

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012)	PS Docket No. 12-94
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s *Notice of Proposed Rulemaking*, FCC 13-31, released March 8, 2013 (“*NPRM*”), in the above-captioned proceedings concerning certain proposals to implement provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (the “Act”).¹

Founded in 1935, APCO is the nation’s oldest and largest public safety communications organization. Most APCO members are state or local government employees who manage and operate communications systems – including Public Safety Answering Points (PSAPs), dispatch centers, radio networks, and information technology – for law enforcement, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other public safety agencies. APCO is the largest FCC-certified frequency coordinator for Part 90, Public Safety

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156 (2012).

Pool channels, and appears regularly before the Commission on a wide range of public safety communications issues.

The Commission seeks comment on a number of proposals to implement provisions of the Act governing the First Responder Network Authority (“FirstNet”) nationwide public safety broadband network (“PSBN”). APCO supports the Commission’s intention to “provide a solid foundation for FirstNet’s operations, taking into account FirstNet’s need for flexibility in carrying out its statutory duties under the Public Safety Spectrum Act to establish a nationwide public safety broadband network.”² The Commission should strive to adopt a limited and appropriate set of rules of lasting nature to avoid the need to conduct additional proceedings or revisit rules in place. In this way, FirstNet and its potential public and private sector partners would have the greatest confidence possible that they can rely upon the applicable FCC rules during all aspects of network planning, construction, and operation.

Many of the questions posed by the Commission relate to technical aspects of the public safety broadband spectrum. To these questions, APCO largely defers to FirstNet, as the public safety broadband license holder. But because APCO’s membership represents significant stakeholders in the PSBN, APCO has a vested interest in ensuring the development of an effective and efficient wireless broadband network. APCO encourages the Commission to adopt technical parameters that maximize FirstNet’s ability to develop public-private partnerships concerning network design, construction, maintenance, and operation, as well as to foster a robust development environment for equipment, devices, and mobile apps. Additionally, the Commission should err on the side of adopting minimal rules that do not unnecessarily burden, restrict or inhibit interactions between FirstNet and potential private sector partners. Finally,

² *NPRM* at para. 2.

APCO notes that the Act requires network design to be based upon “commercial standards,”³ and thus further counsels the Commission to keep this statutory prerogative in mind as well as it crafts any technical rules applicable to the PSBN.

I. Technical Service Rules

Unifying Rules Under Part 90. The Act created a single, public safety broadband licensee by directing the FCC to reallocate and grant a license for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum to FirstNet. As the Commission rightly points out, rules concerning the D Block are currently in Part 27, while rules governing the existing public safety broadband spectrum generally fall under Part 90. APCO agrees with the Commission’s proposal to develop a set of unified rules for the expanded public safety broadband allocation and to remove, where possible, redundant or parallel provisions from Part 27 of the Commission’s rules.

Interference Coordination. APCO defers to FirstNet’s preferences regarding interference coordination, yet cautions the Commission to refrain from adopting any unnecessary procedures or requirements that would have the effect of introducing additional complexity on network planning with little or no corresponding benefit.

Internal Guard Bands. As APCO previously explained,⁴ Congress vested FirstNet with broad powers and responsibilities in order to manage effectively the build-out and construction of the PSBN. These powers extend to the guard bands (768-769/798-799 MHz) for the public safety broadband spectrum, which the Commission rightly included under the license issued to

³ Public Safety Spectrum Act § 6202.

⁴ *Transition Process for 700 Megahertz Public Safety Broadband Waiver Recipients*, PS Docket No. 12-94, Comments of APCO at 2 (Apr. 20, 2012).

FirstNet.⁵ The legislation makes clear that decisions concerning the use of the public safety broadband spectrum rest with FirstNet as the public safety broadband licensee. Therefore the Commission should remove the existing guard band restrictions and instead leave to FirstNet's discretion as to how to address any potential interference issues.

Equipment Certification. APCO understands the Commission's reasoning for suspending acceptance and processing of any new equipment authorizations in the public safety broadband spectrum. However, APCO urges the Commission to act swiftly to take all actions necessary to enable the equipment authorization process to re-start. APCO would support issuance of an earlier order that focuses on this matter to avoid further interruptions in the development of equipment necessary for the PSBN operations.

Federal Use and Sharing. By creating and assigning a new, single licensee for the 20 MHz of public safety broadband spectrum to FirstNet, the Act obviates the need for any reference to a "Public Safety Broadband Licensee" (PSBL) within its rules. APCO thus agrees with the Commission that Section 2.103(c) of its rules should be amended to identify FirstNet as the entity charged with administering Federal access to the entire public safety broadband spectrum. The change is consistent with providing FirstNet maximum flexibility in determining what partnerships, including with federal agencies, FirstNet may seek to cultivate with its licensed spectrum. Additionally, APCO agrees with the Commission's proposal to amend Section 90.179(g) to remove the reference to Public Safety Broadband Licensee (PSBL).

Eligibility. APCO fully supports the Commission's proposals to amend the eligibility criteria of Section 90.523 to make clear that these provisions apply only to the narrowband

⁵ Public Safety Spectrum Act § 6201(a), § 6001(14)(B), (D).

segment of the 700 MHz band. The Act otherwise clearly identifies FirstNet as the license holder for the public safety broadband spectrum.

Bringing the D Block into Part 90. APCO appreciates the Commission's focus on proposing to modify rules which, after the passage of the Act, are now outdated, including Part 27 rules and Section 1.9005(k) that applied to the D Block. APCO similarly supports the proposed rule modification to Section 90.555.

II. FirstNet License Renewal and Interference Management

The Act requires a number of reporting and consultation requirements of FirstNet. Section 6209 requires the Secretary of Commerce to ensure an annual independent audit and report of FirstNet's operations. Section 6210 directs FirstNet to submit a report to Congress containing "a comprehensive and detailed report of the operations, activities, financial condition, and accomplishments of the First Responder Network Authority." FirstNet's consultation obligations extend to federal, state, tribal and local public safety entities, the Director of NIST, the Commission, and the public safety advisory committee (PSAC) on a variety of its responsibilities under the Act.⁶

In light of all of these statutorily-mandated reporting and consultation requirements, APCO believes that the Commission will be afforded sufficient information to base a decision on renewing FirstNet's license and discharging its interference management obligations under Title III of the Communications Act. The Commission should not adopt or impose any additional license renewal criteria or reporting requirements upon FirstNet.

⁶ Section 6206(b)(1).

The Commission rightly points out that FirstNet has an independent, statutory obligation to develop RFPs to build the network, and that these RFPs must include appropriate construction timetables, including rural coverage milestones.⁷ APCO agrees with the Commission's proposal to not set specific rural coverage benchmarks or any related license conditions. FCC-specific rural coverage milestones would create potential conflicts and confusion with the statutory mandate already imposed on FirstNet, and could unduly burden FirstNet's ability to cultivate dynamic, public/private partnerships and even frustrate its ability to meet its primary statutory objectives.

III. Other Existing or Planned Operations in FirstNet's Spectrum

In a 2012 Public Notice,⁸ the Public Safety and Homeland Security Bureau asked a series of questions relating to the transition of certain waiver recipients in the 700 MHz public safety broadband spectrum which has since been assigned to FirstNet. In response, APCO argued that as the prospective licensee of the public safety broadband spectrum, and in consideration of the significant responsibilities assigned to FirstNet by the Act, FirstNet must have full discretion in addressing these waivers.⁹ APCO takes a similar position on the three classes of incumbents (narrowband, wideband and commercial) identified in the *NPRM* who currently operate in FirstNet's licensed spectrum.

The Act delegates FirstNet with comprehensive responsibilities and authorities to carry out the goals of the legislation. Accordingly, APCO defers to FirstNet on the actions it believes the Commission should take to "facilitate the transition" of the public safety broadband spectrum

⁷ *NPRM* at para. 46.

⁸ *Transition Process for 700 Megahertz Public Safety Broadband Waiver Recipients*, Public Notice, PS Docket No. 12-94 (PSHSB 2012).

⁹ Comments of APCO, PS Docket No. 12-94, at 2-3 (Apr. 20, 2012).

to FirstNet, including defining any particular mechanism for addressing incumbent users. However, APCO continues to urge that such mechanisms must provide fair and reasonable reimbursement for public safety narrowband incumbent licensees that are forced to relocate to accommodate the PSBN. The goal should be to afford FirstNet with the greatest possible range of options to address these matters, so that it can ensure the deployment of an advanced, interoperable, public safety broadband network while protecting the interests of incumbents. For example, FirstNet may determine to include the relocation needs of incumbent public safety narrowband operations as part of its request for proposals to implement the PSBN in states having such incumbent operations. FirstNet will naturally consider many factors in the development of RFPs that are specific to certain states or regions. The presence of public safety narrowband incumbents would be just one such factor.¹⁰

With respect to the Commission's questions concerning potential state opt-out choices, APCO submits that it is entirely premature to consider matters related to the opt-out provision. Many steps must occur before the opt-out provision even comes into play, and then a state desiring to opt out must overcome a number of significant showings. In any event, and consistent with APCO's position above, APCO believes that FirstNet – and not any potential opting-out state – should have the authority to determine the steps for relocation of incumbent public safety narrowband systems. Notwithstanding any potential opt-out decision, FirstNet remains the license holder of the 700 MHz broadband spectrum. After first conducting its own RFP process, FirstNet may determine that should a state choose to develop its own RFP for the construction, maintenance and operation of the radio access network (RAN) portion of the

¹⁰ In this regard, APCO notes that states have the opportunity to identify their needs with respect to existing public safety incumbent operations as part of their planning and consulting activities under the State and Local Implementation Grant Program.

nationwide PSBN, then the cost of narrowband relocation should become factored into the state's own costs or RFP process.

The pending applications for the operation of wideband systems in Wasilla, AK and Post Falls, ID should similarly be conditioned upon FirstNet's approval. Consistent with the approach APCO advocated and the Commission adopted for the waiver jurisdictions, the Commission should require these jurisdictions to pursue STAs, which would be subject to FirstNet's concurrence and any conditions within FirstNet's discretion as the license holder.

Finally, with respect to the commercial incumbent, APCO continues to defer to FirstNet's preferences. However, APCO would support Commission action permitting this license to expire under its current terms. Prior to the April 27, 2015 expiration date, the Commission could require the incumbent, as a condition of continued operations (although as the Commission points out, there are no operations), to execute a spectrum lease agreement with FirstNet pursuant to FirstNet's terms and conditions. Alternatively, the Commission could exercise its authority under the Communications Act to modify the license to convert it to STA, and require the incumbent to obtain FirstNet's approval prior to grant.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS
INTERNATIONAL, INC.

By: /s/
D. Terry Hall
President

May 24, 2013