

**Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C. 20230**

<i>In the Matter of the</i>)	
)	
Proposed Scope of NTIA's Authority)	Docket No. 151209999-5999-01
Regarding FirstNet Fees)	
)	

COMMENT'S OF THE COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania ("Pennsylvania") submits these comment's and welcomes the opportunity to respond to the National Telecommunications and Information Administration ("NTIA"), U.S. Department of Commerce's Notice and Request for Comment ("Notice"). The Notice seeks comment on rules "related to 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 ("Act")."¹

Pennsylvania welcomes the opportunity to participate in this proceeding that will impact the future deployment of the national public safety broadband network ("NPSBN"). This Notice is a significant step towards meeting the 9/11 Commission's recommendation to build an interoperable NPSBN for our nation's first responders. There is a need today for our nation's first responders to have interoperable network that can seamlessly roam across public safety networks, as well as their commercial network partners at a just and reasonable rate to public safety and other potential users of the network.

¹ Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156 (2012)(Act); see Department of Commerce, NTIA, Docket No. 151209999-5999-01, *Proposed Scope of NTIA's Authority Regarding FirstNet Fees*, Fed. Reg. Vol. 80, No. 240, 77592 (December 15, 2015)(*Notice*).

I. NTIA's Authority under Section 6208(c) of the Act

At the outset, we agree that NTIA has the authority to review the fees assessed under Section 6208(c) of the Act "on an annual basis, and such fees may only be assessed if approved by NTIA."² We, however, note that the Notice does not address the fees associated with a potential State opt-out of the FirstNet NPSBN. What, if any, is NTIA's role in approving fees in a State opt-out scenario? In addition, we believe that the States should be included in the process of setting and reviewing "just and reasonable" fees under Section 6208.

We also agree that the Act allows FirstNet to consider public/private partnerships and such contractual partnerships may result in the collection of fees that are unspecified in Section 6208(a).³ We believe that these fees fall outside of NTIA's review and approval process under Section 6208(c), but should be considered in FirstNet's operating budget.

In addition, FirstNet's draft request for proposal ("RFP") potentially allows its industry partner to assess and collect network user fees. In this case, what is NTIA's role in approving fees in a public/private partnership where FirstNet would not directly administer and collect the fees? Would NTIA audit the direct payments to FirstNet and not the indirect fees that are assessed on the users? Moreover, "NTIA proposes 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." The Act does not define the term "fee," so we seek clarification of this phrase given FirstNet's guidance in the draft RFP.

² See Act at Section 6208(c); 47 U.S.C. §1428(c).

³ *Id.* at Section 6208(a); 47 U.S.C. §1428(a).

II. Standard of NTIA Fee Review and Approval

Pennsylvania agrees that the Act does not provide a specific standard for NTIA to review and approve FirstNet's fees on an annual basis. NTIA's proposal to review and approve under Section 6208(c) based on FirstNet's projected income and expenses in order to self-fund the network is appropriate. We believe that ensuring that the fees generated by the NPSBN will be used to self-fund the network is essential to the success of the NPSBN.

Section 6208(b) of the Act requires recouping "the total expenses of the First Responder Network Authority." We seek further clarification from NTIA of what the "total expenses" would include. In addition, Pennsylvania also seeks a definition of what the exact costs that "user fees" are expected to cover. We, however, point out that financially breaking even during construction of the network will be difficult, if not impossible for FirstNet to achieve. FirstNet is a public/private public safety telecom provider that must initially sign-up customers and it is unreasonable to expect customer revenues with yearly expenses to break even while only a portion of the network has been constructed. We believe that FirstNet should have the maximum flexibility in the early stages of the build-out to ensure competitive pricing and service which will result in the highest possible customer adoption.

In determining FirstNet's anticipated expenses, "among the specific costs areas that NTIA may consider are: (1) Salaries and Benefits;(2) Travel; (3) Services: Federal Sources;(4) Services: Non-Federal Sources; (5) Facilities Rental; (6) Supplies, Materials, and Printing; (7) Equipment; and (8) Other expenses or obligations incurred for future contract award, capital reserves, or other permitted expenses or obligations." We reiterate that NTIA's primary focus in approving FirstNet fees should be ensuring network sustainability. In addition, we have

concerns with the phrase "among the specific costs areas" as opposed to what the "specific cost areas are." "Among the specific cost areas" is overly broad and vague; NTIA should provide specific cost areas in its methodology to provide certainty to FirstNet.

Further, Pennsylvania contends that the methodology created by NTIA to "review and approve" FirstNet fees should include input from the States. State involvement is essential to ensuring that FirstNet fees are "just and reasonable" and that the NPSBN is sustainable given the considerable amount of capital investment to build-out the network within the States.

III. NTIA's Fee Review and Approval Process on Necessary Reserves

NTIA seeks comment on its proposal that it will consider "reserve funds at the levels designated in FirstNet's budget, to determine whether FirstNet's proposed fees meet but not exceed FirstNet's total expenses." NTIA plans to deem such funds to be a part of FirstNet's projected total expenses under Section 6208(b) of the Act. The Act does not define "total expenses" or "reserve funds" and how they are related to overall revenue. FirstNet we believe must define "total expenses" and "reserve funds" in accordance with Section 6208 of the Act.

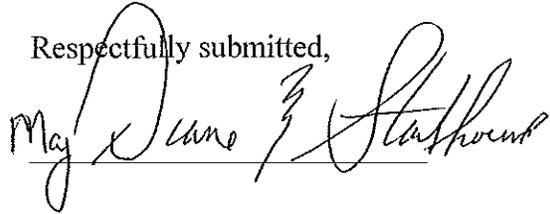
IV. Fees Subject to NTIA Review

We believe that NTIA need not determine the meaning of the term "fee" under Section 6208 of the Act. We agree that the "three sets of fees, which FirstNet may assess, and which NTIA must review if assessed, are clearly defined within Section 6208(a)." Thus, NTIA will review and approve "under Section 6208(c) FirstNet's collection of money that falls within the three categories in Section 6208(a): (1) Network user fees; (2) lease fees related to network capacity, pursuant to a covered leasing agreement; and (3) fees from entities seeking access to or use of any equipment or infrastructure constructed or otherwise owned by FirstNet."

V. **Conclusion**

For the reasons set forth herein, we urge NTIA to interpret Section 6208 of the Act consistent with our comments, so that future forthcoming proposals, interpretative rules, and network policies will reflect Pennsylvania's interpretation of the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Major Diane M. Stackhouse". The signature is written in a cursive style and is positioned above a horizontal line.

Major Diane M. Stackhouse

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