

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

In the Matter of)	
)	
Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network)	PS Docket No. 16-269
)	
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
)	

REPORT AND ORDER AND NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Pai issuing a statement.

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I. INTRODUCTION

1. This *Report and Order and Notice of Proposed Rulemaking* addresses the 758-769/788-799 MHz band, which the Commission licensed to the First Responder Network Authority (FirstNet) on a nationwide basis pursuant to the provisions of the Middle Class Tax Relief and Job Creation Act of 2012.¹ The *Report and Order* adopts rules intended to resolve the remaining questions posed in the 2013 *Notice of Proposed Rulemaking* in these dockets.² As specified herein, we provide a mechanism to facilitate the relocation of the public safety narrowband incumbents currently operating on FirstNet’s spectrum. We also affirmatively decline at this time to impose specific build-out requirements on FirstNet as a condition of renewal of its license. Rather, we find that the build-out obligations and specifications of the Act, coupled with the specifications of FirstNet’s recently released Request for Proposal (Final RFP),³ provide adequate milestones to ensure rural coverage while also providing both FirstNet and the states flexibility in terms of planning for optimal network coverage. We will continue to monitor FirstNet’s buildout progress against these milestones, and expect that existing reporting obligations will be sufficient to allow the Commission to carry out its license renewal responsibilities.

2. In the *Notice of Proposed Rulemaking*, we open a new proceeding to seek comment on proposed procedures for administering the state opt-out process as provided under the Public Safety Spectrum Act, as well as on our implementation of the specific statutory standards by which the Commission is obligated to evaluate state opt-out applications.

II. REPORT AND ORDER

A. General Background

3. The Public Safety Spectrum Act provides for the deployment of a nationwide public safety broadband network (NPSBN) in the 700 MHz band.⁴ The Act established FirstNet as an independent authority within the National Telecommunications and Information Administration (NTIA),⁵

¹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457) (“Public Safety Spectrum Act” or “Act”)

² See *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 et al.*, PS Docket 12-94 et al., Notice of Proposed Rulemaking, 28 FCC Rcd 2715 (2013) (2013 Notice).

³ The FirstNet Board released a Final RFP on January 13, 2016, detailing the construction, operation, maintenance and improvement of the nationwide public safety broadband network (NPSBN) for local, state, regional, tribal and federal first responders. Section C - Nationwide Public Safety Broadband Network (NPSBN) Solicitation Number: D15PS00295E (Jan. 13, 2016) (Final RFP). https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=7806696f4340f16474647ccc57805040&_cvi=0.

⁴ See generally Public Safety Spectrum Act, Pub. L. No. 112-96 § 6001 et. seq.

⁵ *Id.*, § 6204(a).

and required the Commission to grant a license to FirstNet for the 758-769/788-799 MHz band.⁶ The Act charges FirstNet with responsibility for establishing and overseeing “a nationwide, interoperable public safety broadband network”⁷ operated in this spectrum by taking “all actions necessary to ensure the building, deployment, and operation of the . . . network, in consultation with Federal, State, tribal, and local public safety entities, the Director of NIST, the Commission, and the public safety advisory committee [that section 6205 of the Act requires FirstNet to establish].”⁸ Among its more specific duties, FirstNet is responsible for issuing requests for proposals and entering into contracts for the construction, operation and management of the network on a nationwide basis, using funds allocated for these purposes under the Act.⁹

4. In the *2013 Notice*, the Commission sought comment on implementation of certain provisions of the Public Safety Spectrum Act, including how to relocate incumbents operating on the spectrum licensed to FirstNet, and how to address FirstNet’s renewal expectations, including whether FirstNet should be subject to Commission-initiated build-out requirements.¹⁰ With respect to the incumbent relocation issue, the *2013 Notice* identified three classes of incumbents that occupied portions of the FirstNet spectrum: (1) jurisdictions operating narrowband systems that predate the Commission’s 2007 *Second Report and Order*, some of which had received waivers for continued deployment; (2) two jurisdictions operating wideband systems, and (3) one commercial incumbent in the D Block spectrum.¹¹ The Commission sought comment on the appropriate mechanism to transition these operators out of the public safety broadband segment of the band and on a timeframe by which such a transition should be accomplished.¹²

5. With respect to renewal of FirstNet’s license, the Public Safety Spectrum Act empowers the Commission to renew FirstNet’s license after its initial ten-year term.¹³ Prior to the expiration of this term or the expiration of any subsequent renewal of the license, FirstNet is required to submit a renewal application to the Commission that demonstrates that it has met its duties and obligations as set forth in the Act.¹⁴ The Act, however, does not provide guidance to the Commission on how to evaluate whether FirstNet has met its duties and obligations. Therefore, in the *2013 Notice*, the Commission sought comment on how it should assess FirstNet’s compliance with its duties and obligations and the terms of its license at the time of renewal.¹⁵

6. In the *2013 Notice*, the Commission also noted that one of FirstNet’s obligations under the Act includes “deployment phases with substantial rural coverage milestones” that are “consistent with the license granted” by the Commission.¹⁶ The Commission proposed to decline to specify rural

⁶ *Id.* §§ 6101(a), 6201(a), 6204(a).

⁷ *Id.* § 6202(a). *See generally id.* § 6206 (setting out FirstNet’s powers, duties and responsibilities).

⁸ *Id.* § 6206(b).

⁹ *Id.* § 6206.

¹⁰ *2013 Notice*, 28 FCC Rcd at 2729-33, para. 48-59.

¹¹ *Id.*, para 47.

¹² *2013 Notice*, 28 FCC Rcd at 2731-33, para. 52-59.

¹³ *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 et al.*, PS Docket 12-94 *et al.*, Report and Order, 27 FCC Rcd 10953 (2012). On November 15, 2012, the Commission issued FirstNet a ten-year license under Call Sign WQQE234.

¹⁴ Public Safety Spectrum Act, Pub. L. No. 112-96 § 6201(b)(2).

¹⁵ *2013 Notice*, 28 FCC Rcd at 2728-29.

¹⁶ *2013 Notice*, 28 FCC Rcd at 2728-29, para.46. *See* Public Safety Spectrum Act, Pub. L. No. 112-96 §§ 6201(b)(2), 6206(b)(3).

milestones as a condition of FirstNet's license, in light of FirstNet's independent legal obligation under the Act to develop requests for proposals with appropriate timetables for construction, taking into account the time needed to build out in rural areas, and coverage areas, including coverage in rural and nonurban areas.¹⁷ In addition, the Commission suggested that it would not be necessary to delineate specific buildout requirements in light of the oversight that Congress will exercise over FirstNet and FirstNet's other transparency, reporting, and consultation obligations. The Commission sought comment on this view.¹⁸

B. Incumbent Relocation

1. Narrowband Incumbents

7. *Background.* When the Commission revised the 700 MHz band plan in 2007 to create a consolidated public safety broadband allocation, it recognized that certain incumbent narrowband licensees operating in the lower portion of the public safety segment would need to be relocated to the new consolidated block of narrowband spectrum.¹⁹ In order to minimize the transition and maximize the broadband opportunities in the band, the Commission prohibited further licensing of narrowband operations in the broadband spectrum after August 30, 2007.²⁰ Licensees operating narrowband systems in this band segment were required to certify the scope of their operations to the Commission as of that date, and were slated to be relocated.²¹ This included both licensees operating on a local basis and those operating pursuant to statewide licenses.

8. Following the Commission's 2007 order, a number of jurisdictions sought waivers to continue to deploy narrowband systems in the public safety broadband spectrum. Generally, these parties argued that they had existing plans and investments that would otherwise be stranded absent permission from the Commission to complete deployment. The Commission and the Public Safety and Homeland Security Bureau (Bureau) granted a number of these waivers, finding limited relief warranted where there was a showing of potential public harm and where there was evidence of a comprehensive deployment plan that predated the August 30, 2007 deadline.²² In granting these waivers, the Commission and Bureau noted that the waivers were "without prejudice" to the Commission's consideration of other waiver issues,²³ and deferred for future consideration whether facilities deployed under waiver after August 30,

¹⁷ *2013 Notice*, 28 FCC Rcd at 2728-29, para.46. See Public Safety Spectrum Act, Pub. L. No. 112-96 § 6206(c)(1)(A).

¹⁸ *2013 Notice*, 28 FCC Rcd at 2728-29, para.46.

¹⁹ *Second Report and Order*, 22 FCC Rcd at 15409, 15410, para. 329, 332. These incumbents operated on former TV Channels 63, 64, 68 and 69.

²⁰ *Second Report and Order*, 22 FCC Rcd at 15412, para. 339.

²¹ Due to the shift in the overall public safety spectrum down 1 MHz to accommodate operations along the Canadian border, narrowband operations in the upper 1 MHz of TV channels 64 and 69 (775-776/805-806 MHz) were also slated for relocation. See *Second Report and Order*, 22 FCC Rcd at 15428-32, para. 388-402. Appendix A hereto lists those jurisdictions that hold site-based licenses authorizing narrowband operations in the public safety broadband spectrum. Also listed are states that filed narrowband certifications. These latter jurisdictions may be continuing to operate incumbent narrowband systems deployed prior to the August 30, 2007 deadline under "state licenses", for which individual site licensing is not required. States are not permitted to deploy new narrowband facilities in the public safety broadband spectrum.

²² See, e.g., *Virginia Order*, 22 FCC Rcd at 20293, para. 7.

²³ See, e.g., *Virginia Order*, 22 FCC Rcd at 20293, para. 5: ("Accordingly, our decision to permit Virginia to continue to place new narrowband radios into operation after August 30, 2007 is without prejudice to our subsequent ruling on these outstanding waiver issues - including whether Virginia would be entitled to reimbursement for the costs associated with relocating any additional narrowband operations outside of the consolidated narrowband channels that Virginia deploys after August 30, 2007, and on its Petition. Finally, because we grant limited waiver

(continued....)

2007 would be eligible for reimbursement of costs to retune their systems to the consolidated narrowband block of spectrum.²⁴ Waiver recipients were also encouraged to deploy in the public safety narrowband spectrum where feasible to avoid future disruptions due to relocation, and to reduce relocation costs.²⁵

9. While relocation was originally to be funded by the auction winner of the adjacent block of commercial spectrum,²⁶ that spectrum did not receive a winning bid and consequently funding for relocation did not materialize. Prior to passage of the Act, the Commission continued to explore options for relocating narrowband incumbents. In 2008, it sought comment on a funding mechanism, a cost cap, and a deadline for narrowband licensees to complete relocation.²⁷ In 2011, it sought comment on technical measures to ensure that incumbent narrowband licensees receive no harmful interference from public safety broadband operations.²⁸ Nevertheless, in the absence of a relocation mechanism, many of these incumbent narrowband licensees have continued to operate on the public safety broadband spectrum, which is now licensed to FirstNet.

10. In the *2013 Notice*, the Commission sought further comment on relocation in light of the Public Safety Spectrum Act and the Commission's obligation to "facilitate the transition" of the spectrum to FirstNet.²⁹ The Commission specifically sought comment on whether it could require FirstNet to provide funds for and manage the transition of narrowband incumbents from the public safety broadband segment of the band.³⁰ It also asked whether or not there is adequate spectrum available in the consolidated narrowband block to support relocation of the narrowband incumbents.³¹ Parties who commented on relocation overwhelmingly supported the concept of FirstNet using funds allocated to it under the Act to fund incumbent relocation.³² For instance, Motorola noted that it "sees no provision in

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relief as described herein, and must still address the outstanding waiver issues and Virginia's Petition, we deny Virginia's request that it be permitted to include in the narrowband certifications due October 23, 2007 all handsets and vehicle mounted repeaters it expects to deploy after August 30, 2007."); *See also Pierce Transit Order*, 23 FCC Rcd at 443, para. 7; *New York State Order*, 23 FCC Rcd at 9613, para. 5; *Arkansas Order*, 23 FCC Rcd at 11070, para. 6; *Illinois Order*, 23 FCC Rcd at 11066, para. 6; *Hawaii Order*, 23 FCC Rcd 11266, para. 6; *Phoenix Order*, 23 FCC Rcd 16671, para. 6; *Ada County Order*, 23 FCC Rcd 16667, para. 6; *Harris County Order*, 23 FCC Rcd 16663, para. 6.

²⁴ *See Virginia Order*, 22 FCC Rcd at 20294, para. 8; "*Pierce Transit Order*, 23 FCC Rcd at 443, para. 8; *Arkansas Order*, 23 FCC Rcd at 11070, para. 8; *Illinois Order*, 23 FCC Rcd at 11066, para. 8; *Hawaii Order*, 23 FCC Rcd 11266, para. 8; *Phoenix Order*, 23 FCC Rcd 16672, para. 8; *Ada County Order*, 23 FCC Rcd 16668, para. 8; *Harris County Order*, 23 FCC Rcd 16663, para. 7.

²⁵ *Id.*

²⁶ *See Second Report and Order*, 22 FCC Rcd at 15411-13, para. 336-343.

²⁷ *Service Rules for the 698-747, 747-762 and 777-792 MHz Bands et al.*, WT Docket 06-150 *et al.*, Third Notice of Proposed Rulemaking, 23 FCC Rcd 14301, 14441-14450, paras. 434-460 (2008).

²⁸ *Service Rules for the 698-747, 747-762 and 777-792 MHz Bands et al.*, WT Docket 06-150 *et al.*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 26 FCC Rcd 733, 757, para. 83 (2011).

²⁹ *2013 Notice*, 28 FCC Rcd at 2731-2732, para. 53-56.

³⁰ *Id.* at 2731, para. 53.

³¹ *Id.*, para. 55.

³² National Public Safety Telecommunications Council May 24, 2013 Comments at 5 (NPSTC May 24, 2013 Comments); Motorola Solutions, Inc. May 24, 2013 Comments at 17 (Motorola May 24, 2013 Comments); Commonwealth of Virginia Department of State Police May 23, 2013 Comments at 4 (Virginia May 23, 2013 Comments); State of Illinois State Police May 22, 2013 Comments at 3-4 (Illinois May 22, 2013 Comments); Commonwealth of Virginia Department of State Police Jun. 7, 2013 Reply Comments at 2 (Virginia Jun. 7, 2013 Reply Comments).

that Act that would prohibit such a practical solution³³ while Virginia stated that “it is only appropriate that FirstNet bear the cost of relocation.”³⁴ Illinois was the only one party that commented on the availability of spectrum for relocation, but it deferred to the Commission on this matter.³⁵

11. On October 20, 2015, FirstNet filed an *ex parte* letter detailing a proposal for relocating narrowband incumbents.³⁶ The letter stated that FirstNet’s Board had allocated funds for relocation and passed a resolution directing its staff to establish and implement a spectrum relocation assistance grant program.³⁷ FirstNet stated that its grant program would offer narrowband incumbents an appropriate lead time, as well as assistance funds, to facilitate the relocation of their systems off public safety broadband spectrum.³⁸ FirstNet anticipated its grant program funding relocation costs, any necessary frequency coordination, technical assistance, and equipment retuning for eligible incumbents.³⁹

12. As part of its proposal, FirstNet requested that the Commission add a condition to the license or authorization of each narrowband incumbent stating that no operation on the public safety broadband spectrum will be permitted after July 31, 2017 without the express consent of FirstNet.⁴⁰ In addition or in the alternative to this request, FirstNet asked that the Commission “consider conditioning any continued operation on Band 14 on the cessation of all operations on Band 14 within 90 days written notice to the Band 14 incumbent(s) from FirstNet that deployment of the NPSBN is to begin in its State.”⁴¹

13. On November 5, 2015, the Bureau released a Public Notice seeking comment on FirstNet’s relocation proposal.⁴² The Bureau noted in its Public Notice that while the Commission had already received comment on relocation issues in this proceeding, it believed further comment on FirstNet’s more specific proposal would help ensure a complete and comprehensive record on the matter.⁴³

14. Commenting parties generally support FirstNet’s proposed grant program.⁴⁴ For instance, NPSTC states that it “applauds FirstNet for budgeting funds to relocate incumbents and for taking steps to

³³ Motorola May 24, 2013 Comments at 17.

³⁴ Virginia May 23, 2013 Comments at 4.

³⁵ Illinois May 22, 2013 Comments at 7.

³⁶ See Letter, dated October 20, 2015 from Jason Karp, Chief Counsel, First Responder Network Authority to Marlene H. Dortch, Secretary, Federal Communications Commission (FirstNet Relocation Letter).

³⁷ *Id.* at 2. As discussed in paragraph 18, *infra*, FirstNet has since implemented the relocation grant program referenced in its October 2015 *ex parte*.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at n. 5.

⁴² See *Public Safety and Homeland Security Bureau Seeks Comment on FirstNet’s Incumbent Relocation Proposal*, Public Notice, DA 15-1253 (PSHSB 2015). The Office of the Federal Register published a summary of the Public Notice and the associated comment deadline on November 25, 2015. See 80 FR 73696 (Nov. 25, 2015).

⁴³ *Id.* at 2.

⁴⁴ APCO Dec. 9, 2015 Comments at 2 (APCO Relocation Comments); NPSTC Dec. 9, 2015 Comments at 5 (NPSTC Relocation Comments); Commonwealth of Virginia Comments Dec. 8, 2015 Comments at 2 (Virginia Relocation Comments).

establish a relocation grant assistance program.”⁴⁵ Virginia notes that it has “enthusiastically supported relocation funding by FirstNet” since 2013.⁴⁶

15. Four commenting parties, however, express concern about FirstNet’s proposal.⁴⁷ Illinois contends that the proposal gives FirstNet an “unfair advantage” in dealing with narrowband incumbents.⁴⁸ It alleges a lack of process for dealing with disagreements and argues that nothing in the proposal “protects the interests of the incumbent users.”⁴⁹ Citing its significant investment since 2002 amounting to tens of millions of dollars and its 45,000 users, Illinois seeks a “definitive source of funding” for relocation expenses. Thus, it urges the Commission to await finalization of the FirstNet grant program and to adopt a process for resolving disputes about relocation expenses.⁵⁰ Colorado expresses concern about uncertainties associated with the proposed July 31, 2017 deadline for relocation, and advocates a waiver or extension process to address such uncertainties.⁵¹ Virginia states that it “continues to believe that it is not appropriate procedurally” to have FirstNet control at its discretion the schedule upon which incumbent operators exit the broadband segment of the band.⁵² Citing its \$380 million costs for deploying its STARS network throughout the state,⁵³ Virginia argues that a “different time period” should apply to users like itself that will need to retune radios in 3,300 vehicles operating on a statewide basis,⁵⁴ and similarly argues for a liberal waiver or extension policy.⁵⁵ Hawaii argues that any relocation process should be accompanied by a requirement for FirstNet to “pay all reasonable costs, including transactional costs, for a transition to comparable facilities.”⁵⁶

16. With respect to establishing a deadline for relocation, APCO supports FirstNet’s proposal to require narrowband licensees to obtain FirstNet’s consent for any operation on the public safety broadband spectrum after July 31, 2017.⁵⁷ NPSTC, on the other hand, believes it is premature to finalize a deadline for any authorizations to expire until the relocation funds actually become available.⁵⁸

17. On January 19, 2016, FirstNet filed a second *ex parte* letter in which it clarified that it intends to ensure that narrowband incumbents “are able to maintain reliable operations during their relocation.”⁵⁹ FirstNet also states that it plans to “retain independent third parties that have relevant technical, industry, and grant experience” to provide it with advice throughout the implementation of its

⁴⁵ NPSTC Relocation Comments at 5.

⁴⁶ Virginia Relocation Comments at 2.

⁴⁷ See State of Hawaii Dec. 9, 2015 Comments at 2-4 (Hawaii Relocation Comments); State of Illinois Dec. 9, 2015 Comments at 1 (Illinois Relocation Comments); State of Colorado Governor’s Office Dec. 9, 2015 Comments at 2-3 (Colorado Relocation Comments); Virginia Relocation Comments at 3-8.

⁴⁸ Illinois Relocation Comments at 3.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Colorado Relocation Comments at 1-2.

⁵² Virginia Relocation Comments at 3.

⁵³ Commonwealth of Virginia May 23, 2013 Comments at 5 (Virginia 2013 Comments).

⁵⁴ Virginia Relocation Comments at 6.

⁵⁵ Virginia 2013 Comments at 7.

⁵⁶ Hawaii Relocation Comments at 2.

⁵⁷ APCO Relocation Comments at 2.

⁵⁸ NPSTC Relocation Comments at 7.

⁵⁹ See Letter, dated January 19, 2016 from TJ Kennedy, President, First Responder Network Authority to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (FirstNet Jan 2016 Ex Parte).

grant program.⁶⁰ In response to concerns raised by incumbents with larger operations about the proposed relocation deadline, FirstNet states that based on the information it has received from incumbents it believes the deadline is “both reasonable and achievable,” but that the grant program “will allow for reasonable extensions of time for incumbents to relocate, as warranted, depending upon each licensee’s particular situation.”⁶¹ However, FirstNet urges the Commission not to adopt a dispute resolution process, which it believes would “not only delay the deployment of the NPSBN, but would also run counter to Congressional intent.”⁶²

18. Since filing the January 2016 *ex parte*, FirstNet has implemented its grant program for incumbent relocation and has awarded grants to eight incumbent licensees.⁶³ The grant program made up to \$40 million available to incumbents for the purpose of “retuning and reprogramming communications equipment” and in certain “unique cases” for “procurement of new communications equipment.”⁶⁴ FirstNet stated that applicants for grant funding would be expected to relocate their systems within a twelve month “period of performance” but FirstNet noted that it would consider extensions on a case-by-case basis based on demonstrated need.⁶⁵ On August 18, 2016, FirstNet announced relocation grant awards to eight narrowband incumbents totaling over \$26.8 million.⁶⁶

19. *Discussion.* We find that prompt relocation of incumbents remains an imperative to successful deployment of the FirstNet nationwide public safety broadband network, and that certainty with respect to the timing of this process will support this goal. We also agree with FirstNet and other commenters that support the funding proposal made by FirstNet. Accordingly, we find that the process that FirstNet has proposed and the grant program it has implemented are sufficient to ensure a smooth, timely, and adequately funded transition by narrowband incumbents, while providing flexibility to all involved.

20. Therefore, to ensure certainty and prompt action on the part of all parties involved, and consistent with the Commission’s relocation determination in the *Second Report and Order* and subsequent waiver decisions and with the mandate of the Spectrum Act, we will permit incumbents to remain on FirstNet’s licensed spectrum until August 31, 2017, after which they will be required to vacate absent FirstNet’s express consent to remain longer.⁶⁷ This will provide a 12-month transition period for incumbents, consistent with the 12-month period afforded to those incumbents that have received grant funding from FirstNet.⁶⁸ However, as noted below, we will not permit continued operation by those incumbents that have either previously discontinued operations or that are no longer in operation after the effective date of this *Report and Order*.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 3.

⁶³ See Band 14 Incumbent Spectrum Relocation Grant Program, Executive Summary, Federal Funding Opportunity Number 2016-NTIA-SRGP-01 at 1 (Mar 16, 2016) (FirstNet Relocation FFO); FirstNet Announces Eight Grant Awards for Public Safety Entities Relocating from Band 14 Spectrum, Press Release, August 18, 2016 (FirstNet Relocation Grant Announcement), available at <http://www.firstnet.gov/news/firstnet-announces-eight-grant-awards-public-safety-entities-relocating-band-14-spectrum>.

⁶⁴ FirstNet Relocation FFO at 3-4.

⁶⁵ *Id.* at 4.

⁶⁶ FirstNet Relocation Grant Announcement.

⁶⁷ FirstNet Relocation Letter at 2. .

⁶⁸ Although FirstNet originally requested that we establish July 31, 2017 as the licensing condition date based on when it anticipated that grants would be awarded, we adopt August 31, 2017 as the condition date to adjust for the actual timing of FirstNet’s grant announcement.

21. Furthermore, in order to avoid stranding assets and placing additional burdens on the FirstNet spectrum, to the extent previously authorized by waiver we prohibit all narrowband incumbents from deploying additional facilities on FirstNet's licensed spectrum beyond those currently deployed as of the adoption date of this *Report and Order*. Accordingly, as of the adoption date of this *Report and Order*, we hereby terminate all such authority to initiate new deployments pursuant to waivers previously granted by the Commission or Bureau, which had authorized deployment beyond the 2007 deadline.⁶⁹

22. Based on the record, we find that the grant program established by FirstNet provides a reasonable mechanism for funding relocation of incumbent narrowband operators from the public safety broadband to the narrowband segment of the band. Indeed, commenters to the *2013 Notice* emphasized the need for available funding as a condition precedent to relocation.⁷⁰ As noted *supra*, FirstNet has created a grant program that provides up to \$40 million available for relocation costs, and recently announced eight relocation awards from this program. No other party has offered an alternative funding mechanism.

23. Second, we find it in the public interest to set a deadline for narrowband incumbents to clear the broadband segment of the band so that FirstNet can deploy a nationwide broadband network serving public safety. The Act directs the Commission to "take all actions necessary" to facilitate the transition of the broadband spectrum to FirstNet.⁷¹ In discharging that responsibility, we believe a deadline will provide certainty to all parties involved and is the most effective means of supporting the timely deployment of public safety broadband services throughout the Nation, and consistent with the request of FirstNet.⁷² In this regard, we note that the FirstNet grant program provides incumbent licensees a twelve month "period of performance" to vacate the FirstNet licensed spectrum in order to allow it to initiate deployment of the nationwide broadband network beginning in 2017.⁷³ Thus, an August 31, 2017 relocation deadline will provide ample time for the transition while minimizing the potential for delay in testing and deployment of the national public safety broadband network, consistent with the statutory goal of "speed[ing] deployment of the network."⁷⁴ We also believe that setting a date certain for relocation is preferable to establishing rolling deadlines triggered by when FirstNet begins deploying service in individual states. A date certain provides clarity to all incumbent licensees and incentivizes them to seek funding and relocate their systems in a timely manner.⁷⁵

24. We also find that the grant performance timeframe and August 31, 2017 relocation deadline establish a reasonable transition timetable for incumbent operators to complete relocation. Narrowband incumbents have been on notice since August 2007 that they would need to vacate the broadband segment of the band, and indeed were encouraged by the Commission to launch any new

⁶⁹ See *supra* n. 23.

⁷⁰ See Illinois May 22, 2015 Comments at 3-4; Virginia May 23, 2013 Comments at 4; David Dato May 22, 2013 Comments at 1 (Illinois Terrorism Task Force Comments); Jay Danner May 23, 2013 Comments at 1 (Illinois DNR Comments); Joe Galvin May 24, 2013 Comments at 1 (Illinois SWIC Comments); William Carter May 24, 2013 Comments at 1 (Illinois Dept. Public Health Comments).

⁷¹ 47 U.S.C. § 1421(c).

⁷² FirstNet has projected making a contract award in the fourth quarter of 2016. See Testimony of TJ Kennedy, FirstNet, before the House Subcommittee on Communications and Technology (Feb. 2, 2016), at <http://docs.house.gov/meetings/IF/IF16/20160202/104388/HHRG-114-IF16-Wstate-KennedyT-20160202.pdf>. An August 31, 2017 deadline would thus provide reasonable availability for deployment following the contract award.

⁷³ See FirstNet Relocation FFO at 1, 3-4. See also Press Release, First Responder Network Authority, FirstNet Issues RFP for the Nationwide Public Safety Broadband Network (Jan 13, 2016), <http://www.firstnet.gov/news/firstnet-issues-rfp-nationwide-public-safety-broadband-network>.

⁷⁴ 47 U.S.C. § 1426(b)(1)(C).

⁷⁵ See FirstNet Relocation Letter at n. 5.

operations in the consolidated narrowband segment.⁷⁶ Therefore, we expect incumbent licensees to be in a position to begin implementing their transition as soon as they obtain relocation funds.

25. We note that the majority of narrowband incumbents operate site-based facilities which consist of either (1) one or two base station repeaters with associated mobile units, or (2) mobile units only without a base station. For these incumbents, relocating to the narrowband spectrum should not be technically complex and therefore it is reasonable to expect them to complete the transition well in advance of August 31, 2017.⁷⁷

26. For licensees with more expansive systems, FirstNet has affirmed that these licensees will be permitted to continue operating on the broadband segment of the band after the relocation deadline, if needed, at FirstNet's discretion. Indeed, the FFO also provides certain flexibility for granting extensions when appropriate. We expect FirstNet to exercise this discretion reasonably and in good faith to accommodate legitimate incumbent needs and ensure that there is no interruption of narrowband operations that are essential to public safety. We also require FirstNet to notify the Commission of each incumbent extension request and whether the request has been granted or denied.

27. Furthermore, we find there is adequate spectrum in the consolidated block of 700 MHz public safety narrowband spectrum to accommodate the narrowband incumbents. State licensees, such as Virginia and Illinois, will transition to the State Licensee channels reserved in the consolidated block solely for use by the states.⁷⁸ The remaining licensees will transition to the General Use channels that are reserved for them in the consolidated narrowband block by their respective Regional Planning Committees.⁷⁹

28. Consequently, once FirstNet has processed the grant applications, we instruct it to provide the Bureau with a list of all incumbents that applied for relocation funding during its application window and that FirstNet has determined to be eligible for funding under its grant program. FirstNet should also include on its list or lists, should FirstNet issue grants on more than one date, all incumbents who have notified FirstNet that they intend to fund their own relocation. We direct the Bureau to take action after FirstNet submits its list(s) and this *Report and Order* becomes effective, to conform the licenses of each identified incumbent to the modified terms that we have adopted generally in the present rulemaking decision.⁸⁰ More specifically, the Bureau shall further modify, pursuant to Section 316 of the

⁷⁶ *Second Report and Order*, 22 FCC Rcd at 15412, para. 339.

⁷⁷ As noted above, FirstNet states that, based on the information it has received from narrowband incumbents, it believes that a July 31, 2017 clearance deadline is “both reasonable and achievable.” It states that it expects at least seventy percent of narrowband incumbents to clear the broadband segment of the band within a matter of months given the “small scope of their relocation requirements.” See FirstNet Jan 2016 Ex Parte at 2.

⁷⁸ Each state is allotted ninety-six channels (12.5 kHz bandwidth) in the consolidated narrowband block. See 47 C.F.R. § 90.531(b)(5). This is the same number of channels which were allotted to the states prior to consolidation of the narrowband spectrum.

⁷⁹ See 47 C.F.R. § 90.531(b)(6). Each licensee will have an equivalent number of channels reserved for it in the narrowband consolidated block that it had allotted to it prior to consolidation.

⁸⁰ As the Commission has previously stated, “it is well established that the Commission always retains the power to alter the terms of existing licenses by rule making.” Facilitating the Provision of Spectrum-Based Services to Rural Areas, *Report and Order* in WT Docket No. 02-381, *et al.*, 19 FCC Rcd 19078, 19125-26 (2004); see also *Community Television v. FCC*, 216 F.3d 1133, 1140-41 (D.C. Cir. 2000) (holding that the “FCC may modify entire classes of licenses” through rulemaking process); *WBEN, Inc. v. U.S.*, 396 F.2d 601, 618 (2d Cir.), *cert. denied*, 393 U.S. 914 (1968); *California Citizens Band Association v. U.S.*, 375 F.2d 43, 50-52 (9th Cir.), *cert. denied*, 389 U.S. 844 (1967); *cf. U.S. v. Storer*, 351 U.S. 763 (1956) (holding that Section 309(b) requirement that full hearing be conducted before license application is denied did not prevent FCC from changing eligibility requirements by rulemaking, thereby obviating need for full hearing for applicants who failed new eligibility criteria).

Communications Act,⁸¹ the licenses of each identified incumbent to the extent necessary in order to implement the requirement adopted herein that all licensees in this incumbent class vacate, by August 31, 2017, the spectrum licensed to FirstNet, except for those licensees that have the express written consent of FirstNet to remain longer.⁸²

29. We also clarify the status of narrowband incumbents who previously discontinued operations on the broadband segment of the band but have yet to remove those channels from their license. Only incumbents who currently operate facilities will be authorized to continue operating on FirstNet's licensed spectrum after the effective date of this *Report and Order*. In this regard, we also agree with FirstNet that it is appropriate to limit its obligation to pay relocation expenses only to those public safety licensees lawfully operating facilities on FirstNet's licensed spectrum as of the date it published its program on the Grants.gov website (March 16, 2016).⁸³ Thus, after the effective date of this *Report and Order*, we direct the Bureau take the appropriate action under Section 316 required to modify licenses so as to remove channels that encumber FirstNet's spectrum from the license of any incumbent the Bureau determines is no longer actively operating on those frequencies. The Bureau should assume that an incumbent is no longer actively operating on any channels in FirstNet's spectrum if the incumbent failed to contact FirstNet during the 60-day application window about its intention to either seek funding or pay its own relocation costs. Those incumbents unaccounted for in this process will not be entitled to a license condition allowing the continued operation.

30. Finally, we decline the suggestion of some commenters that the Commission play a role in resolving disputes between FirstNet and incumbent licensees over relocation costs. FirstNet is providing relocation funding through a Federal Funding Opportunity grant program, with the safeguards and checks associated with such a program.⁸⁴ For instance, as part of the program, FirstNet has retained independent third parties with expertise in both the "programmatic and technical aspects of the program" who will review each application from an eligible incumbent before it makes any final decisions on grants for relocation costs.⁸⁵ Furthermore, FirstNet states it will give each eligible applicant an opportunity to resolve any "material weaknesses and/or deficiencies" with its application that its peer reviewers identify including resolving issues concerning implementation plans and proposed budget items.⁸⁶ Therefore, we find that any disputes that may arise over how Federal funds from this grant program are used to facilitate relocation will be best resolved within the grant program process, and that there is no need or legal basis for intervention in these issues by the Commission at this time.⁸⁷ We find this approach to be consistent with the Public Safety Spectrum Act and with our licensing authority under the Communications Act.

⁸¹ 47 U.S.C. § 316.

⁸² Licensees that receive written consent from FirstNet to remain on the broadband segment of the band after August 31 2017 should forward an electronic copy of the written consent to the Bureau so that staff can attach it to their license in ULS.

⁸³ See FirstNet's grant program announcement at <http://www.grants.gov/web/grants/view-opportunity.html?oppId=282272>.

⁸⁴ See, e.g., 2 C.F.R. § 200.204.

⁸⁵ FirstNet's FFO states that each application from an eligible incumbent will be reviewed by at least three peer/expert reviewers. See FirstNet Relocation FFO at 17-18. See also FirstNet Jan 2016 Ex Parte at 2; FirstNet Relocation Grant Announcement at 1 ("All grant applications underwent a competitive review process for the Band 14 Program. This included a technical review by independent peer reviewers with subject matter expertise who verified whether each applicant provided a technically feasible and viable solution to relocate its communications systems from the Band 14 spectrum.").

⁸⁶ *Id.*

⁸⁷ We agree with FirstNet that the unique requirements of the Public Safety Spectrum Act distinguish this situation from that resulting in the relocation plan adopted by the Commission in the 800 MHz band. FirstNet Jan 2016 Ex Parte at 4. That plan incorporated features of a voluntary agreement by Nextel in exchange for obtaining contiguous

(continued....)

2. Other Incumbents

31. *Background.* As noted above, the *2013 Notice* identified two wideband incumbents and one commercial incumbent on the FirstNet spectrum, and sought comment on how to transition these operations to make the spectrum available to FirstNet.⁸⁸ In addition, although not addressed in the *2013 Notice*, we note that some TV studio-transmitter links, TV relay, and TV translator relay licensees are operating on the FirstNet spectrum pursuant to Section 74.602(h)(1) of the Commission's rules, which permits licensing of such facilities on UHF TV channels 14-69 on a secondary basis, subject to the provisions in Part 74, subpart G.⁸⁹ We address the disposition of these incumbents below.

32. *Discussion.* The *2013 Notice* identified two small wideband public safety deployments in the 700 MHz public safety spectrum: (1) Post Falls, Idaho, and (2) Wasilla, Alaska. With respect to Post Falls, because it operates on spectrum licensed to FirstNet in the Guard Band between the narrowband and broadband segments of the band, FirstNet has awarded it funding under the relocation grant program.⁹⁰ Therefore, we will apply the same condition to Post Falls' license that we are applying to narrowband incumbents as discussed above. With respect to Wasilla, the licensee originally proposed to operate its wideband system on channels that would have encumbered FirstNet, but later modified its proposal to select channels in the consolidated narrowband segment of the band.⁹¹ Therefore, Wasilla's system does not encumber the FirstNet spectrum and does not need to be relocated or have its license modified.

33. The commercial incumbent identified in the *2013 Notice* was PTPMS II, a commercial incumbent licensed in the D Block spectrum in the Des Moines-Quad Cities and El Paso-Albuquerque Major Economic Areas under Call Signs WPRV448 and WPRV449. These authorizations expired in August 2015. Therefore, no further action is necessary to facilitate FirstNet's access to this spectrum.

34. Finally, the TV studio-transmitter links, TV relay stations, and TV translator relay stations operating under Part 74, subpart G are licensed on a secondary basis that requires them to cease operation within 120 days of being notified by a primary licensee that it intends to begin operation.⁹² Therefore, under our existing rules, all such licensees in the FirstNet spectrum must cease operations within 120 days of receiving notice from FirstNet. We also note that these licensees are not eligible for relocation grant funding from FirstNet.

C. FirstNet License Renewal and Buildout Requirements

35. *Background.* The Public Safety Spectrum Act provides that, prior to the expiration of FirstNet's initial ten-year license term or the expiration of any subsequent renewal of the license, FirstNet must submit to the Commission a renewal application that demonstrates that it "has met its duties and

(Continued from previous page) _____

spectrum in order to resolve interference concerns, and involved a multi-year transition process with many more incumbents. Here, Congress has emphasized the importance of speeding the deployment of a nationwide public safety broadband network, which has been one of the Nation's goals for many years following the recommendations of the 9/11 Commission. *See* The 9/11 Commission: Final Report of the National Commission on Terrorist Attacks Upon the United States at 414 (2004); FCC, Connecting America: The National Broadband Plan at 314-16.

⁸⁸ *2013 Notice*, 28 FCC Rcd at 2732-33, paras. 57-59.

⁸⁹ 47 C.F.R. § 74.602(h)(1).

⁹⁰ FirstNet Relocation Grant Announcement at 1.

⁹¹ *See* letter from Dean Strid, Chairman Region 2 RPC to City of Wasilla (Feb. 28, 2008) (attached to ULS application number 0003427646).

⁹² *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19355-19356 paras. 72-75 (2004). *See also* 47 C.F.R. § 74.703(g).

obligations as set forth in [the Spectrum] Act.”⁹³ However, the Act does not provide guidance to the Commission on how to evaluate whether FirstNet has met its duties and obligations. In the 2013 Notice, the Commission sought comment on how to ensure that the Commission will have sufficient information at the time of renewal to assess whether FirstNet has met its duties and obligations under the Public Safety Spectrum Act and otherwise met the terms of the license.⁹⁴ In addition, the Commission sought comment on its proposal not to include rural buildout milestones as a condition of FirstNet’s license.⁹⁵

36. Some commenters agree with the Commission’s view stated in the *2013 Notice* that the build-out obligations and specifications of the Public Safety Spectrum Act obviate the need for the Commission to adopt such additional requirements. APCO submits that the Commission should not impose any additional license renewal criteria or reporting requirements on FirstNet,⁹⁶ and both APCO and New Mexico agree with the Commission’s proposal not to set specific rural coverage benchmarks or any related license conditions.⁹⁷ Ericsson similarly urges the Commission to offer an expectation of renewal to FirstNet, provided FirstNet demonstrates that it is meeting the duties and obligations set forth in the Act.⁹⁸

37. Some commenters, however, express concern about rural coverage and suggest that clear construction and coverage standards for license renewal may be necessary to ensure rural deployment by FirstNet. MSI asserts that in light of the “uncertainty” that FirstNet faces regarding funding, the Commission should establish tentative renewal standards for FirstNet tied to construction milestones and commit to periodically reevaluating the benchmarks for feasibility.⁹⁹ Similarly, NRECA/NTCA submits that “[g]iven the limited funding allotted to FirstNet, its large assigned licensed spectrum, and its monumental mission, without network coverage guidelines, there is nothing to ensure that FirstNet, a nationwide wireless network operator, will not concentrate its resources on an urban-focused deployment plan and neglect to build out the network in high-cost rural areas.”¹⁰⁰

38. Other commenters propose that the Commission encourage FirstNet to enter into partnerships to leverage existing infrastructure in rural areas. The WISP Coalition states that “[t]he Commission should give careful consideration to the role that WISPs can play in advancing the goals of the nationwide network, particularly in terms of leveraging efficient, cost-effective, existing WISP network architecture and providing incentives to FirstNet to partner with WISPs to build out the LTE network as part of the nationwide effort.”¹⁰¹ UTC suggests that clear standards for license renewal may be necessary to encourage rural deployment by FirstNet and that rural coverage can be accomplished cost effectively by leveraging existing infrastructure in rural areas, including infrastructure that is owned or controlled by utilities and critical infrastructure industries (CII).¹⁰²

39. In reply comments submitted on behalf of FirstNet, NTIA notes that the Act imposes specific legal obligations on FirstNet to consult, report, and meet construction timelines and coverage

⁹³ *2013 Notice*, 28 FCC Rcd at 2728, para. 43 citing Public Safety Spectrum Act, Pub. L. No. 112-96 § 6201(b)(2).

⁹⁴ *2013 Notice*, 28 FCC Rcd at 2729, para 46.

⁹⁵ *Id.*, para 47.

⁹⁶ APCO Comments at 5.

⁹⁷ APCO Comments at 6; New Mexico Reply Comments at 2-3.

⁹⁸ Ericsson Comments at 7. Alcatel-Lucent submits that licensing questions should be deferred to a future proceeding. Alcatel-Lucent Comments at 3.

⁹⁹ MSI Comments at 3, 13-16.

¹⁰⁰ NRECA/NTCA Comments at 4.

¹⁰¹ WISP Coalition Comments at 8.

¹⁰² UTC Reply Comments at 1-2.

areas.¹⁰³ It argues that these legal requirements as well as Congressional oversight will ensure that FirstNet complies with its obligations.¹⁰⁴ In particular, it notes, the Act directs FirstNet to include substantial rural milestones in its deployment phases.¹⁰⁵ According to NTIA, FirstNet will be consulting extensively with local, State and tribal entities to ensure adequate coverage of rural areas,¹⁰⁶ and no additional action on the part of the Commission is necessary.¹⁰⁷ For these reasons, NTIA urges the Commission to refrain from imposing additional reporting requirements or other obligations with respect to license renewal.¹⁰⁸

40. *Decision.* We find that, in light of the build-out obligations and specifications of the Public Safety Spectrum Act,¹⁰⁹ and the specific terms of the Final RFP, there is no need at this time to establish additional Commission rules to ensure rural coverage or any of the other requirements for renewal of FirstNet’s license.¹¹⁰ By avoiding prescriptive regulatory requirements, we also maintain flexibility for both FirstNet and the states in terms of planning for optimal network coverage. In particular, we find that the rural build out and rural partnership provisions of the Final RFP issued by FirstNet are designed to ensure substantial rural coverage in support of its statutory obligations, and mitigate or eliminate the concerns expressed by commenters urging Commission intervention. The Final RFP addresses service availability as well as target timelines for operating the NPSBN, including “substantial rural milestones” over a five year period.¹¹¹ These milestones range from one year following the contract award to five years after the award to meet FirstNet coverage objectives and mirror coverage and capacity solutions in non-rural areas.¹¹²

Timing/Area	12 month s	24 month s	36 month s	48 month s	60 months
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¹⁰³ NTIA Reply Comments at 2.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Public Safety Spectrum Act, Pub. L. No. 112-96 § 6206(b)(3).

¹¹⁰ We recognize that the final contract awarded by FirstNet may differ from the terms of the RFP. However, we find reasonable assurance from the terms of the final RFP and the requirements of the Act governing FirstNet’s deployment that this issue is ripe for resolution now with the expectation that the contract award will not materially differ from the specified terms.

¹¹¹ With regard to state coverage objectives, the Final RFP notes that “[t]he Act (Section 6206(b)(3)) requires a phased deployment of the NPSBN with substantial rural coverage milestones as part of each phase.” *Id.* at page C-6. See also, *Id.*; see Section J-8, Solicitation No. D15PS00295 – Section J, Attachment J-8 IOC/FOC Target Timeline. See also Solicitation No. D15PS00295 – Section F Deliverables and Performance at page F-4; Section J, Attachment J-1, Coverage and Capacity Definitions; Section M Evaluation Factors for Award. (“Deployment phases and substantial rural coverage milestones are outlined in Section J, Attachment J-8, [Initial Operational Capability (IOC)/Final Operational Capability (FOC)] Target Timeline.”). In this respect, rural milestones conform to a phased approach as contemplated by the statute that achieves proposed rural coverage within a 5-year timeframe.

¹¹² See Section J-8, Solicitation No. D15PS00295 – Section J, Attachment J-8 IOC/FOC Target Timeline at page 5. We also recognize that these benchmarks key to vendor proposals that are not yet available and will be dependent on the final contract award. However, we have no reason to believe in light of the terms of the RFP that the percentages expressed will not comply with FirstNet’s statutory obligations.

<p>Substantial Rural Milestones (State and Territory Task Orders)</p>	<ul style="list-style-type: none"> Achievement of 20% of Contractor’s proposed Band 14 coverage in rural areas 	<ul style="list-style-type: none"> Achievement of 60% of Contractor’s proposed Band 14 coverage in rural areas 	<ul style="list-style-type: none"> Achievement of 80% of Contractor’s proposed Band 14 coverage in rural areas 	<ul style="list-style-type: none"> Achievement of 95% of Contractor’s proposed Band 14 coverage in rural areas 	<ul style="list-style-type: none"> Achievement of 100% of Contractor’s proposed Band 14 coverage in rural areas
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41. The Final RFP provides that deployment of Band 14 coverage solutions for both rural and non-rural areas will begin in year 1.¹¹³ Year 2 coverage solutions must significantly expand rural and non-rural Band 14 coverage from 20 percent to 60 percent.¹¹⁴ Final operational coverage (FOC) is targeted for within 5 years post contract award, including the delivery of all milestones, services, systems, and hardening.¹¹⁵ Thus, FirstNet envisions an aggressive timetable for delivery of the FOC. In addition to coverage and capacity milestones, each benchmark details products and architecture,¹¹⁶ business management, and State public safety device connections. Further, the Final RFP provides that “Offerors will be evaluated based on their demonstration of their ability to provide Band 14 and non-Band 14 coverage and capacity in each of the 56 states and territories, including rural and non-rural areas.”¹¹⁷

42. In addition, the Final RFP addresses integration of existing Commercial, Federal, State, Tribal, and Local Infrastructure to support the NPSBN (*i.e.* “integrate existing assets—where economically desirable in accordance with Section 6206 of the Act and as further interpreted in FirstNet’s request for public comments—with an emphasis on assets owned and operated by rural telecommunications providers.”).¹¹⁸ Further, the Final RFP’s evaluation criteria address rural partnerships and state that “Offerors will be evaluated based on their demonstration of their existing and planned partnerships with rural telecommunications providers, including commercial mobile providers, utilizing existing infrastructure to the maximum extent economically desirable to speed deployment in rural areas.”¹¹⁹

43. The Final RFP, the terms of the responsive proposals that may be accepted by FirstNet, and the reporting requirements of the Public Safety Spectrum Act will provide the Commission with substantial information about FirstNet’s performance during the license term while also balancing

¹¹³ *Id.* at page 11.

¹¹⁴ *Id.* at page 14.

¹¹⁵ *Id.* at pages 18-20.

¹¹⁶ Products and architecture for IOC-3, for example, “cover all services, applications, devices, architecture and infrastructure, and operations required to meet FirstNet coverage objectives. During this phase, the Contractor shall complete the NPSBN and prepare for integration with state-deployed RANs and new site builds.” *Id.* at 14.

¹¹⁷ *Section M Evaluation Factors for Award* at page M-2.

¹¹⁸ *Id.* at Section C, page C-5. *See also Solicitation No. D15PS00295 – Section J, Attachment J-2 Nationwide and Rural Coverage Compliance Checklist.*

¹¹⁹ *Section M Evaluation Factors for Award* at page M-2. The Final RFP provides that “Offerors shall complete Section J, Attachment J-2, Nationwide and Rural Coverage Compliance Checklist, to demonstrate their ability to meet the objective to provide coverage in each of the 56 states and territories and to ensure that rural coverage includes partnerships with rural telecommunications providers. The Offeror’s solution must demonstrate commitment to exercise rural telecommunications provider partnerships for at least 15 percent of the total rural coverage nationwide. While Attachment J-2 requests these data by states, the 15 percent coverage factor will be evaluated on a nationwide basis only for this phase.” *Id.* at M-3.

FirstNet's need for flexibility.¹²⁰ We therefore conclude that the information and reports already required of FirstNet by the Act will provide a sufficient basis for the Commission to evaluate FirstNet's renewal application and otherwise discharge its licensing, interference management, and other obligations under Title III of the Communications Act.¹²¹ Imposing additional renewal standards, construction benchmarks, and reporting requirements at this time would unnecessarily increase FirstNet's costs and introduce delay that may undermine the timely buildout of the NPSBN.

44. Similarly, we find that imposing additional rural construction milestones at this time could interfere with FirstNet's continuing outreach and procurement efforts and thus distort the incentives and negotiations necessary to realize expeditious construction of the PSBN. In that respect, we note that "FirstNet has adopted an objectives-based approach in the RFP, rather than a traditional requirements-driven model, to provide industry the maximum opportunity and flexibility in the development of innovative solutions for the NPSBN."¹²² FirstNet states that "[p]roviding this flexibility enables Offerors to illustrate their intent in their proposals to meet or exceed the high-level objectives[.]"¹²³ We conclude that establishing network coverage milestones at this stage in FirstNet's development would frustrate this approach, and that the Act and the Final RFP demonstrate a clear intention to construct the NPSBN at a pace that meets the needs of urban and rural areas consistent with the requirements of that Act.

45. To help us assess whether FirstNet meets its duties and obligations under the Public Safety Act sufficiently to warrant license renewal, including with respect to rural coverage, we will monitor the implementation of the Final RFP and associated existing reporting obligations, as well as the required application specified by the Act demonstrating compliance with its duties and obligations.¹²⁴ We also retain the right to request additional information from FirstNet should the need arise.¹²⁵ This approach is consistent with our view that the success of FirstNet may require flexibility, balancing our need to oversee FirstNet's performance with the challenges associated with funding and constructing the nationwide project, while being consistent with our obligations under the Public Safety Spectrum Act and our authority under the Communications Act.¹²⁶

¹²⁰ These include FirstNet's annual reports to Congress and the annual reports of its independent auditor. See Public Safety Spectrum Act §§ 6209 (independent auditor annual reports) and 6210 (FirstNet annual reports). FirstNet released the first of its annual reports to Congress on February 12, 2013. See First Responder Network Authority Annual Report to Congress for Fiscal Year 2012 (Feb. 2013), available at http://www.ntia.doc.gov/files/ntia/publications/firstnet_report_to_congress_fy2012_02122013.pdf. FirstNet released its FY 2013 and 2014 reports. See also First Responder Network Authority Annual Report to Congress for Fiscal Year 2013 (Feb. 2014), available at <http://www.firstnet.gov/sites/default/files/firstnet-report-to-congress-fy2013.pdf>; First Responder Network Authority Annual Report to Congress for Fiscal Year 2014 (Mar. 3, 2015), available at http://www.firstnet.gov/sites/default/files/Annual%20Report_FY2014_FINAL_3_3_15.pdf. The FirstNet independent auditor's report is available at <http://www.firstnet.gov/sites/default/files/firstnet-independent-auditor-report-fy2013.pdf>. Additionally, the Financial Report: First Responder Network Authority, Fiscal Year 2013 is available at <http://www.firstnet.gov/sites/default/files/firstnet-fy-2013-financial-report.pdf>.

¹²¹ Some of the Title III obligations that generally apply to Commission licensees have been qualified with respect to FirstNet. We note, for example, that the Public Safety Spectrum Act authorizes FirstNet to assess and collect certain fees, "[n]otwithstanding section 337 of the Communications Act of 1934." 47 U.S.C. § 1428(a).

¹²² *Section C Statement of Objectives* at page C-1.

¹²³ *Id.*

¹²⁴ Public Safety Spectrum Act, Pub. L. No. 112-96 § 6201(b)(2).

¹²⁵ See, e.g., 47 U.S.C. §§ 154(i), 303(r), 308(b), 403; Public Safety Spectrum Act, Pub. L. No. 112-96 § 6003(a). The Commission also has authority to request additional information from licensees when needed. See, 47 C.F.R. § 1.17(b)(4).

¹²⁶ Public Safety Spectrum Act, Pub. L. No. 112-96 § 6213.

III. NOTICE OF PROPOSED RULEMAKING

46. Under the Public Safety Spectrum Act, FirstNet must “take all actions necessary to ensure the building, deployment, and operation” of the NPSBN.¹²⁷ Pursuant to Section 6202(b), the NPSBN must be based on a “single national network architecture that evolves with technological advancements” that consists of a core network and a radio access network (RAN).¹²⁸ FirstNet is tasked with developing a plan to deploy the RAN within each state.¹²⁹ The RAN, as defined in Section 6202(b)(2)(A), “consists of all cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum.”¹³⁰ The Act gives each state the option to opt out of FirstNet’s RAN deployment within that state and conduct its own RAN deployment.¹³¹ We describe the state opt-out process in further detail below.¹³²

A. Opt-Out Procedures

47. Pursuant to Section 6302(e)(2) of the Act, upon completion of FirstNet’s request for proposal (RFP) process for the construction, operation, maintenance, and improvement of the NPSBN, FirstNet must provide the Governor of each state, or the Governor’s designee, with notice of its completion of the RFP process, details of the proposed plan to build out in that state, and the funding level for the state as determined by NTIA.¹³³ Then, “[n]ot later than 90 days after the date on which the Governor of a State receives notice . . . the Governor shall choose whether to participate in the deployment of the nationwide, interoperable broadband network as proposed by [FirstNet,] or conduct its own deployment of a radio access network in such State.”¹³⁴ While the Act is silent on what action, if any, state Governors must take if they opt to participate in the NPSBN, FirstNet’s *Final Interpretations/Second Notice* concludes that this affirmative choice “may be manifested by a State providing either (1) actual notice in writing to FirstNet within the 90 day decision period or (2) no notice within the 90 day period established pursuant to 47 U.S.C. 1442(e)(3).”¹³⁵

48. In contrast, if a Governor chooses not to participate in the NPSBN, Section 6302(e)(3)(A) of the Act requires the Governor to “notify [FirstNet], the NTIA, and the Commission of such decision.”¹³⁶ The Act is silent, however, on exactly when and how this notice must be provided.¹³⁷

¹²⁷ *Id.*, § 6206(b)(1).

¹²⁸ *Id.*, § 6202(b).

¹²⁹ *See id.*, § 6302(e)(1).

¹³⁰ *Id.*, § 6202(b)(2)(A); The Definitions section of the Act does not contain the definition for “radio access network” and instead refers to the reader to this section (“radio access network” means the radio access network described in section 6202(b)(2)”). *Id.*, § 6001(29).

¹³¹ *Id.*, 112-96 § 6302(e)(2).

¹³² We have established a separate docket, PS Docket No. 16-269, to address our proposals with respect to the state opt-out process.

¹³³ *See* Pub. L. No. 112-96 § 6302(e)(1).

¹³⁴ *Id.*, § 6302(e)(2).

¹³⁵ First Responder Network Authority, *Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, 80 Fed. Reg. 63504, 63506 (Oct. 20, 2015) (*Final Interpretations/Second Notice*) (emphasis added).

¹³⁶ Pub. L. No. 112-96 § 6302(e)(3)(A).

¹³⁷ While the plain language of the statute imposes a deadline on the *decision* of the Governor, and then requires the Governor to notify NTIA, FirstNet, and the Commission *upon making* that decision, there is no deadline specified for when the Governor must notify these three agencies. *See id.*, § 6302(e)(2) (imposing deadline on Governor’s

(continued....)

Accordingly, in its *Second Notice*, FirstNet proposed to interpret “the requirement to issue such notice as an immediate (*i.e.* same day) requirement,” on the grounds that that “Congress did not intend to apply an artificial deadline on the Governor’s decision, and then permit an indefinite amount of time to lapse before providing [notice of] such a decision.”¹³⁸ Further, in its *Final Interpretations/Second Notice*, FirstNet clarifies its view that all relevant agencies must be notified on the same day.¹³⁹

49. With respect to the Commission’s role in the opt-out process, we tentatively agree that Congress did not intend to permit states to delay their notification to the Commission beyond the 90 days provided for states to determine whether or not to opt out. In order to implement the provisions of the Act relating to the Commission’s responsibilities for reviewing state opt-out plans, we therefore propose to codify in our rules a requirement that states electing to opt out of the NPSBN must file a notification with the Commission no later than 90 days after the date they receive electronic notice from FirstNet as provided in Section 6302(e)(2). We also propose to require that the state’s opt-out notice to the Commission certify that the state has also notified FirstNet and NTIA of its opt-out decision. We believe that this approach is consistent with the Act and FirstNet’s interpretation thereof.¹⁴⁰ We also believe that this approach appropriately treats the timeline within which Governors are required to provide notice as coextensive with the timeframe within which Section 6302(e)(2) requires them to decide whether to opt out.¹⁴¹ We seek comment on these proposals and on our rationale. We also seek comment on how such notice should be provided to the Commission. Should someone other than a state Governor, such as the Governor’s designee, be permitted to file the notice? Should the Commission establish a dedicated email address? Should notice be filed in Docket 16-269? Is there other information that should be included in the notice?

50. Upon providing notice, states that choose to opt out of FirstNet’s nationwide RAN deployment have 180 days to “develop and complete requests for proposals for the construction, maintenance, and operation of the radio access network within the State.”¹⁴² The Act also states that an opt-out state “shall submit” to the Commission an “alternative plan” for “the construction, maintenance, operation, and improvements” of the RAN within the state, but the Act does not expressly specify any deadline for doing so.¹⁴³ We seek comment on what criteria the Commission should use to determine that these requirements have been met.

51. With respect to the RFP process, we seek comment on what showing should be required for a state to demonstrate that it has “develop[ed] and complete[d]” an RFP within the 180 days required by the Act. In its *Final Interpretations*, FirstNet states that an RFP may be considered complete once a state “has progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation, and improvements of the RAN that demonstrates the technical and

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decision); § 6302(e)(3)(A) (mandating the Governor to notify the Commission, FirstNet, and NTIA “upon making” such decision).

¹³⁸ First Responder Network Authority, Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 13336, 13343 (March 13, 2015) (*Second Notice*) (emphasis added).

¹³⁹ *Final Interpretations, Second Notice*, 80 Fed. Reg. at 63506 (“ . . . the requirement within 47 U.S.C. 1442 (e)(3) stating that notice is to be provided to FirstNet, NTIA, and the FCC [is] a contemporaneous (*i.e.*, same day) requirement.”). See also Pub. L. No. 112-96 § 6302(e)(2) (containing the Act’s 90 day decision period).

¹⁴⁰ See Pub. L. No. 112-96 § 6302(e)(2) (containing the Act’s 90 day decision period); *Final Interpretations, Second Notice*, 80 Fed. Reg. at 63506 (FirstNet’s interpretation that a decision to opt in “may be manifested by a State providing either (1) actual notice in writing to FirstNet within the 90 day decision period or (2) no notice within the 90 day period established pursuant to 47 U.S.C. 1442(e)(3).”).

¹⁴¹ See Pub. L. No. 112-96 § 6302(e)(2)(containing the Act’s 90 day decision period).

¹⁴² *Id.*, § 6302(e)(3)(B).

¹⁴³ *Id.*, § 6302(e)(3)(C)(i).

interoperability requirements in accordance with 47 U.S.C. 1442(e)(3)(C)(i).¹⁴⁴ How far must a state have progressed in the RFP process to meet this standard? If the state has released an RFP but has not received bids or awarded a contract within the 180 days, should its RFP be deemed incomplete? However RFP completion is defined, we propose that if an opt-out state fails to meet this requirement within the statutory 180 day period, the consequence should be that it forfeits its right to further consideration of its opt-out application by the Commission. This is consistent with FirstNet's interpretation¹⁴⁵ and we believe it is consistent with the Act's emphasis on speed of deployment of the NPSBN.¹⁴⁶ We seek comment on this proposed approach

52. We next turn to the statutory requirement that an opt-out state provide an alternative plan to the Commission. We propose that, if a state notifies the Commission of its intention to opt out of the NPSBN, the electing state will have 180 days from the date it provides such notification to submit its alternative plan to the Commission, *i.e.*, it must submit the plan within the same timeframe applicable to completion of the state RFP. Although the Act did not specify a deadline for submission of state alternative plans, we believe that applying a single deadline to a state's completion of the RFP and submission of its state plan is consistent with the Act and with FirstNet's interpretation that an RFP may be considered complete once a state "has progressed in such a process to the extent necessary to submit an alternative plan."¹⁴⁷ With this proposed approach, we seek to balance the importance of providing states with adequate time to produce thorough and comprehensive alternative plans with the need to facilitate timely Commission review and network implementation.¹⁴⁸ Therefore, we propose to treat a state's failure to submit an alternative plan within the 180-day period as discontinuing that state's opt-out process and forfeiting of its right to further consideration if its opt-out request. We seek comment on this approach, which we believe best promotes the balanced objectives of the Act.

53. We also seek specific comment on what an opt-out state should be required to include in its alternative plan in order for the plan to be considered complete for purposes of the Commission's review. As described in greater detail in section III.C. below, our tentative view is that the plan as filed with the Commission must, at a minimum, (1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), (2) address the two interoperability requirements set forth in Sections 6302(e)(3)(C)(i)(I) and (II) of the Act, and (3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability. We seek comment on this approach. Should there be a standardized organization scheme or format for alternative plans to ease their evaluation? Should we require plans to include separate sections for each of the four RAN categories (construction, maintenance, operation, and improvements)? We also seek comment on whether we should allow a state to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission's decision. Should Commission staff be permitted to discuss or seek clarification of the alternative plan contents with the filer? If a plan is deemed sufficient for our purposes before a state awards a contract pursuant to its RFP, should we condition approval on substantial compliance with the approved plan under the awarded contract, or should this be addressed by NTIA under its "ongoing" interoperability evaluation?

¹⁴⁴ *Id.*

¹⁴⁵ *Final Interpretations, Second Notice*, 80 Fed. Reg. at 63516.

¹⁴⁶ 47 U.S.C. §§ 1426(b)(1)(C) (describing the need for use of existing infrastructure to speed deployment of the network), 1426(b)(3) (encouraging FirstNet to seek cost effective opportunities to speed deployment in rural areas).

¹⁴⁷ *See id.*

¹⁴⁸ *See e.g.*, Pub. L. No. 112-96 § 6206(b)(1)(C) (describing the need for use of existing infrastructure to speed deployment of the network); *see also e.g., id.*, § 6206 (b)(3)(encouraging FirstNet to seek cost effective opportunities to speed deployment in rural areas).

54. Additionally, we seek comment on who should have access to and the ability to comment on state alternative plans. In this regard, we seek comment on the extent to which state alternative plans may contain confidential, competitive, or sensitive information or information that implicates national security. Should state plans be treated as confidential, with public notice limited to identifying which states have elected to opt out and filed an alternative plan? Despite the possibility that state plans may include sensitive information, would a public filing requirement be feasible with appropriate safeguards, and if so, should we require such filing, and should the public be given an opportunity to comment on them?¹⁴⁹ If state plans were filed publicly, would our existing rules allowing parties to request confidential treatment for their filings provide adequate protection of sensitive information? Alternatively, given the likelihood of sensitive information and the limited scope of the Commission's review of state plans under Section 6302(e)(3)(C)(i) of the Act, should we limit the parties that are entitled to review and comment on such plans? Should we limit comment to specific issues?

55. We also seek comment on whether FirstNet should be allowed access and the ability to comment to the Commission on state plans within a defined comment period. Similarly, should NTIA be allowed a defined period to review and comment, particularly in light of its separate statutory role in reviewing state plans that are approved by the Commission? Assuming that FirstNet and NTIA are afforded a right to comment on state plans, should states have the right to respond to such comments? What rights, if any, should states have to review or comment on alternative plans submitted by other states? What other procedures are appropriate for the Commission's review of such plans? How can the Commission most appropriately ensure that it has heard all "evidence pertinent and material to the decision"?¹⁵⁰

B. Evaluation Criteria

56. Section 3(C)(ii) of the Act mandates that "upon submission of this plan, the Commission shall approve or disapprove of the plan."¹⁵¹ There is no deadline in the statute imposed upon the Commission's decision.¹⁵²

57. We propose that each alternative plan submitted to us should receive expeditious review. We thus propose to establish a "shot clock" for Commission action on alternative plans to provide a measure of certainty and expedience to the process. We seek comment on what an appropriate shot clock period would be. While we anticipate that review of individual state alternative plans could be accomplished reasonably quickly, we must also account for the possibility that the Commission may be required to review and act on multiple state plans submitted to it simultaneously, and that state plans may vary from one another based on the specific circumstances of each state. In light of these factors, would a 90-day shot clock timeframe be appropriate? Should we consider adjusting the shot clock upwards or downwards based on the number of state alternative plans that are submitted? If we allow FirstNet or others to comment on state alternative plans,¹⁵³ should the shot clock be triggered only after the comment period is complete? Should the Commission publicly announce the commencement of the shot clock period? Under what, if any, circumstances should the shot clock be suspended? We seek comment on these questions.

58. The Public Safety Spectrum Act closely circumscribes the review that the Commission is to undertake with respect to States that choose to "opt out" of the nationwide network and to build their

¹⁴⁹ We note that entities filing documents in the Commission's Electronic Comment Filing System (ECFS) may request confidential treatment for their filings under our existing rules.

¹⁵⁰ Pub. L. No. 112-96 § 6302(h)(2)(C) (standards for judicial review of Commission decision in United States District Court for the District of Columbia).

¹⁵¹ *Id.*, § 6302(e)(3)(C)(ii) (emphasis added).

¹⁵² *See id.*

¹⁵³ *See* para. 55 *supra*.

own state-wide RAN. Specifically, Section 6302(e)(3)(C)(i) states that states making a timely opt-out decision shall:

...submit an alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the State to the Commission, and such plan shall demonstrate—

- (I) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203; and
- (II) interoperability with the nationwide public safety broadband network.

In this respect, the statute provides a two-pronged standard by which the Commission must evaluate a state's submission.

59. If the Commission approves a state's alternative plan, the state must then apply to NTIA to lease spectrum capacity from FirstNet, and it may apply for NTIA grant funding if desired.¹⁵⁴ If the Commission disapproves the plan, “the construction, maintenance, operation, and improvements of the network within the State shall proceed in accordance with the plan proposed by [FirstNet].”¹⁵⁵ FirstNet interprets this statutory language as providing that if a plan “has been disapproved by the FCC, subject only to the additional review described in [the Act], the opportunity for a State to conduct its own RAN deployment . . . will be forfeited and FirstNet shall proceed in accordance with its proposed plan for that State.”¹⁵⁶ We agree with FirstNet's interpretation, and given the statutory language we believe that the Commission is barred from entertaining any amended or different alternative plan if it has issued a decision disapproving a state's alternative plan. We seek comment on this view.

60. We address below our tentative conclusions about how we should approach the two interoperability questions enumerated in Section 6302(e)(3)(C)(i) that the Commission must resolve in its review of state opt-out plans. We tentatively conclude from a review of the Act as a whole that Congress intended the scope of our review to be limited solely to these two factors. We note that within the structure of the Act, the review of opt-out requests by the Commission is only the first step in a multi-step process, and that states whose requests are approved by the Commission must go through additional review by NTIA and FirstNet.

61. Specifically, following an approval by the Commission, states “may” submit an application to NTIA for grant funding to build the state-wide RAN, and “shall” apply to NTIA to lease spectrum capacity from FirstNet. The Act then puts forward detailed standards for review by NTIA in assessing eligibility for grant funding, requiring the state to demonstrate five elements to NTIA:

- 1) that the state has the technical capabilities to operate, and the funding to support, the State radio access network;
- 2) that the state has the ability to maintain ongoing interoperability with the nationwide public safety broadband network;
- 3) that the state has the ability to complete the project within specified comparable timelines specific to the State;
- 4) the cost-effectiveness of the state plan; and

¹⁵⁴ Pub. L. No. 112-96 § 6302(e)(3)(C)(iii).

¹⁵⁵ *Id.*, § 6302(e)(3)(C)(iv).

¹⁵⁶ *Final Interpretations, Second Notice*, 80 Fed. Reg. at 63, 506; *see also* Pub. L. No. 112-96 § 6302(h) (stating that “The United States District Court for the District of Columbia shall have exclusive jurisdiction to review a decision of the Commission” to disapprove a state's alternative plan).

- 5) comparable security, coverage, and quality of service to that of the nationwide public safety network.¹⁵⁷

62. We note these statutory provisions because they highlight the clear differentiation in the standards prescribed by the Act for review of state opt-out requests by the Commission and NTIA, respectively. Given this differentiation, we do not believe that Congress intended for the agencies' reviews to be duplicative. The Act focuses the Commission's review on "interoperability," both in terms of adherence to the Board's recommendations and interoperability with the FirstNet nationwide network. On the other hand, the Act describes the scope of NTIA's review more broadly as including assessment of the state's "technical capabilities to operate" and its ability to fund the state RAN. The Act also requires states to demonstrate to NTIA that they have the ability to maintain "ongoing" interoperability with the NPSBN, as well as the "ability" to complete the project. This broader language is not present in the standards for Commission review.¹⁵⁸ Accordingly, we propose that the FCC evaluate state opt-out plans based solely on whether they comply with the requirements for interoperability at the time the plan is submitted, and that its evaluation would not extend to issues that the Act reserves for NTIA's review, such as the state's technical capabilities to operate the RAN, funding support, or the state's ability to maintain "ongoing" interoperability with the NPSBN. Thus, the Commission's approval of a state opt-out plan as meeting the interoperability criteria in Section 6302(e)(3)(C) of the Act would not create a presumption that the state plan meets any of the criteria that NTIA is responsible for evaluating under Section 6302(e)(3)(D) of the Act. We seek comment on this view.

63. We note that FirstNet has asserted that "a required aspect of a State's demonstrations of interoperability to both the FCC and NTIA under 47 U.S.C. 1442(e)(3), is a commitment to adhering to FirstNet's network policies implemented under 47 U.S.C. 1426(c)."¹⁵⁹ We tentatively agree that state alternative plans submitted to the Commission should, consistent with the scope of the Commission's review under the Act, include a showing that the state will adhere to those FirstNet network policies that relate to interoperability with respect to the FirstNet nationwide network. Congress vested FirstNet with significant responsibility, authority, and discretion and directed FirstNet to "take all actions necessary to ensure the building, deployment, and operation of the [NPSBN]." In carrying out these duties, Congress specifically charged FirstNet with establishing "network policies," including "the technical and operational requirements of the network." FirstNet has indicated that these network policies are likely to include specifications relating to how the NPSBN will support nationwide interoperability as required by the Act. We therefore believe that states seeking to opt out should be required to demonstrate to the Commission in their alternative plans that their state RANs will adhere to FirstNet's network policies relating to interoperability, to the extent that FirstNet has published such policies at the time that states submit their plans to the Commission. We seek comment on this proposal. In this respect, we note that FirstNet has indicated it "is developing an interoperability compliance matrix that will document the technical standards and network policies that will be needed to ensure interoperability of a State or Territory deployed RAN with the NPSBN, as required by the Act."¹⁶⁰ FirstNet further states that it "plans to finalize the details of the matrix once it has developed a solution with its network partner" and that it

¹⁵⁷ Pub. L. No. 112-96 § 6302(e)(3)(D)(i)-(iii).

¹⁵⁸ We also note that NITA has issued its own Notice providing states with guidance on how it will evaluate state requests to enter into a lease agreement with FirstNet and to receive funding for RAN construction under the relevant portions of the Act. *See State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network*, 81 Fed. Reg. 46907 (July 19, 2016). Comments on the NTIA Notice were due on August 18, 2016.

¹⁵⁹ *Final Interpretations, Second Notice*, 80 Fed. Reg. at 63505. FirstNet states (but does not conclude) these will likely evolve over time. *Second Notice*, 80 Fed. Reg. at 13340.

¹⁶⁰ *See* Richard Reed, FirstNet Chief Customer Officer, *FirstNet Outlines Key Steps for Development of State Plans, Interoperability Requirement* (July 8, 2016) available at <http://firstnet.gov/newsroom/blog/firstnet-outlines-key-steps-development-state-plans-interoperability-requirements>.

“will deliver the interoperability compliance matrix to the FCC, NTIA, and the States and Territories as expeditiously as possible, but no later than the time of delivery of State and Territory Plans.”¹⁶¹

64. Under Section 6302(e)(3)(C)(i) of the Act, opt-out states are responsible only for construction, maintenance, operation and improvements of the RAN within their states. We therefore propose that the Commission’s evaluation of the opt-out states’ alternative plans be limited to the RAN. In this respect, Section 6202(b)(2)(A) of the Act defines the RAN to consist of “all the cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum.” FirstNet has interpreted this definition to include “standard E-UTRAN elements (*e.g.*, the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points.”¹⁶² We seek comment on how to apply this RAN definition in our analysis and whether there are any elements of the definition that should not be considered as part of the Commission’s interoperability review.

65. We also propose to exclude certain components of the NSPBN from our review because we regard them as not included within the statutory definition of RAN as interpreted by FirstNet. For example, we note that the RAN definition does not include user equipment (UE) or devices and we therefore tentatively conclude that UE-related interoperability considerations are outside of the scope of our opt-out evaluation. We seek comment on this tentative conclusion. Similarly, we tentatively conclude that application-related interoperability considerations are outside of the scope of our opt-out evaluation. Applications usually run between UE and an application server residing in the core. While the corresponding control plane and user plane traffic typically traverses the RAN, this traffic remains transparent to the functions performed in the RAN. Thus, even though applications may play an important role in interoperability, we believe they are beyond the scope of our review because the Act limits the FCC evaluation to the RAN itself. We seek comment on this tentative conclusion.

C. Content and Review of State Plan Elements

66. As noted above, an opt-out state that has completed its RFP process is required to submit to the Commission its “alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the state.”¹⁶³ The Act requires the state’s alternative plan to demonstrate (1) that the state will be in compliance with the minimum technical interoperability requirements developed under section 6203, and (2) interoperability with the nationwide public safety broadband network.¹⁶⁴ The Act requires FirstNet to “ensur[e] nationwide standards for use and access of the network” and establish network policies that include, among other things, “the technical and operational requirements of the network” and does not provide any additional specific factors that the Commission should use to make this interoperability determination. In this section, we seek comment on those relevant aspects of our proposed review under both the first and second prongs of the statutory test.

67. We believe that Congress defined the test to ensure that state RAN plans would only be approved if they are designed to interact with the FirstNet network in a manner that supports the Act’s overarching goal of providing nationwide interoperability to first responders. In this respect, we believe that state RAN plans should not adversely impact FirstNet’s ability to plan and deploy the NSPBN and establish nationwide network standards and policies. More pointedly, we propose that any alternate plan submitted by a state that would require alteration or changes to the FirstNet network to accommodate the

¹⁶¹ *Id.*

¹⁶² See *Final Interpretations, Second Notice*, 80 Fed. Reg. at 63524.

¹⁶³ Pub. L. No. 112-96 § 6302(e)(3)(C)(i). This is the first step a state must take toward being able to opt out of FirstNet. It is not the only step. If the State passes this hurdle, it must then seek approval from to the NTIA to enter into a spectrum capacity lease, and may seek funding from NTIA.

¹⁶⁴ Pub. L. No. 112-96 § 6302(e)(3)(C)(i).

state's proposed RAN would not meet the interoperability requirement under the Act. We seek comment on this approach.

1. Compliance with the Recommendations of the Interoperability Board

68. Under the first prong of review, the Act requires state alternative plans to demonstrate “compliance” with the minimum technical interoperability requirements contained in the Interoperability Board Report. In light of the specific language of the Act defining the scope of Commission review under this prong, we propose that our review should solely address technical interoperability criteria relating to the RAN as defined in the Interoperability Board's Report.¹⁶⁵

69. Specifically, the Interoperability Board Report specified 46 recommended interoperability requirements (“SHALLs”) and an additional set of 55 recommended considerations (“SHOULDs”). Given the Act's reference to “requirements,” we tentatively conclude that only the 46 recommended requirements from the Board Report are appropriate to consider as a part of the Commission's evaluation under the first statutory prong. Moreover, since the Act limits state opt-out plans to development of state RANs, we propose to further restrict the Commission's review of state plans to their compliance with those requirements from among the 46 that are RAN-related. Specifically, we propose that our review under this prong would include requirements (1) - (3), (7) - (10), (20) - (25), (29), (39), (41) - (42) from the Board Report, as documented in Appendix B. We seek comment on this proposal. Does it include all of the relevant RAN-related requirements from the Interoperability Board Report? Are there any proposed requirements that should be eliminated or additional requirements that should be added?

2. Interoperability with the NPSBN

70. Under the second prong of Commission review, the Act requires state alternative plans to demonstrate “interoperability” with the NPSBN. Because this prong of the statute refers to interoperability with FirstNet's network, we believe it requires a broader showing by the state than the first prong, which refers only to demonstrating compliance with elements of the Interoperability Board Report. At the same time, as in the case of the first prong, we propose to interpret this prong to require a showing solely with respect to the state's compliance with those RAN-related network requirements specified by FirstNet that are necessary to ensure interoperability with the FirstNet network, and not to extend the scope of the Commission's review to issues other than such RAN-related interoperability. We also believe that the statute calls for the Commission to independently and impartially evaluate whether alternative plans comply with the interoperability-related requirements established by FirstNet, but does not empower the Commission to impose network policies or interoperability requirements on FirstNet. We propose to exercise our statutory review role in accordance with this view, and seek comment on our proposed approach.

3. Compliance demonstration (“Showing”)

71. We seek comment on what specific information a state should provide in its alternative plan to demonstrate that it will be interoperable with the FirstNet network in accordance with the two-prong statutory test. Should opt-out states certify compliance with the interoperability-related elements of FirstNet's network plan and policies? Should states provide additional documentation regarding specific elements in their alternative plans that could affect interoperability? For example, should states provide vendor information and/or a roadmap detailing the planned life-cycle of the state's proposed RAN, how the state RAN will provide for backward compatibility, and how equipment hardware/software/firmware will be evolved and phased in and out over time consistent with FirstNet's interoperability requirements? Should states submit relevant test plans to demonstrate how they intend to meet the interoperability requirements? What standards for and measurements of compliance should we adopt with respect to evaluating each element of the state's submission?

¹⁶⁵ Interoperability Board Report at 24.

72. If the Commission opts to require applicants to certify their compliance, would self-certification by the governor or his/her designee be sufficient? Under such an approach, for example, states could use the following language in their certification: “The state of [xyz] hereby certifies and affirms that its plan to construct, maintain, operate and improve the RAN within its state will comply with all the FirstNet interoperability requirements and that all information and supporting documentations that it has provided to the FCC are true and accurate to the best of its knowledge.” Another approach would be to require a third party, such as an industry association with interoperability expertise, to certify the plans. We seek comment on these alternative approaches. What would be the costs and benefits of each approach? If we required third-party certification, who would be an appropriate third party?

D. Documentation of Commission Decisions

73. Finally, we seek comment on how the Commission should document its decisions to approve or disapprove state opt-out requests under the statutory criteria. Should it issue a written decision or order explaining the basis for each decision, or would it be sufficient to provide more limited notice of approval or disapproval in each case without a detailed explanation? In this regard, we note that Section 6302(h) of the Act provides for only limited judicial review of the Commission decisions based on a showing that: (1) the decision “was procured by corruption, fraud, or undue means”; (2) there was “actual partiality of corruption”; or there was “misconduct in refusing to hear evidence pertinent and material to the decision or of any other misbehavior by which the rights of any party have been prejudiced.”¹⁶⁶ What level of documentation of the Commission’s review process is necessary to support this scope of judicial review or otherwise appropriate?

IV. PROCEDURAL MATTERS

A. Ex Parte Rules – Permit-But-Disclose

74. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁶⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Section 1.1206(b).¹⁶⁸ In proceedings governed by Section 1.49(f)¹⁶⁹ or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

¹⁶⁶ Pub. L. No. 112-96 § 6302(h)(2).

¹⁶⁷ 47 C.F.R. §§ 1.1200 *et seq.*

¹⁶⁸ 47 C.F.R. § 1.1206(b).

¹⁶⁹ 47 C.F.R. § 1.49(f).

B. Comment Period and Procedures

75. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments in PS Docket No. 16-269 on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

C. Regulatory Flexibility Analysis

76. As required by the Regulatory Flexibility Act of 1980 (RFA),¹⁷⁰ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *NPRM* portion of this document. The analysis is found in Appendix C. We request written public comment on the analysis. Comments must be filed by the same dates as listed on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

77. Pursuant to the Regulatory Flexibility Act of 1980,¹⁷¹ as amended, the Final Regulatory Flexibility Analysis of the *Report and Order* portion of this document is attached as Appendix D.

¹⁷⁰ 5 U.S.C. § 603.

¹⁷¹ *See* 5 U.S.C. § 604.

D. Paperwork Reduction Act

78. The *NPRM* portion of the document contains proposed new or modified information collection requirements. Specifically, the Commission seeks comment on the procedures that states will follow to submit to the Commission its “alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the state.”¹⁷² Additionally, the *NPRM* seeks comment on what these plans must contain and what criteria the Commission will use to evaluate the plans. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, [Public Law 104-13](#). Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before 60 days after publication of the Notice in the *Federal Register*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, we note that the *NPRM* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, [Public Law 107-198](#).

79. The *Report and Order* portion of the document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the information collection requirements contained in this proceeding. The Commission will publish a separate document in the *Federal Register* at a later date seeking these comments. However, the *Report and Order* does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.¹⁷³

E. Congressional Review Act

80. The Commission will send a copy of this document to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁷⁴

F. Further Information

81. For further information, contact Roberto Mussenden of the Public Safety and Homeland Security Bureau, Policy and Licensing Division, at (202) 418-1428, or by email to roberto.mussenden@fcc.gov.

V. ORDERING CLAUSES

82. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 301, 303, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 316, as well as Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, that this *Report and Order and Notice of Proposed Rulemaking* is hereby ADOPTED.

83. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission's Rules,

¹⁷² Pub. L. No. 112-96 § 6302(e)(3)(C)(i).

¹⁷³ See 44 U.S.C. § 3506(c)(4).

¹⁷⁴ See 5 U.S.C. § 801(a)(1)(A).

47 C.F.R. § 1.87, that the waivers permitting narrowband incumbents from deploying additional facilities on FirstNet's licensed spectrum beyond the 2007 deadline ARE TERMINATED.¹⁷⁵

84. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the Public Safety and Homeland Security Bureau SHALL MODIFY the licenses of narrowband incumbents with respect to use of spectrum licensed to FirstNet in accordance with the terms of this *Report and Order and Notice of Proposed Rulemaking*.

85. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau SHALL SEND a copy of this *Report and Order and Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷⁵ The termination of waivers and obligation of incumbents to cease further deployment in the FirstNet licensed spectrum is made effective immediately for good cause, in order to prevent further stranding of assets and facilitate prompt transition of the spectrum. See 5 U.S.C. § 553(d)(3).

APPENDIX A
Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES

Section 90.532 is amended by revising title of the subsection and the redesignating the existing text as subparagraph (a) First Responder Network Authority License and Renewal, and adding additional subsections (b) and (c) as follows:

§ 90.532 Licensing of the 758-769 MHz and 788-799 MHz Bands; State Opt-Out Election and Alternative Plans

(a) *First Responder Network Authority License and Renewal.* Pursuant to Section 6201 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012), a nationwide license for use of the 758–769 MHz and 788–799 MHz bands shall be issued to the First Responder Network Authority for an initial license term of ten years from the date of the initial issuance of the license. Prior to expiration of the term of such initial license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under the foregoing Act. A renewal license shall be for a term not to exceed ten years.

(b) *State election to opt out of the First Responder Network Authority Nationwide Network.* No later than 90 days after receipt of notice from the First Responder Network Authority under Section 6302(e)(1) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (Spectrum Act), any State governor electing to opt out and conduct its own deployment of a State radio access network pursuant to Section 6302(e)(2)(B) of the Middle Class Tax Relief and Job Creation Act of 2012 shall file a notification of its election with the Commission. Such notification shall also certify that the State has notified the First Responder Network Authority and the National Telecommunications and Information Administration of its election.

(c) *Filing of alternative state plans by states electing to opt out.* No later than 180 days after filing notice of a State’s election with the Commission under subparagraph (b) of this section, the State governor or the governor’s designee shall file an alternative plan with the Commission for the construction, maintenance, operation and improvements of the State radio access network. Such a plan shall demonstrate:

(1) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203 of the Middle Class Tax Relief and Job Creation Act of 2012; and

(2) interoperability with the nationwide public safety broadband network.

APPENDIX B**Opt-out Technical Interoperability Requirements Based on the Board Document**

The requirements in this appendix are based on the Board document “Recommended Requirements” (“SHALLs”). Requirements attributable to the NPSBN or FirstNet shall be deemed for these purposes to refer to the applicable state RAN. The numbering is based on the original Board document numbering.

- [1] Hardware and software systems comprising the NPSBN SHALL implement interfaces consistent with Table 2: Standards Implementation Methodology.
- [2] Hardware and software systems comprising the NPSBN SHALL support the interfaces enumerated in Table 1: Minimum Interoperable Interfaces.
- [3] Hardware and software systems comprising the NPSBN SHALL support management functions.
- [7] The NPSBN SHALL support IPv4, IPv6, and IPv4/v6 PDN types defined in 3GPP TS 23.401.
- [8] The NPSBN SHALL support IPv4 and/or IPv6 transport for the EPS interfaces enumerated in Table 1: Minimum Interoperable Interfaces, consistent with the FirstNet design.
- [9] Any sharing agreement that FirstNet enters into SHALL implement network sharing according to 3GPP TS 23.251 and SHALL NOT impact public safety operations.
- [10] The NPSBN SHALL include the capability to collect and convey UE location data to applications using a standardized interface in near real time.
- [20] Prior to operational deployment on the NPSBN, infrastructure equipment SHALL have passed FirstNet required Interface Conformance Testing (e.g. testing S1-MME conformance to 3GPP) on the interfaces specified by FirstNet.
- [21] Prior to operational deployment on the NPSBN, infrastructure equipment SHALL have passed FirstNet required Interoperability Testing at a system level as per the specific IOT requirements for the NPSBN.
- [22] Infrastructure deployed on the NPSBN SHALL be included in the FirstNet-required FOA process as part of the NPSBN deployment.
- [23] The equipment comprising the NPSBN SHALL provide backwards compatibility of interfaces, from time of deprecation, for a minimum of two full major release/upgrades of the network. This requirement may be waived (i.e., interface obsolescence accelerated) if FirstNet can ascertain from the user community that there are no dependencies on a given interface.
- [24] The NPSBN SHALL support user mobility across the entire NPSBN (including Opt-out states).
- [25] The NPSBN SHALL support S1 and SHALL preferentially support X2 handover between adjacent NPSBN cells (including cells owned by opt-out states) whose proximity supports a handover opportunity.
- [29] The NPSBN SHALL support the use of mobile VPN technology to support mobility between the NPSBN and other networks.
- [30] The NPSBN SHALL provide the ability for national, regional, and local applications to dynamically change a UE’s prioritization and QoS using the 3GPP ‘_Rx’ interface.
- [31] The NPSBN SHALL support all 9 QCI classes specified in table 6.1.7 of 3GPP 23.203 v9.11 or future equivalents.
- [32] QoS mechanisms in the NPSBN SHALL comply with 3GPP TS 23.203.

- [33] The NPSBN SHALL support the usage of all 15 ARP values defined in 3GPP 23.203.
- [34] The NPSBN SHALL support the ARP pre-emption capability and vulnerability functions as defined in 3GPP 23.203.
- [35] The NPSBN SHALL implement a nationwide scheme for assigning Access Classes to public safety users and secondary users following the 3GPP recommendations in TS 22.011, Section 4.2.
- [36] The NPSBN SHALL implement a nationwide scheme for assigning QoS Class Identifier priority to IP network and backhaul priority across the entire NPSBN.
- [37] The NPSBN SHALL support the use of industry standard VPN and MVPN technology, while providing priority and Quality of Service for encapsulated applications.
- [38] The NPSBN SHALL use a nationwide common security profile for user plane and control plane traffic between UEs, eNBs and MMEs, in accordance with 3GPP LTE Network Access Domain protocols. The profile SHALL be based on 3GPP TS 33.401, and will be determined by FirstNet based on a system design and other considerations as it deals with evolving cyber threats. As a minimum, the profile SHALL include specification of ciphering algorithms (for example, use of AES-128 vs. SNOW 3G).
- [39] The nationwide common security profile SHALL include ciphering of control plane traffic in order to provide for interoperable cyber protection of the network. Ciphering of user plane traffic is optional and is based on policy decisions that involve FirstNet and user agencies.
- [41] Network Domain Security SHALL be implemented in accordance with 3GPP TS 33.210, which stipulates the use of IPSec to protect IP communication between administrative domains (including all network connections used to interconnect the domains).
- [42] The NPSBN SHALL comply with TS 33.310 as the authentication framework for Public Key Infrastructure to authenticate these network interfaces.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be filed by the same dates as listed on the first page of the *NPRM* and must have a separate and distinct heading designating them as responses to this IRFA. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rules

2. The *Notice of Proposed Rulemaking (Notice)* seeks comment on proposals to implement provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (“Public Safety Spectrum Act” or “Act”)⁴ governing deployment of a nationwide public safety broadband network in the 700 MHz band.

3. The Public Safety Spectrum Act establishes the First Responder Network Authority (FirstNet) to oversee the construction and operation of this network as licensee of both the existing public safety broadband spectrum (763-769/793-799 MHz) and the spectrally adjacent D Block spectrum (758-763/788-793 MHz).⁵ The Act directs the Federal Communications Commission (FCC or Commission) to reallocate the D Block for public safety services,⁶ to license the D Block and the existing public safety broadband spectrum to FirstNet⁷ and to take other actions necessary to “facilitate the transition” of such existing spectrum to FirstNet.⁸ The Act gives each state the option to opt out of FirstNet’s RAN deployment within that state and conduct its own RAN deployment.⁹

4. Proposals in the *Notice* are intended to provide states with clarity as to what steps they must take in order to opt out of FirstNet’s RAN deployment within that state and conduct their own RAN deployment.

B. Legal Basis

5. The proposed action is authorized under pursuant to Sections 1, 4(i), 4(j), 301, 303, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 316, as well as Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

⁵ See *id.* § 6204.

⁶ See *id.* § 6101.

⁷ See *id.* § 6201(a).

⁸ See *id.* § 6201(c).

⁹ See *id.* § 6302(e)(2).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).¹³ Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes we propose in this *Notice*.

7. As an initial matter, we observe that the Public Safety Spectrum Act does not contemplate that “small governmental jurisdictions” would be directly authorized to serve as operators of their own 700 MHz public safety broadband networks. Rather, the Spectrum Act charges a single entity, FirstNet, with constructing, operating and maintaining a 700 MHz public safety broadband network on a nationwide basis.¹⁴ Accordingly, the technical service rules and other requirements the *Notice* proposes or considers for the combined 700 MHz public safety broadband spectrum—in which FirstNet will operate on a nationwide basis—will not directly affect a substantial number of small entities. The absence of a direct affect on a substantial number of small entities suggests that it is not necessary to prepare a regulatory flexibility analysis in connection with these proposed requirements.¹⁵

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. The *NPRM* seeks comment on when Governors will be required to notify FirstNet, NTIA and the Commission if they wish to opt out of the NPSB. Specifically the *NPRM* seeks comment as to whether 90 days of the date they receive notice of FirstNet’s completion of their RFP process is the appropriate timeframe. The *NPRM* also seeks comment on whether an entity other than a state Governor, such as their designee should be permitted to complete this filing requirement.

9. The *NPRM* seeks comment on whether a state will have 180 days to notify the Commission of its intention to opt out of the NPSBN and whether a state’s failure to submit an alternative plan within the 180-day period provided as a discontinuation of that state’s opt out process, and a forfeiture of its right to submit an amended or different alternative plan.

10. The *NPRM* seeks comment on whether states should be required to file their alternative plans in PS Docket No. 16-269.

11. The *NPRM* seeks comment on its proposal to limit the scope of our review of a state’s

¹⁰ 5 U.S.C. § 604(a)(3).

¹¹ 5 U.S.C. § 601(6).

¹² 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹³ 15 U.S.C. § 632.

¹⁴ See Pub. L. No. 112-96 § 6206(b). The statute contemplates that portions of the network may be deployed by State governments, see Spectrum Act § 6302(e), which are categorically excluded from the definition of “small governmental jurisdictions” for purposes of RFA.

¹⁵ See, e.g., Mid-Tex Elec. Co-op., Inc. v. F.E.R.C., 773 F.2d 327, 334 (D.C. Cir. 1985).

alternative plan to the Act's required alternative plan elements. Specifically, we propose to approve alternative plans that (1) demonstrate that the state RAN will be in compliance with the minimum technical interoperability requirements developed under section 6203 of the Act, and (2) manifest interoperability with the nationwide public safety broadband network as presently announced.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.¹⁶

13. The proposed rules will not affect any small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

14. None.

¹⁶ 5 U.S.C. § 603(c)(1)-(4).

APPENDIX D

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (NPRM)*.² The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA.³ The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴

A. Need for, and Objectives of, the Proposed Rules

2. These actions regulate the transition of different classes of incumbents now occupying portions of the spectrum to be licensed to FirstNet. These actions are based on our established authority under the Communications Act to regulate use of the spectrum consistent with the public interest, convenience and necessity and our authority under the Public Safety Spectrum Act “to take all actions necessary to facilitate the transition” of the existing public safety broadband spectrum to FirstNet.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA.

C. Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁸

5. As an initial matter, we observe that the Public Safety Spectrum Act does not contemplate that “small governmental jurisdictions” would be directly authorized to serve as operators of their own 700 MHz public safety broadband networks. Rather, the Spectrum Act charges a single entity, FirstNet, with constructing, operating and maintaining a 700 MHz public safety broadband network on a

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See *2013 Notice*, 28 FCC Rcd at 2752, Appendix B.

³ *Id.*

⁴ See 5 U.S.C. § 604.

⁵ 5 U.S.C. § 604(a)(3).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

nationwide basis.⁹ Accordingly, the technical service rules and other requirements the *Notice* proposes or considers for the combined 700 MHz public safety broadband spectrum—in which FirstNet will operate on a nationwide basis—will not directly affect a substantial number of small entities. The absence of a direct affect on a substantial number of small entities suggests that it is not necessary to prepare a regulatory flexibility analysis in connection with these proposed requirements.¹⁰

6. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.¹¹ First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.¹² In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ Nationwide, as of 2007, there were approximately 1,621,315 small organizations.¹⁴ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States.¹⁶ We estimate that, of this total, as many as 88,506 entities may qualify as “small governmental jurisdictions.”¹⁷ Thus, we estimate that most governmental jurisdictions are small.

7. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.¹⁸ Because of the vast array of public safety licensees, the Commission has not

⁹ See Spectrum Act § 6206(b). The statute contemplates that portions of the network may be deployed by State governments, see Spectrum Act § 6302(e), which are categorically excluded from the definition of “small governmental jurisdictions” for purposes of RFA.

¹⁰ See, e.g., *Mid-Tex Elec. Co-op., Inc. v. F.E.R.C.*, 773 F.2d 327, 334 (D.C. Cir. 1985).

¹¹ See 5 U.S.C. §§ 601(3)–(6).

¹² See SBA, Office of Advocacy, “Frequently Asked Questions,” web.sba.gov/faqs (last visited May 6, 2011; figures are from 2009).

¹³ 5 U.S.C. § 601(4).

¹⁴ INDEPENDENT SECTOR, *THE NEW NONPROFIT ALMANAC & DESK REFERENCE* (2010).

¹⁵ 5 U.S.C. § 601(5).

¹⁶ U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 2011*, Table 427 (2007)

¹⁷The 2007 U.S. Census data for small governmental organizations indicate that there were 89,476 “Local Governments” in 2007. (U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES 2011*, Table 428.) The criterion by which the size of such local governments is determined to be small is a population of 50,000. However, since the Census Bureau does not specifically apply that criterion, it cannot be determined with precision how many of such local governmental organizations is small. Nonetheless, the inference seems reasonable that substantial number of these governmental organizations has a population of less than 50,000. To look at Table 428 in conjunction with a related set of data in Table 429 in the Census’s Statistical Abstract of the U.S., that inference is further supported by the fact that in both Tables, many entities that may well be small are included in the 89,476 local governmental organizations, e.g. county, municipal, township and town, school district and special district entities. Measured by a criterion of a population of 50,000 many specific sub-entities in this category seem more likely than larger county-level governmental organizations to have small populations. Accordingly, of the 89,746 small governmental organizations identified in the 2007 Census, the Commission estimates that a substantial majority is small.

¹⁸ See subparts A and B of Part 90 of the Commission’s Rules, 47 C.F.R. §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under

(continued....)

developed a small business size standard specifically applicable to public safety licensees. The SBA rules contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons.¹⁹ With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services.²⁰ There are 2,442 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of May 23, 2012.²¹ We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

8. *Regional Planning Committees.* Neither the Commission nor the SBA has developed a small business size standard specifically applicable to Regional Planning Committees (RPCs) and the National Regional Planning Council (NRPC). As described by the NRPC, “[t]he National Regional Planning Council (NRPC) is an advocacy body formed in 2007 that supports public safety communications spectrum management by Regional Planning Committees (RPC) in the 700 MHz and 800 MHz NPSAC public safety spectrum as required by the Federal Communications Commission.”²² The NRPC states that “Regional Planning Committees consist of public safety volunteer spectrum planners and members that dedicate their time, in addition to the time spent in their regular positions, to coordinate spectrum efficiently and effectively for the purpose of making it available to public safety agency applicants in their respective region.”²³ There are 54 formed RPCs and one unformed RPC.²⁴ The Commission has not developed a small business size standard specifically applicable to RPCs and the NRPC. The SBA rules, however, contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons.²⁵ Under this category and size standard, we estimate that all of the RPCs and the NRPC can be considered small.

9. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises

(Continued from previous page) _____

governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

¹⁹ See 13 C.F.R. § 121.201, NAICS code 517210.

²⁰ This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change on a daily basis. We do not expect this number to be significantly smaller today. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

²¹ Based on an FCC Universal Licensing System search of May 23, 2012. Search parameters: Radio Service = PA – Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

²² See Petition for Rulemaking to allow Aircraft voice operations on Secondary Trunking Channels in the 700 MHz band, RM-11433, Comments of the National Regional Planning Council at 1 (filed July 15, 2011).

²³ *Id.*

²⁴ See <http://publicsafety.fcc.gov/pshs/public-safety-spectrum/700-MHz/rpc-map.htm>.

²⁵ See 13 C.F.R. § 121.201, NAICS code 517210.

establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”²⁶ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. According to Census bureau data for 2007, there were a total of 919 firms in this category that operated for the entire year. Of this total, 771 had less than 100 employees and 148 had more than 100 employees.²⁷ Thus, under that size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

10. Our actions will not require any reporting, recordkeeping or other compliance requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²⁸

12. Nonetheless, we recognized there may arguably be a significant number of small entities currently operating in FirstNet’s spectrum that would need relocation. Thus, one mechanism the Commission considered to minimize the economic burden on incumbent operators was to consider whether FirstNet or some third party source could fund relocation, thereby relieving any incumbent small entities of this potentially substantial economic burden. It also evaluated whether FirstNet could accommodate incumbent narrowband operations within a portion of its licensed spectrum, either indefinitely or on a transitional basis.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

13. None.

²⁶ The NAICS Code for this service 334220. See 13 C.F.R 121/201. See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=300&-ds_name=EC0731SG2&-lang=en

²⁷ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-skip=4500&-ds_name=EC0731SG3&-lang=en

²⁸ 5 U.S.C. § 603(c)(1) – (c)(4).

G. Report to Congress

14. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁹ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.³⁰

²⁹ See 5 U.S.C. § 801(a)(1)(A).

³⁰ See 5 U.S.C. § 604(b).

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269; *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.

Last month, I visited West Virginia. In Clendenin, I stood on a hill and saw homes that just weeks before were entirely underwater during a once-in-a-lifetime flood. In Clay, I visited a 911 call center at which heroic dispatchers continued to take calls and help people in need even as floodwaters entered the building and destroyed critical equipment. These were just the latest reminders that first responders in small towns across America—not just those in our largest cities—need reliable access to public safety communications.

That brings me to this *Order*. In the Spectrum Act of 2012, Congress charged the First Responder Network Authority (FirstNet) with establishing a nationwide, interoperable public safety broadband network. A nationwide network necessarily includes coverage of rural areas. Although this *Order* does not adopt a specific rule that requires FirstNet to meet rural deployment benchmarks, I'm satisfied that we have made substantial progress in this regard. The *Order* makes clear that FirstNet has a statutory duty to ensure substantial rural coverage.¹ It recognizes that FirstNet has incorporated rural coverage benchmarks into its procurement process.² And it specifically states that the FCC will monitor deployment in rural areas in order to ensure that FirstNet has met its legal obligations.³

These steps are critical to promoting public safety. Painful experience teaches us that Clay, West Virginia,⁴ Oso, Washington,⁵ and Ascension Parish, Louisiana⁶ won't be the last rural communities to need a communications lifeline in times of distress.

¹ *Order* at para. 40 (citing Spectrum Act § 6206(b)(3)).

² *Order* at paras. 40–43 (citing FirstNet's Request for Proposal (Jan. 13, 2016), available at <http://go.usa.gov/xDjcJ>).

³ *Order* at para. 45.

⁴ See WCHS8 Eyewitness News, "Clay County devastated by flooding, in desperate need of donations" (June 26, 2016), available at <http://bit.ly/2bEIUXO>.

⁵ See NBC News, "Oso Mudslide: Residents Remember Tragedy One Year Later" (Mar. 22, 2015), available at <http://nbcnews.to/2bLcXxh>.

⁶ See Weather Channel, "Nearly a Third of All Ascension Parish Homes Flooded as Levee Fails Amid Deadly Flooding" (Aug. 16, 2016), available at <http://wxch.nl/2bbldl5>.