

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
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
	)	

**REPLY COMMENTS OF THE STATE OF NEW MEXICO**

The State of New Mexico (“SONM” or “New Mexico”) hereby submits these Reply Comments in the above-captioned proceeding (Notice of Proposed Rulemaking, FCC 13-31, *rel.* March 8, 2013, “Notice”). In its Notice, the Commission seeks comment on proposals to implement provisions of the Middle Class Tax Relief and Job Creation Act of 2012.<sup>1</sup>

New Mexico previously filed Comments in this proceeding observing that the Commission should terminate all commercial authorizations now licensed on D block spectrum or, at a minimum, limit these operations to secondary status. New Mexico is one of eight jurisdictions with which the FirstNet Board has entered into negotiations for a Spectrum Manager Lease Agreement (SMLA); the SMLA will grant New Mexico authority to proceed with early deployment of LTE broadband service in New Mexico to be supported by Broadband Technology Opportunity Program (BTOP) funding from NTIA. Accordingly, in order to

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<sup>1</sup>Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act”).

implement Congress' intent that band class 14 of the 700 MHz spectrum be allocated for public safety broadband operations, New Mexico urges the Commission to eliminate any ambiguity regarding spectrum rights to the former D-block guardband.

In these Reply Comments, New Mexico responds to Comments on the Commission's license renewal role under the Spectrum Act, particularly in relation to FirstNet's rural deployment obligations.

**FIRSTNET MUST COMPLETE SUBSTANTIAL RURAL DEPLOYMENT CONCURRENTLY WITH URBAN DEPLOYMENT**

The Spectrum Act requires that FirstNet, "shall require deployment phases with substantial rural coverage milestones as part of each phase of the construction and deployment of the network."<sup>2</sup> As one of the least densely populated states in the nation, New Mexico has a strong interest in seeing FirstNet meet the rural deployment obligation. Commercial providers face significant economic hurdles in serving rural areas. As a result, government involvement is essential to the buildout and deployment of a 700 MHz public safety broadband network to meet the needs of public safety users throughout the nation, including in rural areas.

If built on commercial financial models, it is likely that the FirstNet system would, as several commenters suggest,<sup>3</sup> be built first in urban and higher population areas, with revenues generated by initial deployments in urban areas being leveraged to finance later phase deployments in more rural areas. Such a buildout plan would conflict with Congress' mandate that *every* phase of deployment must include *substantial* rural milestones.

The Commission seeks guidance on whether to set specific milestones that FirstNet must

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<sup>2</sup> Spectrum Act, § 6206 (b) (3).

<sup>3</sup> See Comments of the Coalition of WISPS For FirstNet (May 24, 2013); Joint Comments of the National Rural Electric Cooperative Association and NTCA-The Rural Broadband Association (May 24, 2013).

meet in deploying in rural areas, and suggests that establishing such milestones would not be necessary insofar as FirstNet has independent obligations to Congress under the Spectrum Act to comply with the rural buildout requirements. A concern of the Commission is that establishing such milestones could be counterproductive as it would hamper FirstNet's flexibility in planning and deploying networks in both urban and rural areas. Commenters are not in agreement on whether the Commission should establish such milestones. For example, the Coalition of WISPS for FirstNet and NRECA/NTCA urge the Commission to establish specific milestones now,<sup>4</sup> Motorola suggests, "the Commission should establish *tentative* renewal standards for FirstNet tied to construction milestones, and commit to periodically reevaluating the benchmarks for feasibility."<sup>5</sup> On the other hand, APCO contends that the Commission should "not set specific rural coverage benchmarks or any related license conditions."<sup>6</sup>

New Mexico concurs with the suggestion in the Notice that the Commission should not establish rural buildout milestones for FirstNet's deployment at this juncture. Congress in the Spectrum Act specifically assigned to FirstNet the task of designing and planning the network deployment, with the proviso that every phase of deployment include substantial rural milestones. The Spectrum Act requires further that in designing and building the radio access network, FirstNet must take into account State, local and Tribal needs and input obtained pursuant to the State consultation process—specifically, the Spectrum Act states that the radio access network, "shall be developed, constructed, managed, maintained and operated taking into account the plans developed in the State, local and tribal planning and implementation grant

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<sup>4</sup> *Id.*

<sup>5</sup> Comments of Motorola Solutions, Inc., pg. 14 (May 24, 2013).

<sup>6</sup> Comments of APCO, pg. 6 (May 24, 2013).

program under section 6302(a).”<sup>7</sup> Until consultation is completed pursuant to the State and Local Implementation Grant Program (SLIGP) pursuant to section 6302(a), it would be difficult and even arbitrary to design an appropriate buildout plan or establish appropriate construction milestones for either urban or rural areas.

It would be premature for the Commission to establish hard and fast construction milestones at this juncture without the benefit of the required State, local and Tribal input under section 6302(a), particularly given that Congress required that FirstNet itself must take such State, local and Tribal input into account in designing its buildout plan. The establishment of hard and fast milestones at this juncture would unduly hamper and restrict FirstNet’s flexibility to design a buildout plan and milestones for rural construction that best meets the critical broadband communications needs of the State, local and Tribal public safety entities that FirstNet has been established to serve.

As the Commission notes in the Notice, the Commission will have extensive information available to evaluate FirstNet’s performance at the time of license renewal including whether FirstNet has met its rural construction obligations under the Spectrum Act. This information will be gleaned not only from FirstNet’s reports to Congress required under section 6210 of the Spectrum Act, but also from FirstNet’s buildout plan itself that will be provided to the Governor of each State pursuant to section 6302(e)(1)(B) of the Spectrum Act. The latter document in particular will provide ample information to determine whether FirstNet is meeting its rural construction milestone obligations.

New Mexico concurs with Motorola’s suggestion that the Commission require FirstNet to file with the Commission copies of the FirstNet annual reports to Congress in order to create a

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<sup>7</sup> Spectrum Act, § 6302 (b) (2) (B).

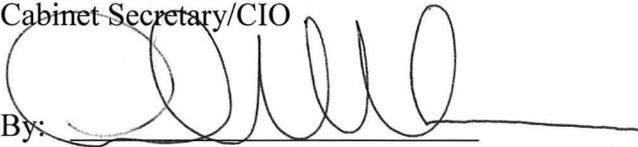
forum for periodic collection of comments on FirstNet's performance.<sup>8</sup> New Mexico suggests further that the Commission should also require FirstNet to file with the Commission a copy of FirstNet's proposed buildout plan that FirstNet will provide to the Governors under Section 6302(e)(1)(B) of the Spectrum Act. This will provide a useful yardstick and forum by which to evaluate whether FirstNet is meeting its obligation to include substantial rural construction milestones in each phase of network construction.

**CONCLUSION**

In view of the foregoing, the State of New Mexico respectfully requests that the Commission adopt rules and policies to promote the development of FirstNet licensed spectrum consistent with the views expressed herein.

Respectfully Submitted,

STATE OF NEW MEXICO  
Department of Information Technology  
Cabinet Secretary/CIO

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<sup>8</sup> Comments of Motorola Solutions, Inc., pg. 15 (May 24, 2013).