

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Transition Process for 700 MHz Public Safety ) PS Docket No. 12-94  
Broadband Waiver Recipients )

**COMMENTS OF THE NATIONAL TELECOMMUNICATIONS  
AND INFORMATION ADMINISTRATION**

As the President’s principal adviser on telecommunications and information policy, the National Telecommunications and Information Administration (NTIA) submits these comments in response to the Commission’s Public Notice, “Public Safety and Homeland Security Bureau Seeks Comment on Transition Process for 700 MHz Public Safety Broadband Waiver Recipients,” in the above-referenced docket.<sup>1</sup> As explained below, the Middle Class Tax Relief and Job Creation Act of 2012 requires the Commission to dismiss any pending 700 MHz public safety waiver applications and to terminate existing leases in the public safety spectrum.<sup>2</sup>

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<sup>1</sup> NTIA is the Executive Branch agency principally responsible for the development of telecommunications policies pertaining to the Nation’s economic and technological advancement and to the regulation of the communications industry, for the coordination of the telecommunications activities of the Executive Branch, and for the effective presentation of the views of the Executive Branch to the Commission. *See* 47 U.S.C. § 902(b)(2).

<sup>2</sup> Middle Class Tax Relief and Job Creation Act of 2012 (Act), Pub. L. No. 112-96, 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1422).

Prior to the new legislation, NTIA awarded provided Broadband Technology Opportunities Program (BTOP) grants to seven 700 MHz public safety broadband projects.<sup>3</sup> All of these public safety broadband projects involve waiver recipients that have been seeking to proceed with individual plans for public safety broadband networks.<sup>4</sup>

Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, however, now establishes the First Responder Network Authority (FirstNet) as an independent authority within NTIA charged with ensuring “the establishment of a nationwide, interoperable public safety broadband network.”<sup>5</sup> The new legislation requires the Commission to reallocate the 700 MHz D block spectrum and the existing public safety broadband spectrum (collectively, public safety broadband spectrum) and to grant a license to FirstNet for its use.<sup>6</sup> The new legislation further

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<sup>3</sup> The American Recovery and Reinvestment Act of 2009 provided \$4.7 billion for NTIA to establish the Broadband Technology Opportunities Program (BTOP) to increase broadband access and adoption; to provide broadband training and support to schools, libraries, healthcare providers, and other organizations; to improve broadband access to public safety agencies; and to stimulate demand for broadband. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001, 123 Stat. 115, 512 (2009) (codified at 47 U.S.C. § 1305). NTIA awarded BTOP grants to seven waiver recipients: Adams County Communications Center, Inc. (Colorado); City of Charlotte (North Carolina); Executive Office of the State of Mississippi (Mississippi); Los Angeles Regional Interoperable Communications System Authority (California); Motorola Solutions, Inc. (San Francisco Bay Area, California); New Jersey Department of Treasury (Northern New Jersey); New Mexico Department of Information Technology (Albuquerque and Santa Fe, New Mexico).

<sup>4</sup> In 2010, the Commission conditionally granted 21 public safety jurisdictions a waiver of existing rules to allow early deployment of their individual systems. Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Dkt. No. 06-229, 25 F.C.C. Rcd. 5145 (2010). In 2011, the Commission granted the waiver request for Harris County, Texas. Requests for Waiver of Various Petitioners to Allow the Establishment of the 700 MHz Public Safety Wireless Broadband Networks, PS Dkt. No. 06-229, 26 F.C.C. Rcd. 6784 (2011). The Commission granted the waivers with a number of conditions, including entering into leases with the existing public safety broadband licensee, the Public Safety Spectrum Trust (PSST). These leases cover 763-768 MHz and 793-798 MHz and do not include the reallocation of the D Block since mandated under the Middle Class Tax Relief and Job Creation Act of 2012.

<sup>5</sup> Act, §§ 6202, 6204, 126 Stat. at 206, 208 (codified at 47 U.S.C. §§ 1422, 1424).

<sup>6</sup> Act, § 6201, 126 Stat. at 206 (codified at 47 U.S.C. § 1421). The 700 MHz D block spectrum includes the frequencies from 758 to 763 megahertz and 788 to 793 megahertz. Act, § 6001(1), 126 Stat. at 201 (codified at 47 U.S.C. § 1401(1)). The Act defines the “existing public safety broadband spectrum” to

requires the Commission to “take all actions necessary to facilitate the transition of the existing public safety broadband spectrum to the First Responder Network Authority.”<sup>7</sup>

As explained in these comments, the new legislation requires the Commission to dismiss any pending waiver applications that seek to operate in the public safety broadband spectrum and to terminate existing leases in this spectrum block upon their expiration or upon grant of the public safety broadband license to FirstNet, whichever is earlier. Such action is necessary to fulfill Congress’ purpose and to promote the viability of the nationwide, public safety broadband network.

## **I. THE COMMISSION MUST FACILITATE THE TRANSITION TO FIRSTNET BY MINIMIZING LEGACY IMPEDIMENTS.**

### **A. Congress Adopted a Single Network, not a Network of Networks, Approach.**

The 9/11 Commission Report in 2004 and the Hurricane Katrina report in 2006 both highlight the failure of public safety communication systems to interoperate.<sup>8</sup> Prior to the new legislation, the Administration concluded that to achieve interoperability, public safety communications should abandon the “patchwork” of individual systems in favor of a single, nationwide network.<sup>9</sup> Congress, well aware of the barriers to interoperability that resulted from

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include the frequencies from 763 to 768 megahertz, from 793 to 798 megahertz, from 768 to 769 megahertz, and from 798 to 799 megahertz. Act, § 6001(14), 126 Stat. at 203 (codified at 47 U.S.C. § 1401(14)). Thus, NTIA collectively refers to the frequencies from 758 to 769 megahertz and from 788 to 799 megahertz as the “public safety broadband spectrum.”

<sup>7</sup> Act, § 6201 (c), 126 Stat. at 206 (codified at 47 U.S.C. § 1421(c)).

<sup>8</sup> *The 9/11 Commission Report* (July 2004), available at <http://www.gpoaccess.gov/911/pdf/fullreport.pdf>; *The Federal Response to Hurricane Katrina: Lessons Learned* (Feb. 2006), available at <http://library.stmarytx.edu/acadlib/edocs/katrinawh.pdf>.

<sup>9</sup> Comments of the National Telecommunications and Information Administration, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Dkt. No. 06-229 (June 10, 2011), available at <http://www.ntia.doc.gov/fcc-filing/2011/ntia-comments-regarding-implementing-nationwide-broadband-interoperable-public-safet>; see also Press Release, “President Obama Details Plan to Win the Future Through Expanded Wireless Access” (Feb. 10, 2011), available at

the “network of networks” concept embodied in legacy land mobile radio systems, chose to invest \$7 billion and create FirstNet to design, build, and operate “a *nationwide*, interoperable public safety broadband network” that is “based on a *single, national* network architecture.”<sup>10</sup>

Guaranteeing interoperability for public safety broadband requires a nationwide network based on a single national design. Congress recognized this fact notwithstanding its awareness of the ongoing efforts of waiver recipients and the potential benefits to be realized from building upon their efforts. Yet it presumably found those potential benefits insufficient to tip the scale against the potential costs to interoperability and affordability that these systems presented. The legislation made no provision for their continuation. It directs the Commission to grant the public safety broadband spectrum license with no encumbrances specified and to facilitate the transition of the spectrum to FirstNet.<sup>11</sup>

**B. Prolonging or Extending the 700 MHz Waiver Regime Would Impair FirstNet’s Efficacy.**

To allow the waiver jurisdictions to continue in the face of the new legislation jeopardizes nationwide interoperability and ultimately could increase the cost of the nationwide network. Systems separately designed and sourced by each of the waiver jurisdictions, as innovative and conscientiously planned as they may be, create obvious technical challenges for harmonious communications. Moreover, the particularized equipment testing, personnel training, and operations management they would require could misdirect resources needed for the nationwide network. These complications would rise exponentially if all existing waiver

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<http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>.

<sup>10</sup> Act, § 6202 (a), (b), 126 Stat. at 206 (codified at 47 U.S.C. § 1422) (emphasis added).

<sup>11</sup> Act, § 6201, 126 Stat. at 206 (codified at 47 U.S.C. § 1421).

jurisdictions continued their deployment and/or the Commission granted additional waiver applications.

The new legislation imposes significant operational, technical, and consultative obligations on FirstNet.<sup>12</sup> It must build a nationwide, cutting-edge network that meets public safety's needs and expectations, substantial rural milestones, and budgetary constraints.<sup>13</sup> For FirstNet to be successful, it must avoid the balkanization that has plagued earlier efforts at interoperable public safety communications and must find ways to lower costs by the economies of scale that ensue from consolidated procurement. The legislation provides FirstNet with considerable flexibility to make nimble, cost-effective, and rational business decisions. The law's vision is plainly at odds with a continuation of the Commission's pre-legislation waiver approach. If the Commission does not take action consistent with Congress' vision, it could jeopardize nationwide interoperability as well as harm FirstNet's ability to carry out its powers, duties, and responsibilities.

## **II. NTIA HAS TAKEN STEPS TO ENSURE THAT THE ACTIVITIES OF ITS PUBLIC SAFETY GRANTEES ARE CONSISTENT WITH THE REQUIREMENTS OF THE NEW LAW.**

The new legislation transforms future public safety communications. NTIA believes that the law requires the Commission to transfer authority for management of the 700 MHz public safety spectrum to FirstNet without encumbrance, and that this statutory requirement will result in the BTOP public safety grant recipients being in material noncompliance with essential grant terms and conditions. In light of this statutory directive and its impact, NTIA has taken steps to ensure that BTOP grant funds are prudently invested. On May 11, 2012, NTIA announced the partial

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<sup>12</sup> See Act, § 6206, 126 Stat. at 211 (codified at 47 U.S.C. § 1426).

<sup>13</sup> Act, §§ 6202, 6206, 6208, 126 Stat. at 206-207, 211- 216 (codified at 47 U.S.C. §§1422, 1426, 1428).

suspensions of seven BTOP-funded 700 MHz public safety projects to ensure that they proceed in a manner that supports development of the nationwide, interoperable network that will help police, firefighters, emergency medical service professionals, and other public safety officials stay safe and do their jobs more effectively.<sup>14</sup> NTIA is working with its responsible and dedicated grantees to ensure that the grant funds remain in their communities, and that any taxpayer dollars are spent on facilities and equipment that will be incorporated into FirstNet's single, nationwide public safety broadband network. To that end, NTIA is also requiring that these BTOP projects avoid "high risk" investments that are likely to require replacement if they are incompatible with a single, nationwide interoperable public safety broadband network.

### **III. CONCLUSION**

The new legislation provides the nation with the tools to accomplish the long-elusive objective of interoperable communications for our nation's first responders. One of these tools is an expert, nimble FirstNet that can build and manage a new state-of-the-art network. Another asset is the dedicated public safety broadband spectrum, unencumbered by the legacy of interoperability that the patchwork "network-of-networks" model created. NTIA understands the benefits to all public safety of the advanced services and applications that 4G broadband can bring, and is moving forward expeditiously with implementing the new legislation. Similarly, the Commission must act in a manner that will allow FirstNet to work in the most effective way possible. Accordingly, the Commission should dismiss pending 700 MHz public safety waiver applications and terminate existing leases in the public safety broadband spectrum upon their expiration or upon grant of the public safety broadband license to FirstNet, whichever is earlier.

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<sup>14</sup> See Frequently Asked Questions, "Broadband Technology Opportunities Program (BTOP) 700 MHz Public Safety Projects: Conforming Existing State and Local BTOP Projects with the Nationwide Public Safety Network Envisioned by the Middle Class Tax Relief and Job Creation Act," *available at* [http://www2.ntia.doc.gov/files/btop\\_public\\_safety\\_700\\_mhz\\_faqs\\_05112012.pdf](http://www2.ntia.doc.gov/files/btop_public_safety_700_mhz_faqs_05112012.pdf).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathy D. Smith". The signature is fluid and cursive, with the first name "Kathy" being the most prominent.

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