

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

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

**COMMENTS OF THE FIRST RESPONDER NETWORK AUTHORITY TO THE  
BOULDER REGIONAL EMERGENCY TELEPHONE SERVICE AUTHORITY'S  
PETITIONS FOR DECLARATORY RULING AND RULEMAKING**

Jeff Bratcher  
Chief Technology and Operations Officer

Uzoma Onyeije  
Counsel

Kevin Green  
Counsel

Erin Greten  
Chief Counsel, First Responder Network  
Authority  
12201 Sunrise Valley Drive  
Reston, VA 20192

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## SUMMARY

The Middle Class Tax Relief and Job Creation Act of 2012 (“2012 Act”) created the First Responder Network Authority (“FirstNet Authority”) as the sole licensee of the Band 14 public safety spectrum and the Federal entity responsible for the establishment of the Nationwide Public Safety Broadband Network (“NPSBN”). To guide the FirstNet Authority in its efforts, the 2012 Act delineates the governance framework for the NPSBN. In fact, it is the 2012 Act framework that defined the foundational work necessary for the establishment of the NPSBN, including the creation of a Technical Advisory Board for First Responder Interoperability (“Interoperability Board”) at the Federal Communications Commission (“Commission”) tasked with developing recommended minimum technical requirements to ensure a nationwide level of interoperability for the NPSBN.

That same framework underpins everything that the FirstNet Authority does. Most notably, it led the FirstNet Authority to establish a historic multi-billion dollar public-private arrangement with AT&T to build, operate, and maintain the NPSBN over 25 years. And, it is the same framework that the FirstNet Authority utilized to consult with all 55 States and territories and the District of Columbia in a manner that resulted in all such jurisdictions affirmatively “opting in” to the FirstNet program. Moreover, the framework laid the foundation for the rapid build out of the NPSBN and deployment of services in support of public safety nationwide, from Maine and the U.S. Virgin Islands to Alaska and Guam.

It is for that reason that the FirstNet Authority submits these comments to highlight for the Commission that the Boulder Regional Emergency Telephone Service Authority (“BRETSA”) Petitions are wholly inconsistent with the framework of the 2012 Act. Ironically, the BRETSA Petitions were originally captioned, in part, under a proceeding entitled “Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012” yet do not include a *single* reference to the 2012 Act beyond the caption. When examined closely, the BRETSA Petitions seek to undo the work of Congress, the Interoperability Board, the Commission, the FirstNet Authority, and AT&T. The BRETSA Petitions seek to modify a successful public-private arrangement without any legislative or regulatory support for doing so. As these comments will explain in detail, contrary to what BRETSA suggests in its petitions, the interoperability mandate of the 2012 Act directed that the NPSBN operate as a single network by requiring all the radio access networks (“RANs”) built under the FirstNet program public-private arrangement (“opt-in”) be interoperable with the RANs built by any States or territories that opted out of the FirstNet-proposed deployment. The 2012 Act neither mandates nor contemplates any requirement for the NPSBN to be interoperable with (or that the NPSBN core connect to) separate commercial or other third-party networks, including, for example, land-mobile-radio (“LMR”) systems and commercial mobile radio service (“CMRS”) providers. Simply put, as defined in the 2012 Act, the NPSBN is interoperable.

The BRETSA Petitions provide no basis for the sweeping and unprecedented relief they seek because there is none. The FirstNet Authority, therefore, respectfully requests that the Commission dismiss the BRETSA Petitions, with prejudice, and allow the 2012 Act framework to continue to govern the successful deployment and operation of the NPSBN.

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The First Responder Network Authority (the “FirstNet Authority”) submits these comments in response to the Public Notice<sup>1</sup> seeking comment on the Boulder Regional Emergency Telephone Service Authority’s (“BRETSA”) petitions for a declaratory ruling and rulemaking.<sup>2</sup> The FirstNet Authority is a Federal government entity whose statutory mission is “to ensure the establishment of a nationwide, interoperable public safety broadband network.”<sup>3</sup> After an open, transparent, and competitive process to select a contractor to build, operate, and maintain the network, all 55 States and territories and the District of Columbia (“all States and territories”) affirmatively “opted in” to the FirstNet Authority’s proposed network deployment. The Nationwide Public Safety Broadband Network (“NPSBN”) is now over 65% constructed, operational, and serving public safety users on a private carrier basis.<sup>4</sup> The FirstNet procurement

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<sup>1</sup> *Boulder Regional Emergency Telephone Service Authority Petitions*, PS Docket No. 19-254, Public Notice (rel. Sept. 11, 2019).

<sup>2</sup> Boulder Regional Emergency Telephone Service Authority, *Petition for Reconsideration, or in the Alternative, Petition for Declaratory Ruling and Petition for Rulemaking* (filed Nov. 21, 2018) (“BRETSA Petitions”).

<sup>3</sup> 47 U.S.C. § 1422(a). The FirstNet Authority is an independent authority within the National Telecommunications and Information Administration (“NTIA”). 47 U.S.C. § 1424(a).

<sup>4</sup> See AT&T, *FirstNet Performs Faster Than Any Commercial Network* (2019, August 12) [Press Release]. Retrieved from [https://about.att.com/story/2019/fn\\_fastest\\_network.html](https://about.att.com/story/2019/fn_fastest_network.html).

process resulted in a public-private arrangement<sup>5</sup> through which the business model for the NPSBN is codified by a contract between the FirstNet Authority and the NPSBN contractor. For the reasons stated more fully below, the BRETSA Petitions: (1) seek actions inconsistent with the 2012 Act;<sup>6</sup> (2) are not actionable under the 2012 Act; and (3) would harm the FirstNet program. Accordingly, the FirstNet Authority urges the Federal Communications Commission (“FCC” or “Commission”) to deny the petitions in full.<sup>7</sup>

**I. The Objectives Sought by the BRETSA Petitions are Inconsistent with the 2012 Act.**

BRETSA petitions the FCC to issue a declaratory ruling that “ensuring interoperability is a fundamental responsibility of FirstNet and that *FirstNet is supported at all levels* including network, services, applications, and devices.”<sup>8</sup> Essentially, BRETSA is asking the Commission

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<sup>5</sup> See 47 U.S.C. § 1428(a).

<sup>6</sup> Middle Class Tax Relief and Job Creation Act (47 U.S.C. § 1401 *et seq.*) (the “2012 Act”).

<sup>7</sup> As a threshold matter, it is the FirstNet Authority’s view that BRETSA’s Petitions and the Colorado Public Safety Broadband Governing Body (CPSBGB) request on which they are based—filed in the FCC dockets related to State opt-out requests well over a year after the Commission adopted its orders on the subject—are stale. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments within a reasonable time on or before the dates specified in the notice of the proposed rulemaking, unless additional comments are required or authorized by the Commission. 47 C.F.R. §§ 1.145, 1.419. With respect to the notice that ultimately resulted in its June 22, 2017 Report and Order, the Commission had established due dates of October 21, 2016 and November 21, 2016 respectively for comments and reply comments, and the FCC established a due date of July 17, 2017 for public comments preceding the issuance of its September 14, 2017 Order. See *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269, Report and Order, 32 FCC Rcd 5311 (2017); *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269, Order, 32 FCC Rcd 7189 (2017). Consequently, the CPSBGB comments and request for clarification submitted to the Commission on July 9, 2018 and the later petitions filed by BRETSA on November 21, 2018 “on the same grounds” as the CPSBGB request are far beyond the Commission’s identified due dates. BRETSA Petitions at 2.

<sup>8</sup> BRETSA Petitions at 8.

to mandate that the NPSBN be interoperable with land-mobile-radio (“LMR”) systems and commercial networks, including by sharing priority and preemption, local control, and Push-to-Talk protocols and applications.<sup>9</sup> Additionally, BRETSA asks the Commission to issue a Notice of Proposed Rulemaking to address:

- the critical issue of roaming and prioritization *as it applies to applications such as PTT and [Mission Critical Push-to-Talk (MCPTT)]*;
- the responsibility of providers other than FirstNet . . . to cooperate with FirstNet in the development of interoperability solutions, and to provide full interoperability with FirstNet . . . ;
- the issue of roaming and prioritization as applicable to LMR and other CMRS public safety priority services; and
- the availability of Commission procedures for dispute resolution as well as standards for dispute resolution concerning matters of interoperability, roaming, and prioritization.<sup>10</sup>

These requests misconstrue the FirstNet Authority’s mission and the Commission’s role in the implementation of the NPSBN, as prescribed by Congress.

**A. BRETSA Misconstrues the FirstNet Authority’s Duties and Responsibilities.**

The 2012 Act created the FirstNet Authority as the sole licensee of the Band 14 public safety spectrum and the party responsible for the establishment of the NPSBN.<sup>11</sup> Under the 2012 Act, the FirstNet Authority’s mission is to ensure the building, deployment, and ongoing operation of the NPSBN, which is “based on a single, national network architecture” that initially consists of a core network and a radio access network (“RAN”).<sup>12</sup> In addition, the 2012 Act would have required any State choosing to deploy its own RAN (commonly referred to as “opt-out”) to

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<sup>9</sup> *See id.* at 2-7.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> 47 U.S.C. §§ 1424, 1426.

<sup>12</sup> *Id.* §§ 1422(b), 1426(b).

demonstrate “*interoperability with the [NPSBN]*” and “the ability to *maintain ongoing interoperability with the [NPSBN]*.”<sup>13</sup> Thus, the FirstNet Authority’s Congressionally imposed duties, responsibilities, and authority are specifically with respect to the establishment of the NPSBN—not any other network or system.<sup>14</sup>

Contrary to what BRETSA suggests in its petitions, the 2012 Act neither mandates nor contemplates any requirement for the NPSBN to be interoperable with (or that the NPSBN core connect to) separate commercial or other third-party networks, including, for example, LMR systems and commercial mobile radio service (“CMRS”) providers.<sup>15</sup> Instead, as discussed above, Congress tasked the FirstNet Authority as the sole entity responsible for ensuring the establishment of the NPSBN, including the operation of a *single* core network to serve public safety in order to meet Congress’ interoperability and security goals for the NPSBN,<sup>16</sup> but not other networks as the BRETSA Petitions seek to prescribe. An opt-out State RAN would have been required to connect to the FirstNet Authority core network, and the opt-out State would have been required to pay any user fees associated with the State’s use of elements of the FirstNet Authority core network.<sup>17</sup>

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<sup>13</sup> *Id.* § 1442(e)(3)(C), (D) (emphasis added).

<sup>14</sup> *See also id.* § 1423(c) (requiring the FCC’s Technical Advisory Board for First Responder Interoperability to “develop recommended minimum technical requirements to ensure a nationwide level of interoperability for the [NPSBN]” discussed *infra*).

<sup>15</sup> Notwithstanding, the NPSBN is compliant with section 4.4.3.1 of the Technical Advisory Board for First Responder Interoperability’s report. *See Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network*, Final Report, at 59 (May 22, 2012), available at <https://ecfsapi.fcc.gov/file/7021919873.pdf>. Additionally, the FirstNet Authority has identified LMR-LTE interconnection as a priority in its Roadmap for the advancement of the NPSBN. *See First Responder Network Authority Roadmap*, at 10, available at [https://www.firstnet.gov/system/tdf/FirstNet\\_Roadmap.pdf?file=1&type=node&id=1055](https://www.firstnet.gov/system/tdf/FirstNet_Roadmap.pdf?file=1&type=node&id=1055).

<sup>16</sup> *See* 47 U.S.C. §§ 1422, 1426, 1442.

<sup>17</sup> 47 U.S.C. § 1442(e)(2)-(3), (f). *See also* Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63,504, 63,524 (Oct. 20, 2015), available at <https://www.federalregister.gov/articles/2015/10/20/2015-26622/final-interpretations-of-parts->

Thus, the FirstNet Authority’s interoperability obligations are fulfilled not by ensuring “full interoperability” or interoperability “at all levels” with other public safety or commercial networks or systems, as BRETSA requests, but rather by interoperability of the FirstNet Authority core network with what would have been the RANs of opt-out States, of which we now know there are none.<sup>18</sup> Stated plainly, the interoperability mandate of the 2012 Act required that the NPSBN operate as a single network by requiring all the RANs built under the FirstNet program public-private arrangement (“opt-in”) be interoperable with the RANs built by any States or territories that opted out of the FirstNet-proposed deployment.<sup>19</sup> The requests in BRETSA’s Petitions are not called for in the 2012 Act and, therefore, cannot be forced upon the FirstNet program as it works to complete the construction and deployment of the NPSBN in accordance with its statutory and contractual requirements.

The FirstNet Authority is undeniably satisfying its requirements under the 2012 Act to ensure the establishment of an interoperable NPSBN. Following a rigorous, comprehensive, open, transparent, and competitive procurement process that resulted in a contract award in 2017, AT&T is building, deploying, operating, and maintaining the network consistent with the key objectives

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of-the-middle-class-tax-relief-and-job-creation-act-of-2012 (concluding that a State choosing to opt out must “use the FirstNet core network to provide public safety services within the State”).

<sup>18</sup> See *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269, Order, 34 FCC Rcd 1105 (2019).

<sup>19</sup> Note that if the FirstNet Authority had decided to enter into a public-private arrangement with multiple vendors—rather than a single contractor, as it did—to build, deploy, and operate the NPSBN (for example, on a regional basis), the 2012 Act would have similarly required the core network and all such RANs to be interoperable. See 47 U.S.C. § 1422 (requiring the establishment of a “nationwide, interoperable public safety broadband network . . . based on a single, national network architecture” and allowing the core network to be “distributed geographically”).



identified during the procurement process as important to public safety.<sup>20</sup> The NPSBN is operational, with services currently being provided to public safety entities for use during emergencies and daily operations, while AT&T continues to build out Band 14 throughout the United States. Because all States and territories decided to opt-in to the FirstNet Authority-proposed network deployment for their State or territory, the FirstNet Authority has established a single, interoperable nationwide network as required under the 2012 Act—without the need for any interconnection of separate State RANs—which ensures that NPSBN users from different jurisdictions, agencies, and across levels of government have seamless operable communications.<sup>21</sup>

BRETSAs requests related to roaming and prioritization are also unfounded. The 2012 Act’s requirements regarding roaming and prioritization are limited to roaming and prioritization agreements with respect to NPSBN users, and any such agreements are to be determined by the FirstNet Authority. Under the 2012 Act, the FirstNet Authority “shall negotiate and enter into, *as it determines appropriate*, roaming agreements with commercial network providers to allow the [NPSBN] to *roam onto commercial networks* and gain prioritization of public safety

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<sup>20</sup> The FirstNet Authority and AT&T continue to engage with public safety stakeholders to ensure the network is meeting their needs. *See, e.g.*, First Responder Network Authority Roadmap, *available at* [https://www.firstnet.gov/system/tdf/FirstNet\\_Roadmap.pdf?file=1&type=node&id=1055](https://www.firstnet.gov/system/tdf/FirstNet_Roadmap.pdf?file=1&type=node&id=1055). The FirstNet Authority has held more than 800 engagements this year with public safety across the country.

<sup>21</sup> Moreover, in accordance with the requirements of the 2012 Act, the NPSBN solution is based upon open, commercial standards (*e.g.*, 3GPP). *See* 47 U.S.C. §§ 1401(10), 1422(b). The NPSBN also connects to the Public Switched Telephone Network (“PSTN”), and therefore is interoperable with any other network (*e.g.*, commercial wireless provider) that connects to the PSTN. Consequently, public safety subscriber communications between the NPSBN and other networks operate (*i.e.*, interconnect) in the same manner as is the current practice between commercial carriers, including calls, texts, and multimedia messages to any other wireless user on any other network.

communications over such networks in times of an emergency.”<sup>22</sup> Hence, the FirstNet Authority is under no obligation to offer roaming and prioritization services to users of other networks.<sup>23</sup> As the singular entity tasked by Congress with the duty for ensuring the creation of the NPSBN, the FirstNet Authority is responsible for making determinations about interoperability, roaming, and prioritization *related to the network*.<sup>24</sup>

**B. The Commission fulfilled its Duties and Obligations Regarding NPSBN Interoperability under the 2012 Act.**

The 2012 Act outlined a limited two-part role for the Commission on issues of interoperability related to the NPSBN. First, the 2012 Act directed the Chairman of the Commission to appoint members to the Technical Advisory Board for First Responder Interoperability (“Interoperability Board”) with the objective of: (a) developing recommended

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<sup>22</sup> 47 U.S.C. § 1426(c)(5) (emphasis added).

<sup>23</sup> Although the FCC may, at its discretion, adopt rules related to roaming and prioritization, those rules are limited to addressing “public safety networks [] roam[ing] onto commercial networks [] to gain priority access to commercial networks in an emergency . . . .” 47 U.S.C. § 1431. As noted in footnote 21, the NPSBN connects to the PSTN.

<sup>24</sup> To the extent any declarations, rules, or policies for the NPSBN related to interoperability, roaming, or prioritization are warranted, the FirstNet Authority has that exclusive authority. *See* 47 U.S.C. § 1426 (providing the FirstNet Authority’s duty and responsibility to, among other things, ensure the building, deployment, and operation of the NPSBN, ensure nationwide standards for use and access of the network, establish network policies, and enter into roaming agreements as appropriate; and noting the FirstNet Authority’s authority to take other such actions that may be necessary or appropriate to accomplish its mission). Indeed, the FirstNet Authority issued final legal interpretations, after a public notice process that sought stakeholder input, to establish the framework for network implementation and operation, including certain matters related to interoperability with the NPSBN and prioritization of users of the NPSBN. *See* Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63,523 (Oct. 20, 2015), *available at* <https://www.federalregister.gov/articles/2015/10/20/2015-26621/first-responder-network-authority-final-interpretations-of-parts-of-the-middle-class-tax-relief-and-job-creation-act-of-2012>; Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63,504 (Oct. 20, 2015), *available at* <https://www.federalregister.gov/articles/2015/10/20/2015-26622/final-interpretations-of-parts-of-the-middle-class-tax-relief-and-job-creation-act-of-2012>.

minimum technical requirements to ensure a nationwide level of interoperability for the NPSBN; and (b) submitting the minimum requirements to the Commission for approval.<sup>25</sup> The Commission has fulfilled this mandate. On June 12, 2012, the Commission adopted an order transmitting to the FirstNet Authority the recommended minimum technical requirements that the Interoperability Board submitted to the Commission on May 22, 2012. Notably, the Order clarifies that in making the transmittal, “the Commission discharges its obligations under Section 6203(c)(3)(A) of the Middle Class Tax Relief and Job Creation Act of 2012.”<sup>26</sup>

Second, under the 2012 Act, any State that decided to opt-out of the FirstNet Authority’s proposed RAN deployment was required to submit an alternative plan for its proposed State RAN to the FCC.<sup>27</sup> As noted above, no jurisdictions took that action. Had any of the States decided to opt-out, the FCC would have been required to examine whether the alternative plan meets the minimum technical interoperability requirements developed by the Interoperability Board and demonstrates interoperability with the NPSBN.<sup>28</sup> Similar to the Interoperability Board’s minimum technical requirements, the Commission’s interoperability obligations concerning opt-out States are no longer active. With every State accepting the FirstNet Authority’s proposed RAN

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<sup>25</sup> See 47 U.S.C. § 1423(c)(1).

<sup>26</sup> See Recommendations of the Technical Advisory Board for First Responder Interoperability at para 1, FCC 12-68, PS Docket No. 12-74 (June 21, 2012). It is also notable that the foundational interoperability conclusions transmitted to the FirstNet Authority by the Commission are not subject to change based on the BRETSA Petitions as the 2012 Act clarified that while the Commission could “approve the recommendations, with any revisions it deems necessary,” action taken by the Commission “shall not be reviewable as a final agency action.” 47 U.S.C. § 1423(c)(3).

<sup>27</sup> See 47 U.S.C. § 1442(e)(3)(C)(i).

<sup>28</sup> See *id.* § 1442(e)(3)(C).

deployment, there was never a need for the Commission to exercise that portion of its interoperability obligations.<sup>29</sup>

The BRETSA Petitions clearly fall outside of the Congressionally-intended role of the Commission as it relates to interoperability of the NPSBN. The Commission's role was to set the minimum technical requirements and ensure that any opt-out States develop a RAN consistent with those requirements. BRETSA's Petitions, however, ignore the scope of the Commission's interoperability obligations. Worse still, BRETSA would have the Commission rewrite the 2012 Act by altering the FCC's role from developing "minimum technical requirements to ensure a nationwide level of interoperability for the [NPSBN]"<sup>30</sup> to allowing other parties, including competitors to the FirstNet public safety service offerings, access to the unique applications and services that will be developed for the NPSBN by seeking a fundamentally misguided view of interoperability "at all levels."<sup>31</sup>

BRETSA seeks to have the Commission ignore the reality that Federal agencies do not have the power to take action "in excess of statutory jurisdiction, authority, or limitations."<sup>32</sup> Indeed, the FCC has already rightfully concluded that the scope of its interoperability jurisprudence was related to opt-out RAN interoperability with the NSPBN, and issues associated with general interoperability with the NPSBN (*e.g.*, State-operated core networks, devices, LMR

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<sup>29</sup> See *In the Matter of Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, at 1, PS Docket No. 16-269 (Mar. 6, 2019) ("In this Order, we delete certain of the Commission's rules related to the opt-out provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act or Act) that have been rendered moot by the passage of time. Specifically, we delete those rules adopted to implement the 'opt-out' provisions of the Act, in light of the fact that no State or territory chose to exercise this option within the statutory timeframe.").

<sup>30</sup> 47 U.S.C. § 1423(c)(1).

<sup>31</sup> BRETSA Petitions at 8.

<sup>32</sup> 5 U.S.C. § 706(2)(C).

network interoperability with the NPSBN) fall outside the scope of its statutory duties under the 2012 Act.<sup>33</sup> As discussed above, under the 2012 Act, the FirstNet Authority is tasked by Congress with ensuring the establishment and implementation of a nationwide, interoperable broadband network for public safety.<sup>34</sup> Thus, the initial request for clarification and BRETSA's subsequent petitions are outside the scope of the Commission's orders.<sup>35</sup> The orders adopted procedures for administering the State opt-out process as provided under the 2012 Act, as well as delineated the specific standards by which the Commission would evaluate State opt-out applications. However, as noted above, the governors of all States and territories "opted-in" and chose to have network deployment occur as proposed by the FirstNet Authority. As a result, the process and standards described in the orders are no longer applicable, and any further comments, requests, or petitions are moot.<sup>36</sup>

## **II. BRETSA's Specific Requests Are Not Actionable under the 2012 Act.**

BRETSA's Petitions ask the Commission to address the "critical issue of roaming and prioritization as it applies to applications such as [push-to-talk] and [mission critical push-to-talk],

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<sup>33</sup> See *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269, Report and Order, 32 FCC Rcd 5311 (2017); *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269, Order, 32 FCC Rcd 7189 (2017).

<sup>34</sup> See 47 U.S.C. §§ 1422, 1426 (charging the FirstNet Authority with the duty to "ensure the establishment of a nationwide, interoperable public safety broadband network . . . based on a single, national network architecture," and directing the FirstNet Authority to take all actions necessary to ensure the building, deployment, and operation of the network).

<sup>35</sup> Colorado Public Safety Broadband Governing Body 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); BRETSA Petitions.

<sup>36</sup> See 47 C.F.R. §§ 1.2(b) (A Commission bureau should only docket a petition for declaratory ruling if "the issues raised within the petition substantially relate to an existing proceeding."); 1.401(e) (Petitions for rulemaking that are moot may be denied or dismissed).

as well as other applications that will face the same issues.”<sup>37</sup> However, as noted in Section I above, BRETSA’s requests fail to acknowledge that the 2012 Act’s requirements regarding roaming and prioritization are limited to roaming and prioritization agreements with respect to NPSBN users, and any such agreements are to be determined by the FirstNet Authority.<sup>38</sup> Not only is the technical feasibility of roaming onto the NPSBN to obtain priority and preemption services in doubt, the 2012 Act does not impose such an obligation on the FirstNet Authority.

Indeed, such a requirement is foreclosed by the fact that the Commission has to date imposed roaming obligations only on CMRS providers,<sup>39</sup> and the public safety services offered on the NPSBN are not CMRS.<sup>40</sup>

Beyond the above-referenced overarching concerns of the BRETSA Petitions, each of BRETSA’s additional requests are not actionable under the 2012 Act. First, BRETSA seeks to have the Commission address “[t]he responsibility of providers other than FirstNet (*i.e.*, providers of public safety land mobile radio (LMR) systems or services and public safety priority services offered over Commercial Mobile Radio Service (CMRS) networks) to cooperate with FirstNet in the development of interoperability solutions, and to provide full interoperability with FirstNet, LMR and other CMRS priority public safety services (subject only to technological limitations of

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<sup>37</sup> BRETSA Petitions at 8.

<sup>38</sup> See 47 U.S.C. § 1426(c)(5).

<sup>39</sup> See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers & Other Providers of Mobile Data Services, *Second Report and Order*, 26 FCC Rcd 5411, ¶ 1(2011); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15818-19, ¶¶ 1-2 (2007); 47 C.F.R. § 20.12.

<sup>40</sup> See Restoring Internet Freedom, *Declaratory Ruling, Report and Order, and Order*, 33 FCC Rcd 311, 319 n.64 (2018) (public safety services as defined in section 337(f)(1) “are not made commercially available to the public by the provider”). The offering of service “to the public” is a prerequisite for classifying any mobile service as CMRS. See 47 U.S.C. § 332(d)(1).

a specific service).”<sup>41</sup> The FirstNet Authority is tasked with ensuring the development and operation of an interoperable public safety network which will, in turn, eliminate the interoperability issues that plagued legacy LMR due to the proliferation of a multitude of disparate systems.<sup>42</sup> Unlike LMR, the FirstNet Authority was created with the primary purpose of creating a *single*, nationwide, broadband network to foster interoperability—one single network, using one technology (LTE), with one set of protocols defined by 3GPP. Therefore, there is no need for regulatory action concerning the “cooperation” of entities with the FirstNet Authority in the “development of interoperability solutions.”<sup>43</sup> The NPSBN is interoperable as required under the 2012 Act. Furthermore, BRETSA’s use of the term interoperability to discuss legacy LMR is problematic. Interoperability typically implies interchangeability (*e.g.*, ability to put a new SIM card in a phone to move from one broadband carrier to another). However, you cannot use a LMR radio on a broadband system, and vice versa you cannot use a broadband device (cell phone) on a legacy LMR system. Thus, the two technologies are not interchangeable. It is notable that, consistent with its statutory authority, the FirstNet Authority is actively contributing and driving the development of 3GPP standards on LMR-LTE interworking, as well as interworking standards being developed in the Alliance for Telecommunications Industry Solutions (“ATIS”) and

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<sup>41</sup> BRETSA Petitions at 9.

<sup>42</sup> See Emergency Communications: Various Challenges Likely to Slow Implementation of a Public Safety Broadband Network, at 17 (GAO-12-343) (Feb. 22, 2012) (“Despite decades of effort, a significant limitation of current LMR systems is that they are not fully interoperable. One reason for the lack of interoperability is the fragmentation of spectrum assignments for public safety, since existing radios are typically unable to transmit and receive in all these frequencies. Therefore, a rural area using public safety radios operating on VHF spectrum will not be interoperable with radios used in an urban area that operate on UHF spectrum . . . . This is compounded by the lack of mandatory standards for the current LMR systems or devices.”).

<sup>43</sup> BRETSA Petitions at 9.

Telecommunications Industry Association (“TIA”).<sup>44</sup> These standards include the use of priority between LMR and MCPTT systems. In addition, the NPSBN currently supports several existing solutions that provide interworking between some LMR users and NPSBN subscribers. For example, the Enhanced Push-to-Talk capability provides a level of LMR-LTE interworking, as do several solutions in the FirstNet Applications Catalog.

Second, BRETSA seeks Commission guidance on “the issue of roaming and prioritization as applicable to LMR and other CMRS public safety priority services.”<sup>45</sup> While it is not entirely clear what BRETSA is requesting, CMRS roaming obligations, as noted above, do not apply to the FirstNet Authority. Moreover, the FirstNet Authority—not the FCC—is responsible for addressing these issues with respect to the NPSBN as appropriate.<sup>46</sup>

BRETSA also requests that the Commission examine “the availability of Commission processes for dispute resolution as well as standards for dispute resolution concerning matters of interoperability, roaming and prioritization.”<sup>47</sup> As explained above, BRETSA misunderstands the division of labor among Federal agencies established in the 2012 Act. To the extent that any dispute resolution is required concerning the functioning of the NPSBN, such inquiries should be directed to the FirstNet Authority. We urge the Commission to remain consistent with its stated

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<sup>44</sup> See 47 U.S.C. § 1426(c)(7).

<sup>45</sup> BRETSA Petitions at 9.

<sup>46</sup> See 47 U.S.C. § 1426(c)(1), (5); See also Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63,523 (Oct. 20, 2015), *available at* <https://www.federalregister.gov/articles/2015/10/20/2015-26621/first-responder-network-authority-final-interpretations-of-parts-of-the-middle-class-tax-relief-and-job-creation-act-of-2012>; Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63,504 (Oct. 20, 2015), *available at* <https://www.federalregister.gov/articles/2015/10/20/2015-26622/final-interpretations-of-parts-of-the-middle-class-tax-relief-and-job-creation-act-of-2012>.

<sup>47</sup> BRETSA Petitions at 9.



position that it “decline[s] to opine on the actions of other agencies with duties under the [2012] Act or their implementation of their statutory responsibilities.”<sup>48</sup>

### **III. Granting BRETSA’s Petitions Will Harm the FirstNet Program.**

In addition to the clear failings described above, the BRETSA Petitions are also unwise as they would likely result in material harm to the FirstNet program. As the Commission is aware, the FirstNet Authority and AT&T have entered into a \$40 billion public-private arrangement to ensure the successful deployment, usage, and performance of the NPSBN for first responders and other public safety entities throughout the country. Although the public-private arrangement is just over two years old, it has been a sweeping success. As of August 2019, nearly 9,000 public safety agencies and organizations have subscribed to FirstNet, accounting for more than 750,000 connections in service.<sup>49</sup>

AT&T continues to rapidly build out Band 14 for the network, with about 65% of its nationwide coverage targets completed, which is well ahead of schedule.<sup>50</sup> This coverage includes the launch of several new FirstNet cell sites, including in rural areas like Preston County, West

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<sup>48</sup> *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, para. 13, PS Docket No. 16-269, Order, 32 FCC Rcd 7189 (2017) (concluding that “[the Commission’s] focus in this proceeding is on the duties Congress imposed upon the Commission in the Act.”).

<sup>49</sup> First Responder Network Authority. *FirstNet Momentum: Platform Passes 750,000 Connections, Performs Faster Than Any Commercial Network for Second Consecutive Quarter*. (August 12, 2019) [Press Release]. Retrieved from <https://firstnet.gov/newsroom/press-releases/firstnet-momentum-platform-passes-750000-connections-performs-faster-any>.

<sup>50</sup> AT&T. *FirstNet Performs Faster Than Any Commercial Network* (August 12, 2019) [Press Release]. Retrieved from [https://about.att.com/story/2019/fn\\_fastest\\_network.html](https://about.att.com/story/2019/fn_fastest_network.html).

Virginia;<sup>51</sup> Warrenton, North Carolina;<sup>52</sup> and Talbot County, Maryland.<sup>53</sup> Public safety personnel across the country continue to turn to FirstNet to advance their routine and emergency responses. FirstNet is serving large cities like San Jose, California<sup>54</sup> and Columbia, South Carolina<sup>55</sup> to rural communities like Elmore County, Idaho.<sup>56</sup> Agencies across the country are using FirstNet to stay connected during routine operations and emergency incidents alike, such as the Anchorage Police Department's use of FirstNet in the aftermath of a 7.0 earthquake;<sup>57</sup> the City of Whiteville, North Carolina's<sup>58</sup> use of FirstNet when other communications systems were down during Hurricane

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<sup>51</sup> Miller, Susan. "FirstNet adds cell sites in West Virginia, Wisconsin's Red Cliff Reservation." GCN.com (May 30, 2019). Accessed September 18, 2019. <https://gcn.com/articles/2019/05/30/firstnet-rural-wisconsin-west-va.aspx>;

<sup>52</sup> First Responder Network Authority. *New FirstNet Cell Sites Launch in Warren County to Support Public Safety* (August 9, 2019) [Press Release]. Retrieved from <https://firstnet.gov/newsroom/press-releases/new-firstnet-cell-sites-launch-warren-county-support-public-safety>.

<sup>53</sup> Rivas, Kayla. "FirstNet Cell Site launches in Tilghman." *The Star Democrat* (August 28, 2019). Accessed September 18, 2019. [https://www.stardem.com/news/local\\_news/firstnet-cell-site-launches-in-tilghman/article\\_77fdafa1-53e6-5a18-bc99-751a9d15fe79.html](https://www.stardem.com/news/local_news/firstnet-cell-site-launches-in-tilghman/article_77fdafa1-53e6-5a18-bc99-751a9d15fe79.html).

<sup>54</sup> Quaintance, Zack. "What's New in Civic Tech: San Jose, Calif., Joins FirstNet." *Government Technology* (June 27, 2019). Accessed September 18, 2019. <https://www.govtech.com/civic/Whats-New-in-Civic-Tech-San-Jose-Calif-Joins-FirstNet.html>.

<sup>55</sup> Jones, Nic. "It will save lives,' Columbia First Responders receive new communication technology." *WLTX19* (August 19, 2019). Accessed September 18, 2019. <https://www.wltx.com/article/news/it-will-save-lives-columbia-first-responders-receive-new-communication-technology/101-19cf4f60-feba-4261-a514-4380443a6d78>.

<sup>56</sup> Holmes, Brian. "Elmore County joins new first responder communication network." *KTVB.com* (April 17, 2019). Accessed September 18, 2019. <https://www.ktvb.com/article/news/local/elmore-county-joins-new-first-responder-communication-network/277-302ecfbf-966d-4126-8896-23783ddc5a41>.

<sup>57</sup> Downing, Suzanne. "Anchorage Police now have dedicated cell service." *Must Read Alaska* (April 8, 2019). Accessed September 18, 2019. <https://mustreadalaska.com/anchorage-police-dedicated-cell-service/>.

<sup>58</sup> Jackson, Donny. "North Carolina city relies on FirstNet voice, data communications during Hurricane Florence." *Urgent Communications* (September 26, 2018). Accessed September 19, 2019. <https://urgentcomm.com/2018/09/26/north-carolina-city-relies-on-firstnet-voice-data-communications-during-hurricane-florence/>.

Florence; and the use of FirstNet's dedicated deployable assets to support fire ground operations during wildfires on the West Coast, from California<sup>59</sup> to Oregon.<sup>60</sup>

The success of the FirstNet Authority/AT&T public-private arrangement is the fruit of carefully orchestrated efforts in which the FirstNet Authority, among other things, oversees the NPSBN contract and AT&T delivers a service consistent with the needs of public safety and the provisions of the contract between the parties. As noted previously, issues associated with general interoperability with the NPSBN (*e.g.*, State-operated core networks, devices, LMR network interoperability with the NPSBN) fall outside the scope of the Commission's statutory duties under the 2012 Act.

The FirstNet Authority is concerned that the unintended consequences of modifying the public-private arrangement would have a significant negative impact on the program. The BRETSA Petitions show no appreciation of the fact that they seek to redefine the FirstNet program mission and public-private arrangement that the FirstNet Authority has with AT&T. This is unnecessary and contrary to the public interest.

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<sup>59</sup> First Responder Network Authority. *California Camp Fire is Reminder of Responders' Sacrifice*. (January 30, 2019) [Press Release]. Retrieved from <https://www.firstnet.gov/newsroom/blog/california-camp-fire-reminder-responders%E2%80%99-sacrifice>.

<sup>60</sup> First Responder Network Authority. *Serving those on the frontlines of the West Coast wildfires*. (August 23, 2018) [Press Release]. Retrieved from <https://www.firstnet.gov/newsroom/blog/serving-those-frontlines-west-coast-wildfires>.

#### IV. Conclusion

For the reasons stated above, the Commission should dismiss the BRETSA Petitions.

Respectfully submitted,

/s/ *Erin Greten*

By:

Jeff Bratcher  
Chief Technology and Operations Officer

Uzoma Onyeije  
Counsel

Kevin Green  
Counsel

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Erin Greten  
Chief Counsel, First Responder Network  
Authority  
12201 Sunrise Valley Drive  
Reston, VA 20192

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