

**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.¹ 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.² 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.³ 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,”⁴ among other things, and the National Telecommunications and Information Administration (NTIA) allocated \$382 million to public safety projects under that program.⁵ Meanwhile, the Commission itself has authorized 20 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.

¹ The 9/11 Commission Report at 414 (2004).

² *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*).

³ Pub. L. No. 109-171, § 3006, 120 Stat. 21, 24 (2006) (Title III of the Deficit Reduction Act of 2005).

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

⁵ See NTIA, Broadband Grants, available at <http://www.ntia.doc.gov/grants-combined>.

In my view, the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) builds upon this foundation.⁶ 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.⁷ 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.”⁸ 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.⁹ The Act requires FirstNet to use these interoperability requirements “without material chang[e].”¹⁰ And the Act requires FirstNet to “consult with regional, State, tribal, and local jurisdictions”¹¹ 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.¹² 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.¹³

⁶ See Pub. L. No. 112-96, 126 Stat. 156 (2012).

⁷ *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).

⁸ *Id.* § 6206(c)(3).

⁹ *Id.* § 6203.

¹⁰ *Id.* § 6206(b)(1)(B).

¹¹ *Id.* § 6206(c)(2).

¹² See *id.* § 6302(e).

¹³ 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 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.

We have already recognized as much. Last month, we approved the Recommended Minimum Technical Requirements to Ensure Nationwide Operability.¹⁴ 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.¹⁵

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."¹⁶

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 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

¹⁴ See *Transmittal Order* Appx. A.

¹⁵ See *id.* Appx. A, Section 4.1.4.

¹⁶ Order at para. 16.

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?¹⁷ 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.

¹⁷ 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.