



Alex Starr
Assistant Vice President-
Senior Legal Counsel

AT&T Services, Inc.
1120 20th Street NW Ste. 1000
Washington, D.C. 20036

Phone: 202.457.2044
E-mail: alex.starr@att.com

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EX PARTE VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street SW
Washington DC 20554

Re: In the Matter of Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, PS Docket No. 16-269; Promoting Interoperability in the 700 MHz Commercial Spectrum WT Docket No. 12-69

Dear Ms. Dortch:

AT&T submits this ex parte letter in response to comments submitted by Competitive Carriers Association (“CCA”)¹ pursuant to the Public Notice dated June 28, 2017² in the proceeding PS Docket No. 16-269.

Much of CCA’s Comments repeat arguments previously made and refuted by AT&T, the First Responder Network Authority (“FirstNet”), and others in this proceeding. CCA’s Comments do contain two new assertions, however: (i) AT&T is allegedly violating its obligations under the *700 MHz Interoperability Order*³ because one of its third party providers in serving FirstNet, Motorola Solutions, Inc. (“Motorola”), markets a device as a FirstNet-ready solution – the Motorola LEX F10 – that supports Band Class 17,⁴ and (ii) the design of the Nationwide Public Safety Broadband Network (“NPSBN”) should ensure that handsets used in the FirstNet ecosystem include all LTE bands, not just those chosen by AT&T.⁵ For the following reasons, those assertions lack merit.

¹ Comments of Competitive Carrier Association, PS Docket No. 16-269 (July 17, 2017) (“CCA’s Comments”).

² *Public Safety and Homeland Security Bureau Seeks Comment on FirstNet Ex Parte Submissions Proposing Interoperability Requirements for State Opt-Out Requests from the FirstNet Radio Access Network*, Public Notice, PS Docket No. 16-269, DA 17-625 (rel. June 28, 2017) (“Public Notice” or “PN”).

³ *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122 (2103), and *Order of Modification*, 29 FCC Rcd 281 (WTB rel. Jan. 16, 2014) (collectively, the “*700 MHz Interoperability Order*”).

⁴ See, e.g., CCA’s Comments at 4, 10-14.

⁵ See, e.g., CCA’s Comments at 3, 8.

First, the issue of device interoperability is beyond the scope of this proceeding.⁶ Second, as explained below, CCA's device interoperability arguments rest on incorrect facts, contravene Congressional directives, and by displacing innovation with regulation, would merely ensure that first responders have more expensive and less capable devices than consumers would have.

CCA's statements about the Motorola LEX F10 are wrong on multiple counts. Nothing about the Motorola LEX F10 is inconsistent with AT&T's commitments under the Commission's *700MHz Interoperability Order*.⁷ The device is not part of AT&T's device portfolio. AT&T neither sells the device nor has provided any specific requirements for its development. AT&T has certified the device for use on its network, including by FirstNet subscribers; but this nevertheless remains a "non-stock" device just like numerous other similarly certified non-stock devices sold by other entities. Indeed, there are many devices sold by others that are certified for use on AT&T's network. In addition, AT&T's 700MHz Interoperability commitments do not prohibit AT&T from supporting Band 17 devices on its network. Last, and most telling, CCA is simply wrong about the specifications of the Motorola LEX F10. The Motorola LEX F10, like the Sonim XP7 on which it is based, is Band 12 capable. A simple software update is all that is required to enable the device to operate in Band 12 rather than Band 17.

Furthermore, CCA would like the Commission to believe that unless FirstNet is denied the opportunity to offer devices of its own choosing to NPSBN users, opt-out states will be "locked out." Not only is this assertion patently absurd, but CCA's suggested cure for this imaginary "lock out" is even more ludicrous—that no first responder on the NPSBN should be able to employ a device that carries fewer than all LTE bands in use anywhere in the United States by any carrier. Presumably if DISH ever launches service, FirstNet would have to recall all of its devices and provide all users with new ones. No such requirement presently exists for any carrier, and for good reasons.

First, the Commission has properly recognized that competition and innovation flourish without the sort of central government planning CCA apparently favors. Carriers are allowed to deploy LTE in any band they are authorized to use. Accordingly, AT&T uses Bands 29 and 30 (among others), even though no one else does. Carriers also negotiate with manufacturers to build devices that will operate in the bands they have deployed. AT&T has some devices that operate on all the LTE bands in its network, and some that only operate on a subset. Carriers also seek to include bands that will permit them to access roaming partner networks in the United States and abroad. Manufacturers might determine that they would prefer to use a standard SKU, and some models have only one set of bands available in the United States. To attempt to impose limits on the technology that FirstNet may employ to accomplish its mission would be

⁶ *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Report and Order, FCC 17-75 (rel. June 22, 2017) at ¶ 48.

⁷ See, e.g., *Order of Modification*, *supra*; Letter dated July 10, 2017 from Joseph P. Marx to Marlene Dortch, WT Docket No. 12-69; Letter dated Jan. 10, 2017 from Joseph P. Marx to Marlene Dortch, FCC, WT Docket No. 12-69.

contrary to Congress' directives to continuously upgrade the NPSBN to account for new and evolving technologies.⁸

Second, such an "all LTE bands" requirement – to the extent that it would even be technologically possible to accomplish — would increase the cost of FirstNet devices and degrade their capabilities. Congress certainly did not intend that first responders be saddled with devices that were both more costly and less capable than those available to consumers. Nor did it intend to limit FirstNet's ability to develop equipment best suited to its users' needs. And it surely did not intend to require all first responders to trade in their device if and when DISH deploys service.

Moreover, to suggest that an all-band inclusion requirement is necessary to preserve the viability of the state opt-out option is plainly mistaken. If a state decides to opt out and instead embark on building a RAN in its state, it is likely that it would do so with a commercial partner, just as FirstNet has done with AT&T. Such a partner can source devices with Band 14 capabilities by simply asking that Band 14 be added to chipsets that are available today. These might include devices that operate on Band 14 as well as the LTE bands used by Sprint, Verizon, T-Mobile, AT&T, or all/some of the above. The devices sold by FirstNet would in no way reduce the choices available to an opt-out state network operator, much less "lock out" an opt-out state as CCA breathlessly predicts. An "all LTE band" requirement would leave users of the NPSBN and an opt-out state network in the same position, though — saddled with inferior equipment.

At bottom, what CCA really appears to be arguing is that FirstNet has the statutory responsibility to make the NPSBN interoperable with any state wishing to opt out. In reality, the complete opposite is true: any state wishing to opt out has the statutory responsibility to make its RAN interoperable with the NPSBN. Accordingly, the Commission should disregard CCA's comments regarding device interoperability.

Pursuant to the Commission's rules, a copy of this letter is being filed electronically in the above-referenced docket. Please do not hesitate to call me if you have questions.

Sincerely,

/s/ Alex Starr

⁸ See, e.g., 47 U.S.C. §§ 1426(c)(4), 1443. See generally Letter dated July 10, 2013 from David L. Lawson, Sidley Austin, to Marlene Dortch, FCC, WT Docket No. 12-69 at 3-4, Slide 15; Letter dated July 18, 2013 from David L. Lawson, Sidley Austin, to Marlene Dortch, FCC, WT Docket No. 12-69 at 5-8; Reply Comments of AT&T Services, Inc., WT Docket No. 12-69 (July 16, 2012) at 57-60 (all explaining that the Commission lacks authority to force a carrier to include a band in its devices that it does not need and will not use).