

**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 ON RECONSIDERATION

Adopted: August 29, 2012

Released: August 29, 2012

By the Commission: Commissioner McDowell concurring.

1. In this order, pursuant to Section 1.108 of the Commission's rules,¹ we reconsider on our motion one aspect of our July 31, 2012 *Order (STA Order)* in PS Docket 12-94.² Having carefully reviewed the record in this proceeding in light of a recent letter from the National Telecommunications and Information Administration (NTIA),³ we reconsider our determination to entertain applications for Special Temporary Authority (STA) to operate public safety broadband networks on a "5x5 MHz" basis only, *i.e.*, to confine such operations to the existing public safety broadband spectrum (763-768 MHz/793-798 MHz). For the reasons articulated below, we have determined to entertain STA applications filed pursuant to the *STA Order* that contemplate "10x10 MHz" operations, *i.e.*, operations that span the existing public safety broadband spectrum and the 700 MHz D Block (758-763 MHz/788-793 MHz). We direct to the Public Safety and Homeland Security Bureau to review and act upon such applications consistent with our previous delegation of authority in the *STA Order*.⁴

I. BACKGROUND

2. In the *STA Order*, we determined to allow, on a case-by-case basis, "limited deployment of public safety broadband services to first responders in the existing public safety broadband spectrum"

¹ 47 C.F.R. § 1.108.

² See Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, PS Docket No. 12-94, *Order*, FCC 12-85 (July 30, 2012) (*STA Order*).

³ See National Telecommunications and Information Administration (NTIA) Filing, PS Docket 12-94 (filed Aug. 17, 2012) (NTIA Filing). NTIA is the Executive Branch agency principally responsible for the development of telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the communications industry, for the coordination of the telecommunications activities of the Executive Branch, and for the effective presentation of the views of the Executive Branch to the Commission. See 47 U.S.C. § 902(b) (2). Under the Middle Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act), FirstNet is "established as an independent authority within the NTIA." See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 at § 6204 (2012).

⁴ See *STA Order* at 13-14 ¶ 28.

pursuant to our existing STA rules prior to the deployment of a nationwide public safety broadband network by the newly formed First Responder Network Authority (FirstNet).⁵ Although FirstNet will deploy a network spanning both the existing public safety broadband spectrum and the reallocated D Block, we provided that early deployment under STA must be confined to the former spectrum band. We reasoned that such limitation would “preserve the existing scope of any planned deployments and avoid unnecessary encumbrance of the D Block spectrum prior to its being licensed to FirstNet.”⁶

3. On August 17, 2012, NTIA submitted a letter to the Commission requesting that it “only provide STA authority for the entire 20 MHz of spectrum (763-768/793-798 MHz and 758-763/788-793 MHz) allocated to FirstNet under the Act.”⁷ NTIA contends that authorizing STA operations on a 10x10 MHz basis “would further the critical goal of advancing interoperability as well as mitigating cost concerns associated with the deployment of a nationwide public safety broadband network.”⁸ NTIA explains that STA facilities deployed on a 5x5 MHz basis could require “costly, time-consuming and technically challenging” upgrades to be made compatible with the nationwide network FirstNet will deploy using its full 10x10 MHz spectrum allocation.⁹ In addition, NTIA argues that 10x10 MHz STA operations “will reap ‘lessons learned’ more valuable to overall success of the nationwide network than those based on dissimilar bandwidth [*i.e.*, 5x5 MHz operations].”¹⁰

II. DISCUSSION

4. As noted above, our determination in the *STA Order* to limit STA operations to the existing public safety broadband spectrum was intended to “avoid unnecessary encumbrance” of the D Block prior to its being licensed to FirstNet. NTIA’s August 17 filing, however, persuasively argues that such limitation could unduly constrain early deployments and undermine their value as a resource for FirstNet. Given our commitment to facilitating the eventual integration of STA facilities into the FirstNet system “to the greatest extent possible,”¹¹ we find particularly troubling the possibility that prohibiting STA operations on a 10x10 MHz basis could make such system integration more “costly, time-consuming and technically challenging.” We also agree with NTIA that 10x10 MHz operations could more closely approximate the conditions under which FirstNet will operate and thereby generate particularly valuable “lessons learned” to inform FirstNet’s deployment efforts.¹² Overall, we find that these considerations provide a sufficient basis for permitting limited STA operations in the D Block along with the existing public safety broadband spectrum as a means of furthering our objectives in the *STA Order*.

5. We decline, however, to prohibit the operation of public safety broadband networks under STA on a 5x5 MHz basis. Such prohibition may unduly prejudice those jurisdictions that have invested substantially in developing 5x5 MHz public safety broadband networks and may be prepared to enter service in the immediate term. As NTIA observes, “3GPP standards provide a mechanism whereby user equipment can transition from 5 MHz to 10 MHz channel size.”¹³ We find that the best course is to

⁵ See *id.* at 1-2 ¶ 2.

⁶ *Id.* at 13 ¶ 27.

⁷ See NTIA Filing at 1.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ See *STA Order* at 12 ¶ 25.

¹² See also Comments of BayRICS at 13 (failure to include D Block would “limit the value of the technical and operational data that will be available from the early builders”).

¹³ NTIA Filing at 2.

provide each jurisdiction flexibility in managing this transition for its own deployment. We believe that our approach strikes a reasonable balance between accommodating the prior plans of STA applicants and preserving their need for flexibility, while addressing NTIA's concerns in accordance with the emphasis in the *STA Order* on "facilitating integration of these facilities to the greatest extent possible in order to support FirstNet's mission."¹⁴ We also note that applicants will have appropriate incentives to design their proposals in a way that persuades FirstNet of the longer term value of such test beds.

6. Accordingly, we will entertain STA applications that contemplate either 10x10 MHz or 5x5 MHz public safety broadband network operations. We direct the Bureau to review and act upon such applications consistent with our previous delegation of authority in the *STA Order*.¹⁵

III. ORDERING CLAUSES

7. 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, Section 6201(c) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), and section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, 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

¹⁴ *Id.* at 12-13 ¶ 25.

¹⁵ In light of the pendency of three STA applications, the likely imminent filing of additional applications pursuant to the requirements of our *STA Order*, and the benefits of facilitating the transition to FirstNet by clarifying the conditions under which we will entertain STA requests and minimizing the potential difficulties of going from a 5x5 to a 10x10 MHz system, we believe that the public interest would be served by providing prompt notice of our sua sponte reconsideration of this aspect of the *STA Order*. To the extent this order could be construed to constitute action with respect to a petition for reconsideration under 47 C.F.R. § 1.106, we believe there is good cause for waiving the opportunity for comment with respect to NTIA's letter, and we hereby waive such requirements. Our action in this Order on Reconsideration serves to increase the options for use of spectrum available to applicants pursuant to our *STA Order*. However, in accordance with the requirements of Section 1.106 of our rules, any parties who may be aggrieved by such action may seek reconsideration of this Order on Reconsideration.