

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Boulder Regional Emergency Telephone Service)	PS Docket No. 19-254
Authority Petitions)	
)	

REPLY COMMENTS OF THE FIRST RESPONDER NETWORK AUTHORITY

The First Responder Network Authority (“FirstNet Authority”) respectfully submits the following reply comments to the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ In these reply comments, the FirstNet Authority addresses certain issues raised in comments submitted by other parties.² In particular, the FirstNet Authority rebuts claims made in comments submitted by Verizon that: (1) incorrectly suggest, based on a misplaced reliance on the U.S. Department of Homeland Security (“DHS”) SAFECOM program’s definition of interoperability, that “full interoperability” with other third-

¹ See *Boulder Regional Emergency Telephone Service Authority Petitions*, PS Docket No. 19-254, Public Notice (rel. Sept. 11, 2019). The FirstNet Authority is an independent authority within the National Telecommunications and Information Administration (“NTIA”). 47 U.S.C. § 1424(a).

² As an initial matter, the bulk of the comments in support of the Boulder Regional Emergency Telephone Service Authority’s (“BRETSA”) petitions for a declaratory ruling and rulemaking (“BRETSA Petitions”) fail to cite to either a statutory provision or a Commission regulation as a basis upon which they seek to have the Commission act. See, e.g., Comments of the Boulder Regional Emergency Telephone Service Authority, PS Docket No. 19-254 (filed Sept. 26, 2019); Comments of Ryan Poltermann, PS Docket No. 19-254 (filed Sept. 23, 2019); Comments of the Emergency Communication Networks (ECN) Division of the Minnesota Department of Public Safety, PS Docket No. 19-254 (filed Sept. 26, 2019); Comments of Southern Communications Services, Inc. d/b/a Southern Linc and Cellular South, Inc. d/b/a C Spire, PS Docket No. 19-254 (filed Sept. 26, 2019); Comments of The Digital Decision, PS Docket No. 19-254 (filed Sept. 25, 2019); Comments of Jeff Spivey, PS Docket No. 19-254 (filed Oct. 2, 2019); Comments of Major Diane M. Stackhouse, PS Docket No. 19-254 (filed Oct. 7, 2019).

party networks is required for the nationwide public safety broadband network (“NPSBN”); and (2) seek to diminish the role of the FirstNet Authority in the implementation of the NPSBN.

I. Interoperability Requirements for the NPSBN are Determined by the 2012 Act and the FCC Interoperability Board Report.

In its initial comments, the FirstNet Authority clarified that the Middle Class Tax Relief and Job Creation Act of 2012³ “delineates the governance framework for the [NPSBN],”⁴ including the relevant interoperability requirements for the network. Therefore, the proper examination of interoperability requirements for the NPSBN must be done within the four corners of the 2012 Act.

The 2012 Act is not silent concerning how to establish interoperability on the NPSBN. As emphasized in our initial comments, “[t]he 2012 Act outlined a limited two-part role for the Commission on issues of interoperability related to the NPSBN.”⁵ First, it was to establish a Technical Advisory Board for First Responder Interoperability (“Interoperability Board”), which was to deliver to the FirstNet Authority a report on the minimum technical requirements necessary to ensure a nationwide level of interoperability for the NPSBN (“Interoperability Report”). Second, the Commission was to ensure interoperability in the event any states or territories decided to opt-out of the FirstNet Authority’s proposed RAN deployment.

In its comments, though, Verizon posits FCC authority to amend the language of the 2012 Act. It would have the Commission “promptly issue a declaratory ruling clarifying that: . . . the U.S. Department of Homeland Security SAFECOM definition of ‘interoperability,’ which

³ 47 U.S.C. § 1401 *et seq.* (“2012 Act”).

⁴ Comments of the First Responder Network Authority, PS Docket No. 19-254 (filed Sept. 26, 2019) (“FirstNet Authority Comments”).

⁵ See FirstNet Authority Comments at 7.

includes ‘full interoperability’ between different wireless providers’ public safety communications networks, represents what the term means under the Spectrum Act.”⁶ The Commission should reject the notion that Verizon, under the guise of clarification, may propose a fundamental modification to the work completed by the Interoperability Board in 2012.⁷

DHS’s definition of interoperability cannot supplant the unambiguous work of the Interoperability Board as mandated in the 2012 Act.⁸ Verizon is seeking nothing less than to revise the Interoperability Board’s list of “minimum technical requirements to ensure a nationwide level of interoperability for the [NPSBN].”⁹ There is no justification for Verizon replacing the judgment of Congress with its own judgement concerning what constitutes the minimum interoperability requirements for the NPSBN. As noted in the FirstNet Authority’s initial comments,¹⁰ Congress clarified that while the Commission could “approve the recommendations, with any revisions it

⁶ Comments of Verizon, PS Docket No. 19-254, at 2 (filed Sept. 26, 2019) (“Verizon Comments”). Pursuant to Section 6203 of the 2012 Act, the Chairman of the FCC appointed fourteen persons to serve on the Interoperability Board. *See* 47 U.S.C. § 1423(b)(1)(A). Note that one of those appointments was an employee of Verizon’s subsidiary, Verizon Wireless. *See* Public Notice, “FCC Announces Membership of Technical Advisory Board for First Responder Interoperability,” DA 12-455 (rel. March 22, 2012).

⁷ The FirstNet Authority included the Interoperability Board Requirements in its January 2016 objectives-based Request for Proposals (“RFP”). All potential offerors were informed that any proposed solution for the NPSBN must conform to the Interoperability Board’s technical requirements. Potential offerors, including but not limited to Verizon, could have challenged the content of the RFP in the bid protest process, but chose not to do so. *See* Solicitation for the FirstNet Nationwide Public Safety Broadband Network (NPSBN), Sections C and J, Attachment J-3, <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=7806696f4340f16474647ccc57805040&cview=0> (last visited Oct. 4, 2019).

⁸ *See* 47 U.S.C. § 1423.

⁹ *Id.*

¹⁰ *See* FirstNet Authority Comments at 8 n.26.

deems necessary,” the Interoperability Report submitted to the FirstNet Authority would “not be reviewable as a final agency action.”¹¹

Further, the Interoperability Report specifically mentioned the SAFECOM program definition of interoperability, and explicitly concluded that the DHS definition is outside the scope of its responsibilities: “Because of the Interoperability Board’s focus on minimum technical interoperability requirements based on commercial standards for Long Term Evolution (LTE) technology, the Interoperability Board felt it prudent to adopt a definition of interoperability that more appropriately reflected this limited scope.”¹² Indeed, the Interoperability Report forecloses the notion that the 2012 Act mandated “full interoperability” with competing networks. Recognizing “the limitations placed upon it by the [2012 Act],” the Interoperability Board defined interoperability as “the ability of all authorized local, state and federal public safety entities and users to operate on the *NPSBN and commercial partner networks . . .*”¹³ There is no reference to interoperability on competing carrier networks. As such, because the Interoperability Board specifically, and after a thorough evaluation, declined to adopt DHS’s definition of interoperability now proffered by Verizon, the Commission should reject Verizon’s requested “clarification.”¹⁴

¹¹ 47 U.S.C. § 1423.

¹² Public Safety Interoperability Board, Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network, Final Report, § 3.2 (2012) (“Interoperability Report”).

¹³ *Id.* (emphasis added).

¹⁴ Claims by Verizon and BRETSA that the NPSBN solution is “proprietary” (Verizon Comments at 3, 4; BRETSA Comments at 2) are simply false. As noted in the FirstNet Authority’s initial comments, the NPSBN is being implemented using open, commercial standards, such as 3GPP, in accordance with the requirements of the 2012 Act. *See* FirstNet Authority Comments at 6 n.21.

II. The FirstNet Authority is Statutorily Responsible for the Implementation and Oversight of Requirements for the NPSBN.

Verizon's comments substantially mischaracterize and minimize the FirstNet Authority's duties and responsibilities under the 2012 Act. Misinterpreting section 6003 of the 2012 Act,¹⁵ Verizon states that "the Spectrum Act limits FirstNet's authority to the *administrative and business-related activities* 'expressly required to be carried out by' FirstNet as enumerated in the statute."¹⁶ Although section 6003 establishes the parameters for enforcement authority under the 2012 Act, that section makes it abundantly clear that the FirstNet Authority—and not the FCC—is the Federal entity responsible for the implementation and oversight of the NPSBN.

Pursuant to section 6003, the Commission is responsible for implementing and enforcing the 2012 Act, *except* "in the case of a provision of [the 2012 Act] that is expressly required to be carried out by an agency . . . other than the Commission."¹⁷ That is exactly the case here — Congress made the FirstNet Authority the agency expressly responsible for carrying out the provisions implementing and overseeing the NPSBN, and those duties and responsibilities extend far beyond mere "administrative and business-related actions." As detailed in the FirstNet Authority's comments,¹⁸ the 2012 Act explicitly requires the FirstNet Authority to, among other things, "take all actions necessary to ensure the building, deployment, and operation of the [NPSBN]," including "ensuring nationwide standards for use and access of the network;" "managing and overseeing the implementation and execution of contracts or agreements . . . to build, operate, and maintain the network;" and developing "the technical and operational

¹⁵ 47 U.S.C. § 1403.

¹⁶ Verizon Comments at 8-9, n.17 (emphasis added).

¹⁷ 47 U.S.C. § 1403.

¹⁸ See FirstNet Authority Comments at 3-7.

requirements of the network” and “practices, procedures, and standards for the management and operation of such network.”¹⁹ Moreover, the 2012 Act broadly authorizes the FirstNet Authority to “take such other actions as the [FirstNet Authority] . . . may from time to time determine necessary, appropriate, or advisable to accomplish” its mission.²⁰ Accordingly, as noted in our initial comments,²¹ the FirstNet Authority—as the sole entity directed by Congress to ensure the establishment, implementation, and ongoing operation of the NPSBN—is responsible for making any determinations regarding interoperability, roaming, or prioritization related to the network.²²

¹⁹ 47 U.S.C. § 1426(b), (c).

²⁰ *Id.* § 1426(a)(6).

²¹ FirstNet Authority Comments at 7, n.24.

²² *See* 47 U.S.C. § 1426. In asserting that the FCC has “affirmed an expansive view of its Title III authority,” Verizon cites portions of the Commission’s Second Report and Order implementing technical service rules for the NPSBN. Verizon Comments at 8. However, the referenced paragraphs of the Second Report and Order do not go nearly as far as Verizon would suggest. The referenced paragraphs simply note the FCC’s regulatory authority to prevent and protect communications from interference from other networks. *See Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 28 FCC Rcd 15174, ¶¶ 34, 40 (2013). In fact, the Commission stated that the purpose of the Second Report and Order was to “further ‘facilitate the transition’ of spectrum to FirstNet to enable its deployment of a nationwide public safety broadband network as prescribed by statute.” *Id.* ¶ 1. Although the 2012 Act anticipated that the NPSBN would “interact” with other networks (*see* Comments of Mutualink, Inc., at 2, PS Docket No. 19-254 (filed Sept. 26, 2019)), by no means did the 2012 Act require, much less contemplate, “full interoperability” with separate commercial or other third-party networks.

III. Conclusion

The Commission should recognize the clear language of the 2012 Act regarding interoperability requirements for the NPSBN and the primacy of the FCC Interoperability Board Report on minimum requirements and reject Verizon's request for clarification of the definition of interoperability. Further, the Commission should disregard Verizon's claims regarding the limitations of the authority Congress granted to the FirstNet Authority as the claims do not reconcile with the language of the 2012 Act. For these reasons, and the failings of the BRETSA Petitions as described in the FirstNet Authority's comments, the Commission should deny the BRETSA Petitions.

Respectfully submitted,

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