

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

In the Matter of)	
)	
Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network)	PS Docket No. 16-269
)	
)	
Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012)	PS Docket No. 12-94
)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	

ORDER

Adopted: September 11, 2019

Released: September 11, 2019

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, we dismiss as untimely a Petition for Reconsideration filed by the Boulder Regional Emergency Telephone Service Authority (BRETSA).¹ BRETSA seeks reconsideration of a Bureau order² dismissing a Request for Clarification filed on July 6, 2018, by the Colorado Public Safety Broadband Governing Body (CPSBGB).³

¹ Boulder Regional Emergency Telephone Service Authority’s Petition for Reconsideration, or in the Alternative, Petition for Declaratory Ruling and Petition for Rulemaking, PS Docket No. 16-269, PS Docket No. 12-94, PS Docket 06-229, WT Docket No. 06-150 (filed Nov. 21, 2018), <https://ecfsapi.fcc.gov/file/1122123418089/BRETSA%20181121%20Pet%20Recon%20PS%2016-269%20Firstnet.pdf> (BRETSA Petitions). In the alternative, BRETSA asks the Bureau to issue a declaratory ruling and a notice of proposed rulemaking (or inquiry) to address the issues raised in CPSBGB’s Request. *Id.* at 8-9. In a companion public notice, we are seeking comment on BRETSA’s alternative petitions for declaratory ruling and rulemaking. *See Public Safety and Homeland Security Bureau Seeks Comment on Petitions Filed by the Boulder Regional Emergency Telephone Service Authority*, PS Docket No. 19-254, Public Notice, DA 19-902 (rel Sep. 11, 2019).

² *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network et al.*, PS Docket No. 16-269 et al., Order, 33 FCC Rcd 10148, 10148 (PSHSB 2018) (Colorado Dismissal Order).

³ BRETSA Petitions at 1, 7-8; see also Colorado Public Safety Broadband Governing Body’s Request for Commission Clarification on Guidelines for Commercial Network Interoperability for the National Public Safety Broadband Network (NPSBN), PS Docket No. 16-269, PS Docket No. 12-94, PS Docket 06-229, WT Docket No. 06-150 (filed Jul. 6, 2018),

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II. BACKGROUND

2. Title VI of the Middle-Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act) calls for the deployment of a nationwide public safety broadband network (NPSBN) in the 700 MHz band.⁴ The Act established FirstNet as an independent authority under the auspices of the National Telecommunications and Information Administration (NTIA) and required the Commission to grant a license to FirstNet for the 758-769/788-799 MHz band.⁵ The Public Safety Spectrum Act charges FirstNet with establishing and managing “a nationwide, interoperable public safety broadband network” in the 700 MHz spectrum.⁶

3. On July 6, 2018, CPSBGB filed a Request for Clarification (CPSBGB Request) in the above captioned dockets,⁷ asking the Commission “to clarify that ensuring interoperability is a fundamental responsibility of FirstNet, and that FirstNet must ensure that interoperability is supported at all levels, including network, services, applications, and devices.”⁸ CPSBGB also requested the Commission to institute a rulemaking proceeding to “establish rules for all roaming arrangements to ensure interoperability and . . . that such rules accommodate the bi-directional nature of such roaming arrangements.”⁹ On July 12, 2018, Verizon filed a letter in support of the CPSBGB Request.¹⁰

4. In a letter filed July 13, 2018, the Colorado Broadband Office (CBO) requested, on behalf of CPSBGB, that the Commission “not take any further action on this matter at this time.”¹¹ The CBO stated it would “work collaboratively with the CPSBGB and FirstNet to resolve the concerns raised regarding interoperability and ensure that the Colorado first responder community has access to a state of the art communications system.”¹² Three entities later filed letters supporting the original CPSBGB Request.¹³

5. On October 23, 2018, the Public Safety and Homeland Security Bureau (Bureau) issued an Order dismissing the CPSBGB Request without prejudice. The Bureau found that CBO’s commitment

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<https://ecfsapi.fcc.gov/file/10706501320747/CPSBGB%20FirstNet%20Interoperability%20Request.pdf> (CPSBGB Request).

⁴ See generally Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457), 126 Stat. 156, 201-222, 235-236.

⁵ *Id.* §§ 6101(a), 6201(a), 6204(a).

⁶ *Id.* § 6206(b).

⁷ See CPSBGB Request, *supra*, note 3.

⁸ *Id.* at 8-9.

⁹ *Id.* at 9.

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

¹¹ Letter from Brian Shepherd, Chief Operating Officer, Colorado Broadband Office, Colorado Governor’s Office of Information Technology, Letter to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269, 12-94 and 06-229, WT Docket No. 06-150, at 1 (filed Jul. 13, 2018), <https://ecfsapi.fcc.gov/file/107132922404691/FCC%20NPSBN%20Final%20Letter.pdf>.

¹² *Id.*

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

to work collaboratively with CPSBGB and FirstNet “may result in further steps to address Colorado’s interoperability concerns without the need for the Commission to consider [the promulgation of rules or the issuance of a declaratory ruling].”¹⁴ The Bureau also found that “th[e] ongoing collaboration indicate[d] that the interoperability issues identified in the [CPSBGB] Request ha[d] not crystallized into a controversy or uncertainty that warrant[ed] Commission resolution through a declaratory ruling.”¹⁵ Thus, the Bureau determined that CPSBGB’s Request was “premature because ongoing events may alter Colorado’s interest in, and asserted need for, the requested relief.”¹⁶

6. In response, BRETSA filed the instant Petition, arguing that the Bureau should have granted CPSBGB’s Request.¹⁷ BRETSA claims that the Bureau erred in dismissing CPSBGB’s Request because other parties (but not BRETSA) had submitted letters that demonstrated the need for the requested relief.¹⁸ BRETSA further argues that the issues raised in the Request and supporting letters “affect public safety agencies nationwide.”¹⁹ Two entities, the Mississippi Wireless Communication Commission²⁰ and SouthernLINC,²¹ filed ex parte letters supporting BRETSA’s Petition.

III. DISCUSSION

7. Section 1.106(a)(1) of the Commission’s rules provides that petitions for reconsideration are ripe only if they request reconsideration of “final actions”—not “interlocutory actions.”²² As an initial matter, we note that the *Colorado Dismissal Order* is an interlocutory order. In the order, the Bureau did not take any final action on CPSBGB’s Request for Clarification, but rather left open—to CPSBGB or any other interested party—the opportunity to pursue the results specified in the Request. Because it appeared that the events underlying CPSBGB’s Request were unfolding in a manner that could resolve the interoperability concerns raised in the Request, PSHSB dismissed CPSBGB’s Request, without prejudice, as premature.²³ In doing so, the Bureau specifically noted that other parties (like

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Inc. d/b/a C Spire, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269, 12-94, and 06-229, WT Docket No. 06-150, at 1-2 (filed July 26, 2018).

¹⁴ Colorado Dismissal Order, 33 FCC Rcd at 10148, 10150, 10151, paras. 1, 6, 9.

¹⁵ *Id.* at 10150, para. 6.

¹⁶ *Id.*

¹⁷ BRETSA Petitions at 7.

¹⁸ BRETSA Petitions at 7 & n.13.

¹⁹ *Id.* at 7.

²⁰ Letter from Vicki B. Helfrich, Executive Officer, Mississippi Wireless Communication Commission, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 et al. (filed Dec. 6, 2018).

²¹ Letter from Michael D. Rosenthal, Director of Legal & External Affairs, SouthernLINC, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 et al. (filed Mar. 11, 2019).

²² 47 CFR § 1.106(a)(1); *accord id.* § 1.102(b)(2); *cf. id.* § 1.115(a). The Commission has applied these rules to dismiss petitions for reconsideration of, among other things, decisions that did not grant or deny a right. *See, e.g., Mr. George S. Sebastian, Oral Roberts University*, Letter Order, 25 FCC Rcd 8166, 8168 (MB 2010); *Iridium 2GHz LLC*, Order, 18 FCC Rcd 18121, 18122, para. 3 (IB 2003) (Iridium Order); *Applications of Alexander Snipe, Jr. et al.*, Hearing Designation Order, 7 FCC Rcd 5278, 5279, para. 3 (MMB 1992); *see also Unity Broadcasters v. FCC*, 64 Fed. App’x 784, 785 (D.C. Cir. 2003) (per curiam), *aff’g, Abundant Life, Inc.*, 12 FCC Rcd 11724 (1997); *Fort Harrison Telecasting Corp. v. FCC*, 297 F.2d 779, 782 (D.C. Cir. 1961). In determining whether to apply this rule to dismiss a petition, one factor that the Commission considers is whether the petitioner could achieve the purpose of

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BRETSA) may file their own petitions “[i]f they have concerns that they believe warrant Commission action.”²⁴

8. Because the underlying *Colorado Dismissal Order* was interlocutory, we find that it is unripe for review pursuant to Section 1.106(a)(1) of the Commission’s rules. We therefore dismiss the BRETSA Petition for Reconsideration as untimely pursuant to section 1.106(p)(9) of the rules.²⁵

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to section 0.191 of the Commission’s Rules, 47 C.F.R. § 1.106(p), this ORDER in PS Docket Nos. 16-269, 12-94 and 06-229, and WT Docket No. 06-150 is ADOPTED.

10. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by the Boulder Regional Emergency Telephone Service Authority on November 21, 2018, is DISMISSED.

11. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission’s Rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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

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its petition through another filing. *See, e.g., Wireline Competition Bureau Seeks Comments on Areas Shown as Unserved on the National Broadband Map for Connect America Fund Phase I Incremental Support*, Order, 28 FCC Rcd 334, 335, para. 3 & n.9 (WCB 2013) (comments); *Iridium Order*, 18 FCC Rcd at 18122, para. 3 (revised license application); *Annual 1988 Access Tariff Filings*, Memorandum Opinion and Order, 3 FCC Rcd 5275, 5276, paras. 7 (CCB 1988).

²³ *See generally, Colorado Dismissal Order.*

²⁴ *Id.* at 10150, para.7.

²⁵ Section 1.106(p)(9) authorizes the Bureau to dismiss a petition for reconsideration as untimely. 47 CFR § 1.106(p)(9). *See, e.g., Dialing Services, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5537, 5546, para. 23 & n.59 (2014).