

NTIA Notice of Proposed Rulemaking on NTIA Authority Regarding FirstNet Fees

Comments of APCO International

Docket No. 151209999-5999-01

The Association of Public-Safety Communications Officials-International, Inc. (APCO) submits the following comments in response to the above-captioned Notice of Proposed Rulemaking (NPRM) issued by the National Telecommunications and Information Administration (NTIA). NTIA is seeking comment on its review and approval of fees imposed by the First Responder Network Authority (FirstNet) as authorized by the Middle Class Tax Relief and Job Creation Act of 2012 (the Act).

Founded in 1935, APCO is the nation's oldest and largest organization of public safety communications professionals. APCO is a non-profit association with over 25,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including Public Safety Answering Points (PSAPs), dispatch centers, emergency operations centers, radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies. APCO's members are the public safety communications professionals that will be among the primary users of the nationwide public safety broadband network (NPSBN).

As an initial matter, APCO fully agrees with NTIA's approach "to execute its statutory fee review duties to afford FirstNet as much flexibility as possible to establish its business and budgetary goals and to adjust those goals as necessary to respond to the day-to-day realities of the broader competitive marketplace in which FirstNet must operate."¹ Implementing a mission-critical network that meets public safety's needs will be a significant task for FirstNet and its partners. FirstNet must be able to move quickly. Thus NTIA has adopted the right perspective when stating its intent "to implement a fee review process that allows FirstNet to respond to changing market conditions and the demands of its vital and dynamic customer base: First responders."²

Throughout the NPRM, NTIA also correctly adheres to the Act's clear and limited directives with respect to its responsibilities concerning the fees assessed by FirstNet. APCO agrees with NTIA's proposal "to define the term 'fee,' for purposes of its statutory obligations under Section 6208(c) of the Act, to mean FirstNet's direct collection of money that is generated from the three categories established in Section 6208(a) of the Act: (1) Network user fees; (2) lease fees pursuant to a covered leasing agreement (CLA); and (3) fees from entities seeking access to or use of any network equipment

¹ 80 Fed. Reg. 77592, 77593 (Dec. 15, 2015).

² *Id.* APCO agrees with NTIA that FirstNet "will need the flexibility over the course of a fiscal year to adjust specific fees it wishes to assess" and thus supports NTIA's intent to "empower FirstNet with the flexibility needed to compete in the marketplace." *Id.* at 77595.

or infrastructure constructed or otherwise owned by FirstNet.”³ NTIA is limited by the Act to consider these three categories only.⁴

NTIA properly proposes a straight-forward approach to carrying out its responsibility under Section 6208(c). APCO agrees that “the Act’s purpose for the fee review is *solely to support FirstNet’s obligation* under Section 6208(b) to be self-funding.”⁵ In other words, NTIA is to annually review the fees assessed by FirstNet, and approve such fees if, in aggregate and combined with other non-fee-based income, they are sufficient, but not in excess, of what’s projected as necessary to carry out FirstNet’s obligations for a given year.⁶ Thus, NTIA correctly delineates its responsibility by proposing that it “not assess whether individual or total fees in any given category described in Section 6208(a) are reasonable, proportionate, or otherwise subjectively appropriate in light of individual or total fees in that category, or any other category of fees listed in Section 6208(a),”⁷ and “not analyze the terms and conditions of any CLA, or any other agreement between FirstNet and another entity, beyond those specific terms and conditions which establish any fees that meet the three categories described in Section 6208(a).”⁸ As NTIA points out, other sections of the Act subject FirstNet to substantial oversight and transparency requirements.⁹ The Act makes clear that the scope of NTIA’s review under the Act is distinct and narrow by comparison.

Finally, APCO supports NTIA’s proposal “to defer to FirstNet on any need for reserves, working capital, or similar fund categories.”¹⁰ NTIA rightly points out that “[t]o be successful, FirstNet will need to employ business strategies with flexibility and agility commonplace in the private sector.”¹¹ This means that FirstNet must be free to exercise its discretion to take such financial measures as it needs to fulfill its important responsibility to deliver an advanced, interoperable, nationwide public safety broadband network. As proposed, and consistent with the Act, NTIA should “not, in its fee review and approval process, assess whether or what level of funds FirstNet should maintain in reserves, capital accounts, or other funding categories.”¹²

³ *Id.* at 77594 (citing 47 U.S.C. § 1428(a)).

⁴ *Id.* at 77596.

⁵ *Id.* at 77595 (emphasis added).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 77596. NTIA is correct that in order to carry out its statutory responsibility, it must consider other income separate and distinct from fees assessed by FirstNet. Importantly, and as NTIA also proposes, NTIA otherwise has no authority to review or approve any other form of income. *Id.*

⁹ *Id.* at 77594 (citing 47 U.S.C. § 1429 (requiring the Secretary of Commerce to contract with an independent auditor to conduct an annual financial audit and submit a report of each audit to Congress, the President, and FirstNet); § 1430 (requiring FirstNet to submit an annual, comprehensive report to Congress)).

¹⁰ *Id.* at 77593.

¹¹ *Id.*

¹² *Id.* at 77596.

CONCLUSION

For the reasons stated above, APCO supports NTIA's proposals to carry out its limited responsibility under the Act to review fees that the Act authorizes FirstNet to assess.

Respectfully submitted,

APCO International

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January 14, 2016