

**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.