



January 19, 2016

Ex Parte

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

Re: 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.

Dear Ms. Dortch:

On January 15, 2016, First Responder Network Authority (FirstNet) representatives met with members of the Public Safety and Homeland Security Bureau to discuss the above-referenced proceeding. Those present in the meeting or on the phone are listed as an attachment to this letter.

During the meeting, FirstNet discussed its plans to implement a spectrum relocation assistance grant program (Grant Program). The purpose of the Grant Program will be to provide funding assistance to help relocate eligible incumbent public safety users from the 758-769/788-799 MHz band (Band 14) prior to the deployment and operation of the nationwide public safety broadband network (NPSBN).¹

As discussed below, the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) directs the Federal Communications Commission (Commission) to take “all actions necessary to facilitate the transition of the existing public safety broadband spectrum to [FirstNet].”² Accordingly, on October 20, 2015, FirstNet submitted an ex parte letter requesting that the Commission no longer permit incumbent public safety operations on Band 14 after July 31, 2017, without the express consent of FirstNet.³ Following the Commission’s release of a

¹ FirstNet recognizes that the 3rd Generation Partnership Project (3GPP) defines Band 14 as the 758-768/788-798 MHz band, however, since FirstNet’s license includes the 768-769/798-799 MHz band, for purposes of this letter, we include those frequencies within the definition of Band 14.

² Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. §§ 1401 *et seq.*).

³ See Ex Parte Letter from Jason Karp, Chief Counsel, First Responder Network Authority to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket 12-94, PS Docket 06-229, PS Docket 06-150 (filed Oct. 20, 2015).

Public Notice,⁴ six commenters filed in response, including the Association of Public-Safety Communications Officials-International, Inc. (APCO), the National Public Safety Telecommunications Council (NPSTC), the State of Colorado, Governor's Office of Information Technology (Colorado), the State of Hawaii (Hawaii), the State of Illinois (Illinois), and the Commonwealth of Virginia, Department of State Police (Virginia).

While commenters were generally supportive of FirstNet's Grant Program, during the meeting we addressed several issues that were raised in response to the Public Notice. Most importantly, we highlighted that FirstNet's intent is to ensure that the relocation process is fair and equitable. Indeed, FirstNet was tasked with building a nationwide, interoperable public safety broadband network *for* first responders. We take this public safety mission seriously and will ensure that Band 14 incumbent licensees are able to maintain reliable operations during their relocation. Moreover, to better ensure a fair and efficient outcome, FirstNet plans to retain independent third parties that have relevant technical, industry, and grant experience. The third parties will provide FirstNet with advice throughout the implementation of the Grant Program and will review FirstNet's determinations related to incumbents' spectrum relocation costs. We also noted that most of the commenters' concerns should be allayed after they read FirstNet's "Announcement of Federal Funding Opportunity (FFO)," which will describe in detail FirstNet's intention to accommodate incumbent Band 14 licensees during their relocation. We expect the FFO to be released in the next several weeks.

Further, we highlighted that FirstNet recognizes that the size and scope of the relocation project will be different for all Band 14 public safety incumbents. As Virginia notes, a "one-year deadline may be reasonable for local county or city public safety entities to reband, but a different time period must be used for a statewide licensee."⁵ We appreciate this concern and are very cognizant of the differences in incumbent Band 14 public safety licensees' operations. Accordingly, the FFO will allow for reasonable extensions of time for incumbents to relocate, as warranted, depending upon each licensee's particular situation. That said, since Band 14 spectrum must be unencumbered for FirstNet to successfully deploy the NPSBN, we noted that it is critical for the Commission to establish a firm timeline that includes a targeted end-date for clearing the spectrum. Based on the information that FirstNet has received thus far from Band 14 incumbents, we firmly believe that a July 31, 2017 spectrum clearance deadline is both reasonable and achievable. Indeed, FirstNet expects that at least 70 percent of the Band 14 incumbents will be able to clear the spectrum within a matter of months given the small scope of their relocation requirements.

We also made clear that the FirstNet Board approved the Grant Program with the intent of fully funding reasonable relocation costs to ensure that the transition of public safety incumbents off of Band 14 is seamless. To accomplish this goal, FirstNet intends to exercise

⁴ Public Safety and Homeland Security Bureau Seeks Comment on FirstNet's Incumbent Relocation Proposal, Public Notice, PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, DA 15-1253 (Nov. 5, 2015) (Public Notice).

⁵ Comments of the Commonwealth of Virginia, PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, at 3 (December 9, 2015) (Virginia Comments).

its broad statutory authority to complete the relocation in a timely manner. We are concerned, however, that several parties suggested that Commission staff serve as an arbiter in the event FirstNet and an incumbent licensee disagree over relocation funding.⁶ While FirstNet understands these concerns, a dispute resolution process would not only delay the deployment of the NPSBN, but would also run counter to Congressional intent.

In the Act, Congress was clear that FirstNet must have sufficient flexibility and discretion in its efforts to establish a nationwide interoperable public safety network.⁷ Moreover, the Act specifically charged FirstNet with “taking all actions necessary to ensure the building, deployment, and operation of the [NPSBN].”⁸ FirstNet was also directed to exercise “all powers specifically granted” by the Act “and such incidental powers as shall be necessary,” including “such other actions as” FirstNet, through its Board, “may from time to time determine necessary, appropriate, or advisable to accomplish the purposes of” the Act.⁹ Similarly, the Act directs the Commission to take “any action necessary to assist [FirstNet] in effectuating its duties and responsibilities” and “all actions necessary to facilitate the transition of the existing public safety broadband spectrum to [FirstNet].”¹⁰ Clearly, any suggestion that the Commission serve as an arbiter over FirstNet’s grant funding decisions related to the transition of the existing public safety broadband spectrum to FirstNet would run counter to Congressional intent and the FirstNet Board’s Congressionally delegated authority. As APCO notes, “the Commission should provide FirstNet with appropriate deference and assistance, consistent with the legislation that created FirstNet.”¹¹

During the meeting, we highlighted that FirstNet fully intends to ensure that its relocation program is equitably and efficiently administered for eligible incumbent public safety Band 14 licensees, but noted that FirstNet must also fulfill its statutory mandate to take “all actions necessary to ensure the building, deployment, and operation of the NPSBN.”¹² While FirstNet will continue to closely coordinate with the Commission, the FirstNet Board must be given complete autonomy in overseeing and managing its grant-funding decisions, as contemplated by the Act.

⁶ See Virginia Comments at 3; Comments of the State of Illinois, PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, at 3 (December 9, 2015) (Illinois Comments); Comments of the State of Hawaii, PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, at 4 (December 9, 2015) (Hawaii Comments).

⁷ See 47 U.S.C. § 1426.

⁸ 47 U.S.C. § 1426(b)(1).

⁹ 47 U.S.C. § 1426(a)(1); see also *id.* § 1426(b)(4)(D).

¹⁰ 47 U.S.C. § 1433; see also *id.* § 1421(c).

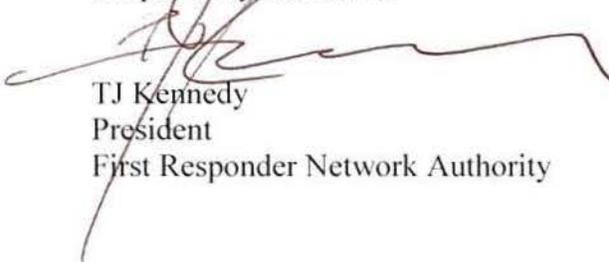
¹¹ Comments of the Association of Public-Safety Communications Officials-International, Inc., PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, at 2 (December 9, 2015)(APCO Comments).

¹² 47 U.S.C. § 1426(b)(1).

We also discussed Virginia’s argument that FirstNet should be subject to similar policies and procedures as those that were applied to Sprint Nextel during 800 MHz rebanding.¹³ The 800 MHz rebanding project, however, was implemented under an entirely different set of circumstances. It was a voluntary agreement in which Nextel offered to pay all of the 800 MHz rebanding costs in exchange for contiguous spectrum in the 800 MHz and 1.9 GHz bands.¹⁴ It also involved a commercial wireless carrier that had been interfering with public safety operations, not a governmental entity that was allocated the relevant spectrum and tasked by Congress with building a critical nationwide interoperable broadband network for first responders. Moreover, the 800 MHz rebanding process was a multi-year, multibillion dollar project.¹⁵ Thus, a requirement for FirstNet to undertake a process similar to 800 MHz rebanding would not be feasible given FirstNet’s critical mission. It would also run counter to the Act’s emphasis for FirstNet “to speed deployment of the network.”¹⁶ While FirstNet will certainly incorporate lessons learned from the 800 MHz rebanding project, it cannot, and should not, be held to the terms of Nextel’s agreement with the Commission.

Finally, we discussed NPSTC’s request for the Commission “to consider and decide whether a portion of the guard[]band spectrum at 768-769/798-799 should be provided as an option to help support vehicular repeater use.”¹⁷ While we appreciate NPSTC’s request and intend to work with them on plans for the guard band going forward, Congress vested FirstNet with broad powers and responsibilities to manage the build-out and construction of the NPSBN. These powers extend to the guard band, which the Act included within the spectrum to be assigned to FirstNet.¹⁸ Accordingly, FirstNet should have discretion on how best to utilize the guard band spectrum.

Respectfully submitted,



TJ Kennedy
President
First Responder Network Authority

¹³ Virginia Comments at 2-3.

¹⁴ Improving Public Safety Communications in the 800 MHz Band. *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15124 (2004).

¹⁵ See Sprint’s Status Report on 800 MHz Band Reconfiguration, WT Docket No. 02-55, at 2 (filed July 1, 2014); Donny Jackson, Ten Years Later, 800 MHz Rebanding Proves to be an Enlightening Exercise, Urgent Communications (July 8, 2014), <http://urgentcomm.com/blog/ten-years-later-800-mhz-rebanding-proves-be-enlightening-exercise>.

¹⁶ See 47 U.S.C. § 1401(14)(B), (D).

¹⁷ Comments of the National Public Safety Telecommunications Council, PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, at 2 (December 9, 2015)(NPSTC Comments).

¹⁸ See Act at §§ 6001(14); 6201(a).

ATTENDEES:

FirstNet

TJ Kennedy
Patrick Donovan
Peter Tomczak
Jeff Bratcher
Justin Shore

Public Safety and Homeland Security Bureau

David Furth
Erika Olsen
Roberto Mussenden
John Evanoff
Behzad Ghaffari
Rasoul Safavian
Carolynn Shillingburg