



BEFORE THE

FIRST RESPONDER NETWORK AUTHORITY

*Further Proposed
Interpretations of Parts of the
Middle Class Tax Relief and Job
Creation Act of 2012*

Dkt. No. 140821696-5400-03

COMMENTS OF THE STATE OF MINNESOTA

The State of Minnesota provides these comments in response to FirstNet's *Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012* ("Third Notice").¹

I. Introduction

In its Third Notice, FirstNet further describes its preliminary conclusions and reasoning behind the interpretation in the First Notice² of the term "public safety entity" used in Section 6001(26) of the Act.³ The Act authorizes FirstNet to serve "public safety entities" directly as subscribers, but it may only serve those that fall outside the meaning of "public safety entity" indirectly and on a secondary basis through a "covered leasing agreement."⁴ In the First Notice, FirstNet adopted a broad interpretation of the meaning of "public safety entity;" in the Third Notice, FirstNet reinforces and further explains that broad interpretation, preliminarily concluding that its statutory authority permits it, should it so choose, to serve as direct subscribers both traditional governmental public safety service providers as well as related nongovernmental entities and individuals.⁵

¹ *First Responder Network Authority Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, Notice and Request for Comments, National Telecommunications and Information Administration, 80 FR 25663 (May 5, 2015) ("Third Notice").

² *First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, Notice and Request for Comments, National Telecommunications and Information Administration, 79 FR 57058 (Sept. 24, 2014) ("First Notice").

³ 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.)) ("Act"), Sec. 6001(26) ("The term 'public safety entity' means an entity that provides public safety services.").

⁴ Act, Sec. 6208(a)(2) ("covered leasing agreement" provides "access to network capacity on a secondary basis for non-public safety services") and Sec. 6212 ("Prohibition on Direct Offering of Commercial Telecommunications Service Directly to Consumers").

⁵ Third Notice at 25668 ("if personnel or subgroups of nongovernmental organizations [are] 'emergency response . . . personnel' or personnel 'related' to such emergency response personnel, they would also qualify as public safety entities under the Act.").



Minnesota strongly supports FirstNet’s broad interpretation of “public safety entity.” As it described in its comments responding to the First Notice, and as it further explains below, Minnesota relies on a wide array of non-traditional public safety services providers—both entities and individuals—some of which might be excluded from subscribership by a narrower interpretation, a result that would subvert the core purpose of the Act: to ensure the reliable communication of information used to protect the public.

The State also recognizes, however, that the success of the nationwide public safety broadband network (“NPSBN”) may well depend upon FirstNet’s ability to form partnership(s) with commercial carriers, some of which may be concerned that a broad interpretation of “public safety entity” would permit FirstNet to serve a greater variety and number of subscribers currently served by commercial carriers. Striking an arrangement that will allow FirstNet to ensure the reliability of public safety communications while also providing business terms acceptable to carriers will require FirstNet to develop deliberate, thoughtful policies within the “outer legal boundaries” of its statutory authority as interpreted in the Third Notice.⁶ Such policies must be tailored to accommodate the needs of public safety as well as those of potential commercial partners.

Once FirstNet adopts policies for determining subscribership eligibility, it should look to state governance bodies for help in implementing those policies. Today, Minnesota’s Statewide Emergency Communications Board (“SECB”) permits non-traditional public safety providers to use the statewide land mobile radio system, applying its own policies for determining whether a user is “public safety” within the meaning of its own authority. As is further explained below, FirstNet should delegate to state governance bodies the role of making similar determinations for NPSBN subscribership.

II. FirstNet’s Legal Authority Is Distinct from Its Policy Decisions

The Act establishes the “outer legal boundaries” of FirstNet’s authority:⁷ it may not directly serve as a subscriber any person or entity that is not a “public safety entity.” Both the First and Third Notices focus on identifying the full extent of the universe of potential subscribers within the statutory meaning of “public safety entity.”

The Act, however, does not require FirstNet to serve *every* public safety entity that it is legally authorized to serve. The number of statutory “public safety entities” that FirstNet elects to serve *as a matter of policy* will likely be somewhat smaller than the number that it is legally authorized to serve. As it notes in the Third Notice, FirstNet “may as a policy matter decide to narrow the scope of users we actually serve relative to those we can legally serve under the definition of public safety entity.”⁸

Development of these subscribership eligibility policies should be an open, public process with substantial opportunity for public safety input. It is during this process that FirstNet should consider

⁶ Third Notice at 25668.

⁷ *Id.*

⁸ *Id.* at 25664 (citing First Notice at 57060).



relevant public safety concerns such as the ability to prioritize non-traditional responders considered integral to incident response and management, performance concerns such as the potential for network congestion, financial concerns such as network sustainability, and business concerns such as the value of attracting interested private partners. To reach the best policy decision in consideration of these concerns may require creativity and flexibility on FirstNet’s part, creativity and flexibility that will be constrained by the limits of FirstNet’s statutory authority. The only logical approach is for FirstNet to interpret “public safety entity” as broadly as the Act arguably permits, consistent with the Third Notice. A narrower reading would serve only to unnecessarily limit FirstNet’s ability to reach the best policy result even before it actively engaged public safety in an open dialogue focused on this policy issue.

During the policy-making stage of implementing the “public safety entity” definition, FirstNet should also consider other, less immediately apparent issues than the concerns mentioned above. For example, how will FirstNet serve “public safety entity” subscribers who bring their own personal devices (“BYOD”), particularly where they typically use those devices through a commercial family share plan? FirstNet’s subscriber-eligibility policies will have tremendous implications for the finances of the network and its value to public safety users.

III. Congress Balanced a Broad Definition of “Public Safety Entity” with Protections for Commercial Carriers

Prior to the Act, Congress had set aside 24 MHz of spectrum in the upper 700 MHz band for “public safety services;” the permitted uses of the spectrum were limited by the definition of that term found in Sec. 337(f)(1) of the Communications Act of 1934.⁹ Though that definition addresses only use by state and local governmental entities and by nongovernmental entities, the FCC found in 1998 that federal governmental entities could also use the spectrum under certain conditions within the bounds of Sec. 337.¹⁰

In 2007, the FCC designated a portion of that spectrum for public safety broadband services under a single nationwide license.¹¹ Three years later, the FCC granted waivers of the FCC’s rules to allow 22 state and local governments and non-profit entities to deploy systems using the public safety broadband spectrum in their own geographic areas.¹² In establishing guidance for waiver recipients, the FCC requested comment on permissible uses of the public safety broadband spectrum under Sec. 337.¹³

⁹ 47 U.S.C. Sec. 337(a)(1) and (f)(1).

¹⁰ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, *First Report & Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152, 184 ¶ 66 (1998).

¹¹ Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289, 15406 ¶ 322 (2007) (“*Second Report and Order*”).

¹² Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 25 FCC Rcd 5145, 5147 ¶ 7 (2010).

¹³ Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband,

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State and local entities, including Minnesota, urged the FCC to adopt a broad interpretation of Sec. 337(f), thereby enabling waiver recipients to serve a wider array of traditional and non-traditional public safety providers.¹⁴ As Minnesota stated at that time,

[T]he Commission is encouraged to work to the fullest extent legally practicable to broaden that definition to include all government users, as well as government and non-government partners who share a common interest in the public good. Such partners may include, but may not necessarily be limited to: utilities, transit authorities, municipalities, and various state and Federal government agencies.¹⁵

Such was the public record when Congress passed the Act in 2012, well aware of these regulatory developments. Had it intended to limit FirstNet subscribers to traditional state and local public safety providers and Federal users, Congress could have defined “public safety entity” as an entity providing “public safety services” with the latter term having the same meaning as in Sec. 337. But Congress, reacting to pleas for greater flexibility in the use of the public safety spectrum, did not limit FirstNet to the strictures of Sec. 337; rather, the Act further states that the term “public safety services” also “includes services provided by emergency response providers as that term is defined in section 2 of the Homeland Security Act.”¹⁶ In other words, Congress *expanded* the meaning of “public safety services” in the Act beyond the meaning of that term in Sec. 337(f).

Specifically, by building the Homeland Security Act (“HSA”) language into the definition of “public safety services,” Congress brought under the definition an important set of services not necessarily covered by Sec. 337: it included services provided by “personnel, agencies, and authorities” that are “related” to more traditional emergency response providers. The breadth and generality of the term “related” is critical, because it provides FirstNet discretion to consider non-traditional providers—such as utilities, non-governmental entities and schools—to be “public safety entities” within the Act. Minnesota relies on such non-traditional providers to protect the public, as described in Section IV.B, below.

When it adopted the Act’s definition of “public safety entity,” Congress was not only aware of the FCC’s relevant regulatory history, but it also knew that subscribers purchasing service from FirstNet were likely migrating from commercial service. Until FirstNet is deployed, virtually all users of mobile broadband services, whether public safety or not, will obtain their service from commercial carriers. Weighing

Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 26 FCC Rcd 733 (2011).

¹⁴ See Comments of the State of New Mexico (Apr. 11, 2011) at 13 (“the Commission has broad legal authority to allow public safety entities to enter agreements with [critical infrastructure industries such as utilities] that would provide for ... access to the spectrum as users of the public safety network”) (available at <http://apps.fcc.gov/ecfs/document/view?id=7021237626>).

¹⁵ Comments of the State of Minnesota (Apr. 11, 2011) at 15 (available at <http://apps.fcc.gov/ecfs/document/view?id=7021237605>).

¹⁶ Act, Sec. 6001(27) (“The term ‘public safety services’— (A) has the meaning given the term in section 337(f) of the Communications Act of 1934 (47 U.S.C. 337(f)); and (B) includes services provided by emergency response providers, as that term is de-fined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).”).



public safety's interest in the network serving a broad array of both traditional and non-traditional providers, the carriers' interest in protecting their subscriber base, and FirstNet's interest in attracting private partners, Congress not only adopted the Act's definition of "public safety entity,"¹⁷ but it also prohibited FirstNet from directly providing commercial service to consumers¹⁸ and created the "covered leasing agreement,"¹⁹ thus protecting the carriers and establishing a statutory method for their participation in the NPSBN. As it develops its subscribership eligibility policies, FirstNet must be mindful of the balance Congress struck and the importance of accommodating these related interests. It is similarly important that prospective commercial partners recognize that FirstNet's interpretation of "public safety entity" safeguards interoperable broadband communications capabilities for the proper range of public safety responders to facilitate their collective incident response. In the absence of seamless communications, the safety of both the community and the responders are at greater risk. FirstNet's goal is not to compete for customers but rather to forge a meaningful partnership to the mutual benefit of both public and private partners.

IV. State Governance Bodies Should Determine the "Public Safety Entities" That Will Be Primary Users

A. State Governance Bodies Are Best Positioned to Assess the Value of Including Specific Subscribers

Whatever policies FirstNet develops for determining subscribership eligibility, the decision of whether to approve a request for subscription will undoubtedly require the collection and verification of facts and the application of those facts to FirstNet's eligibility policy. As FirstNet states in the Third Notice,

We recognize that implementation of the above framework may require certifications or other evidence of eligibility of certain customers or groups within organizations. ... [W]e seek comments on the appropriate mechanisms for implementing this interpretation assuming it is ultimately adopted.²⁰

Specifically, with regard to nongovernmental entities like many utilities, FirstNet states that it

anticipate[s] relying heavily on the authorization of personnel from such entities by "primary mission" first responders under the section 337(f) prong in determining which personnel should gain access to the network as public safety entities.²¹

State governance bodies are best positioned to help FirstNet make the subscribership eligibility determination. State and local personnel on those governance bodies will be able to determine the

¹⁷ Act, Sec. 6001(26).

¹⁸ Act, Sec. 6212(a).

¹⁹ Act, Sec. 6208(a)(2)(B).

²⁰ Third Notice at 25667.

²¹ *Id.* at 25668 n.58.



extent to which a prospective subscriber provides public safety services, is “related” to emergency response activities, or otherwise meets the standard FirstNet establishes for subscribership within its authority under the Act.

Delegating this role to state governance bodies also makes sense in light of FirstNet’s commitment to local control during an incident. A local incident commander cannot prioritize communications from a private bus operator in an evacuation scenario, for example, if that operator is not a subscriber. FirstNet cannot be expected to know whether a bus operator requesting subscribership is one that is used by local public safety for evacuation incidents; the state governance body, however, would be able to make that determination.

Though FirstNet’s subscribership eligibility policies will need to apply nationwide, public safety reliance on various types of non-traditional providers will vary widely state-by-state and county-by-county. Similarly, that reliance will change—perhaps on a fairly localized basis—over time, evolving with demographic, economic, and governmental policy changes. FirstNet cannot hope to make accurate, timely decisions based on the facts on the ground without in-state support. Armed with clear, standardized guidelines from FirstNet, state governance bodies would be far better positioned to efficiently and effectively render subscribership eligibility decisions. Just as the Act defines the outer limits of FirstNet’s authority within which FirstNet may develop more stringent policies, so too should state governance bodies be able to adopt more stringent eligibility policies than that required by FirstNet.

B. Minnesota Relies on Non-traditional Providers of Public Safety Services

The NPSBN must provide reliable communication necessary to ensure the safety of the public. In Minnesota, that communication often includes a non-traditional public safety service provider, whether it be a private ambulance service, a tribal casino security officer, or the Red Cross. Unless the statutory definition of “public safety entity” permits FirstNet to directly serve such non-traditional providers—in addition to the traditional governmental fire, law enforcement, and emergency medical agencies—as subscribers capable of prioritization on the NPSBN, the network will not properly serve its most basic function in Minnesota.

Today, Minnesota provides access to the ARMER system, its statewide radio network, for a range of non-traditional public safety service providers. Local incident commanders use ARMER—and will rely upon the NPSBN—to communicate with these providers in responding to emergencies. To protect the safety of the public in Minnesota, each responder must fall within the interpreted scope of “public safety entity.” The following is an illustrative, not comprehensive, list of non-traditional providers of public safety service providers that use ARMER today and must be eligible for prioritization-capable subscriber service on the NPSBN:

- Public and mass transit



- Highway departments
- Tow truck companies²²
- Public works
- Parks and recreation
- Non-governmental organizations²³ such as:
 - Health care institutions
 - Ambulance companies
 - Independent firefighting corporations
 - Hospitals
- Non-government disaster relief and aid organizations,²⁴ including:
 - American Red Cross
 - Salvation Army
- Educational Institutions
 - Universities
 - School districts
- US National Weather Service²⁵
- Railroad companies
- Mining companies

In response to the Third Notice, Minnesota offers the above list to illustrate the breadth of non-traditional providers of public safety services that must fall within FirstNet’s interpretation of the term “public safety entity.” As FirstNet turns from interpreting its statutory authority to developing policy within that statutory authority, the State will continue to urge FirstNet to offer priority-capable network access to such non-traditional providers which serve critical public safety functions in in Minnesota.

V. Conclusion

For the reasons set forth above, Minnesota urges FirstNet to adopt the broad interpretation of the Act’s definition of “public safety entity” described in the Third Notice. The State also urges FirstNet to

²² ARMER Standard 1.10.2 at <https://dps.mn.gov/divisions/ecn/programs/armer/Documents/standard1102.pdf>

²³ ARMER Standard 5.4.0 at <https://dps.mn.gov/divisions/ecn/programs/armer/Documents/standard540.pdf>.

²⁴ ARMER Standard 5.2.0 at <https://dps.mn.gov/divisions/ecn/programs/armer/Documents/standard520.pdf>.

²⁵ ARMER Standard 3.35.0 at <https://dps.mn.gov/divisions/ecn/programs/armer/Documents/standard3350.pdf>.

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authorize state governance bodies to make subscribership eligibility decisions subject to FirstNet nationwide policy guidelines.

Respectfully submitted,

A handwritten signature in black ink that reads "Jackie Mines". The signature is written in a cursive, flowing style.

Jackie Mines
Director, Emergency Communications Network
Minnesota Department of Public Safety

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