky and his talented staff for carefully analyzing the record and for providing us with a thoughtful approach for resolving the issues in a manner that best serves the public interest.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

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

Earlier this year, Congress passed the Middle Class Tax Relief and Job Creation Act, setting forth a framework for a nationwide, interoperable, wireless broadband network for first responders. This legislation created a First Responder Network Authority to build, deploy, and operate the network with a “single, national network architecture,” but Congress gave this agency only a limited role in that process. I support this Order because it is designed to harmonize the early efforts some jurisdictions have made to improve interoperability with the more recent direction from Congress.

I also would like to thank the staff of the Public Safety and Homeland Security Bureau for its hard work on this Order and ongoing work on other critically important communications safety issues.

**STATEMENT OF
COMMISSIONER AJIT PAI
APPROVING IN PART AND CONCURRING IN PART**

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

Years ago, the 9/11 Commission identified as a national priority the need for interoperable communications systems that could better enable first responders to keep the public safe.⁵ I have doubts about how much closer today's order moves us to achieving that goal. Nevertheless, because my colleagues were willing to incorporate some important suggestions for improving this item, I have voted to approve in part and concur in part.

Let us start with what is unquestionably good about this order: It approves the interoperability showings of the State of Texas (Harris County) and the City of Charlotte, North Carolina so that they can finish deploying their public safety networks. Allowing these projects to move forward makes eminent sense—these lessees of public safety spectrum have almost completed building out their networks, complying with existing interoperability standards. And these standards are at least as stringent as the minimum interoperability standards we transmitted to FirstNet just last month.⁶ In particular, signing off on the Texas showing will allow it to start up its network immediately, right before the height of hurricane season. I therefore approve of this part of the order.

I only concur in the remainder of the order, however, due to the decision to terminate existing leases on September 2—just one month from now—in favor of the prospect of agency-granted special temporary authority (STA) that could enable lessees to finish building out and start operating their networks.

Federal law does not mandate this result. The Digital Television Transition and Public Safety Act of 2005 dedicated one billion dollars to the deployment and use of interoperable communications in the public safety spectrum.⁷ The American Recovery and Reinvestment Act of 2009 created the Broadband Technology Opportunities Program (BTOP) to “improve access to, and use of, broadband service by public safety agencies,”⁸ among other things, and the National Telecommunications and Information Administration (NTIA) allocated \$382 million to public safety projects under that program.⁹ Meanwhile, the Commission itself has authorized 20

⁵ The 9/11 Commission Report at 414 (2004).

⁶ *Recommendations of the Technical Advisory Board for First Responder Interoperability*, PS Docket No. 12-74, Order of Transmittal, FCC 12-68 (rel. June 21, 2012) (*Transmittal Order*).

⁷ Pub. L. No. 109-171, § 3006, 120 Stat. 21, 24 (2006) (Title III of the Deficit Reduction Act of 2005).

⁸ Pub. L. No. 111-5, § 6001(b)(4), 123 Stat. 115, 513 (2009).

⁹ See NTIA, *Broadband Grants*, available at <http://www.ntia.doc.gov/grants-combined>.

jurisdictions to start constructing interoperable communications networks in the public safety spectrum, relying on BTOP funding, grants from the Department of Homeland Security, and state and local revenues.

In my view, the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) builds upon this foundation.¹⁰ It does not bar existing lessees from continuing to build out and launch interoperable networks pending the completion of the request for proposal (RFP) process by FirstNet.¹¹ Rather, the Act instructs FirstNet to “utilize, to the maximum extent economically desirable, existing—(A) commercial or other communications infrastructure and (B) Federal, State, Tribal or local infrastructure.”¹² This instruction suggests that Congress recognized that the \$7 billion newly allocated by the Act might not be sufficient to construct a green-field network nationwide and that FirstNet would need to capitalize on infrastructure that had already been deployed.

The general structure of the Act also affirmatively supports the continued deployment of public safety networks as FirstNet is stood up. The Act established a Technical Advisory Board for First Responder Interoperability at the Commission, charged it with developing recommendations for “minimum technical requirements to ensure a nationwide level of interoperability,” and required us to review and transmit those recommendations all before FirstNet is created.¹³ The Act requires FirstNet to use these interoperability requirements “without material chang[e].”¹⁴ And the Act requires FirstNet to “consult with regional, State, tribal, and local jurisdictions”¹⁵ and specifically gives States the opportunity to opt out of FirstNet’s planned network construction so long as they meet the minimum operability requirements and demonstrate continued interoperability with other jurisdictions.¹⁶ It therefore seems to me that the Act encourages, not ousts, state and local deployments of interoperable public safety communications in order to enable FirstNet to accomplish its goal of nationwide, interoperable communications more quickly at a lower cost.¹⁷

¹⁰ See Pub. L. No. 112-96, 126 Stat. 156 (2012).

¹¹ *Id.* § 6302(e) (requiring FirstNet to notify the governor of each State once it has completed the RFP process to allow that State the opportunity to opt out and build its own interoperable network).

¹² *Id.* § 6206(c)(3).

¹³ *Id.* § 6203.

¹⁴ *Id.* § 6206(b)(1)(B).

¹⁵ *Id.* § 6206(c)(2).

¹⁶ See *id.* § 6302(e).

¹⁷ NTIA asserts that the requirement that the network “be based on a single, national network architecture,” Act § 6202(b), means the Commission must “grant the public safety broadband spectrum license [to FirstNet] with no encumbrances.” NTIA Comments at 4. In other words, NTIA’s view is that existing lessees must be terminated as a matter of law. I do not support this interpretation of the Act. For one thing, a single national network architecture is an obvious aspect of interoperability; if a public safety official in Texas is going to respond to a disaster in Louisiana, his device must transmit on the same frequencies, interface using the same protocols, and coordinate with a common data center to verify that the device is authorized to use the network. No one doubts (continued....)

We have already recognized as much. Last month, we approved the Recommended Minimum Technical Requirements to Ensure Nationwide Operability.¹⁸ Section 4.1.4 of those recommendations specifically lays out how to incorporate public safety networks constructed under the existing waiver-and-leasing process into FirstNet's project.¹⁹

I do not read today's order as disagreeing with this assessment of the law. Indeed, the Commission specifically recognizes that the Act "does not preclude the Commission from exercising its authority to [allow public safety officials to deploy in advance of FirstNet's RFP process] so long as they are consistent with the Commission's duty to facilitate the transition of the [public safety] spectrum to FirstNet" and that the interoperability recommendations "provide[] a path for integrating and leveraging systems that are deployed prior to the installation of the FirstNet authority."²⁰

Consequently, in the ideal world I would have preferred to allow states and localities to proceed with deploying interoperable public safety systems through the use of waivers. This approach would have provided public safety officials with more certainty, would have made it less likely that prior infrastructure investments would be stranded, and would have been more likely to yield important short-term public safety benefits.

But we must deal with the world as it is rather than how we wish it were. Given my colleagues' support for an STA framework, I thought that it was important to work with them to improve the item instead of sitting on the sidelines and dissenting. Although not all of my suggestions were incorporated into today's item, some key changes were made that have led to my decision to concur.

For example, in deciding whether to grant an STA, the Commission now need not ignore investments and deployments that postdate the enactment of the Act on February 22, 2012. It would have been arbitrary to limit the Commission's evaluation of an STA application to look only at the progress made by states and localities prior to February 22. Infrastructure deployed after February 22 is just as capable of saving lives as infrastructure deployed before that date, and it goes without saying that public safety, rather than temporal bright-line rules, must be our paramount goal. Moreover, given the Commission's finding that the Act does not preclude the continued deployment of public safety networks, there is no reason why states and localities

(Continued from previous page) _____

that the Internet has a single architecture—packet-based transmissions, Internet Protocol addressing, Domain Name System look-ups—and yet the Internet is the ultimate network of networks. For another, this reading of the Act necessitates the termination of all existing leases and the indefinite suspension of all networks built to use the public safety spectrum even if they are fully interoperable. I do not believe that Congress intended such a result, or that it would have used such indirect language if in fact it did. I therefore appreciate that the Commission does not accede to NTIA's approach to the statute.

¹⁸ See *Transmittal Order* Appx. A.

¹⁹ See *id.* Appx. A, Section 4.1.4.

²⁰ Order at para. 16.

should have concluded that they should have stopped making investments after the law's enactment.

Additionally, I am pleased that today's order establishes the expectation that the Public Safety and Homeland Security Bureau will rule on STA applications within 30 days. Given the importance of the public safety networks at issue in this proceeding, it is critical that STA applications be processed promptly rather than being allowed to languish.

There are further aspects of the order I would like to change. For instance, I would prefer that the criteria for evaluating STA applications be less restrictive. And I would prefer that the STA applications be voted on by those directly accountable to Congress instead of being decided by the Bureau.

At the end of the day, however, I recognize that this is the beginning of a process, not the end of one. As we move forward, I hope that the Bureau will give serious consideration to the STA applications that are about to come our way, particularly those filed by jurisdictions facing a significant risk of natural disasters, such as hurricanes, earthquakes, or tornadoes. We should not artificially limit ourselves to approving only a "very few" applications. Rather, each should be evaluated on its own merits with one simple question in mind: Can the early deployment of this network improve public safety without undercutting FirstNet?²¹ In my view, our statutory responsibilities regarding public safety—whether longstanding (such as Section 1 of the Communications Act) or of recent vintage (such as the Act)—counsel that we enable to the fullest extent the deployment of interoperable communications networks that have the potential to save lives.

²¹ Indeed, far from undercutting FirstNet, early adopters of interoperable communications may be opportunities rather than liabilities. Congress allocated limited funds for the creation of nationwide public safety communications. Thus, if Houston or Charlotte or any other jurisdiction builds an interoperable network without drawing on FirstNet's funds, that just leaves more money that FirstNet can apply to build out its network, especially in rural America. In other words, early deployment should make FirstNet's job easier, not harder.