

Comments of the State of Washington

First Responder Network Authority: Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012

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Introduction

1. The State of Washington provides these comments in response to the First Responder Network Authority's ("FirstNet") Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012 ("*Third Notice*"). These comments are prepared by Washington's Office of the Chief Information Officer ("OCIO"). The Washington Chief Information Officer ("CIO"), under the Revised Code of Washington ("RCW") Title 43.41A.080¹ is charged to support and staff the Washington State Interoperability Executive Committee ("SIEC"). Washington Governor Jay Inslee designated the SIEC and its Chair, Bill Schrier, as the FirstNet State Point of Contact ("SPOC").
2. The word "Washington", when used in these comments, refers to the State of Washington, not the national capital, Washington, D.C. The word "responder", when used in these comments, refers to any individual or agency authorized to use the FirstNet-licensed Band 14 spectrum to protect the safety of the public. The term "first responder", when used in these comments, refers to entities and organizations providing law enforcement, firefighting, emergency medical and public-safety answering point (PSAP) services for local, state, tribal or federal governments or private companies. The term "network", unless otherwise qualified, refers to the Nationwide Public Safety wireless Broadband Network (NPSBN) which FirstNet is authorized by Congress to deploy.
3. FirstNet requested, in this *Third Notice*, comments on its proposed interpretation of several portions of the Middle Class Tax Relief and Job Creation Act of 2012² ("the Act") which created the First Responder Network Authority (FirstNet) and which directs and constrains its authority and actions.

Consultation with States is a Primary Requirement for Selection of Allowable Users.

4. The State of Washington agrees that FirstNet has an obligation to consult with regional, State, tribal, and local jurisdictions regarding the "assignment of priority and selection of

¹ RCW establishing the SIEC under the authority of the CIO:

<http://app.leg.wa.gov/rcw/default.aspx?cite=43.41A.080>

² Public Law 112-96 - <http://www.gpo.gov/fdsys/pkg/PLAW-112publ96/pdf/PLAW-112publ96.pdf>

entities seeking access to or use of the [network].”³ Indeed, this obligation supersedes almost all other considerations as to which entities and responders will be allowed to use the network in Washington or any other state.

5. FirstNet consultation with States is an extremely serious matter. After FirstNet delivers a State Plan, each Governor will make a decision about allowing FirstNet to proceed with deployment in a state, or, alternatively, to proceed with deployment of a state public safety wireless broadband radio access network (RAN). A primary consideration in this decision will be which entities and responders are allowed to use the network under the FirstNet-proposed State Plan. A Governor will rely heavily upon the advice of the State Interoperability Executive Committee and the heads of public safety entities (Fire Chiefs, Police Chiefs, etc.) in making this decision. If such Chiefs, and their respective elected officials (Mayors, County Executives, County Commissioners, City Council members and so forth) do not feel FirstNet has adequately consulted and respected their opinions in the matter of allowable users, it will be difficult for the Governor to “opt in” to the FirstNet State Plan.
6. Washington agrees with FirstNet’s interpretation FirstNet may, *after consultation with each State* “decide to narrow the scope of users it actually serves relative to those it can legally serve.”⁴ Washington explicitly added the phrase “after consultation with each state” to FirstNet’s interpretation stated in the *Third Notice*.

Allowable Users

7. In the *Third Notice*, FirstNet cites two sources for its interpretation of who might be allowed to use the network. The *Third Notice* states the term “public safety services”: (A) has the meaning given the term in section 337(f) of the Communications Act of 1934; and (B) includes services provided by emergency response providers, as that term is defined in the Homeland Security Act⁵. Washington agrees with FirstNet’s interpretation that these two sources constitute a combined list of potentially allowable users. Washington agrees with FirstNet that users allowed under (B) are not lesser than or necessarily subordinate to (A), and that both Federal responders and non-governmental responders such as hospital emergency services, which are included in (B) but not (A) should potentially be allowable users of the First Responder Network.
8. Washington explicitly rejects the idea that the only allowable users for FirstNet are entities whose “primary mission” is “the sole or principal purpose of which is to protect the

³ 47 U.S.C. § 1426(c)(2)(A)(vi)

⁴ 79 Fed. Reg. 57060 (September 24, 2014)

⁵ 47 U.S.C. § 1401(27)

safety of life, health or property”. Washington believes entities which sometimes perform public safety functions are potentially allowable users of FirstNet. Such entities might be citizens who are volunteer firefighters or search-and-rescue workers, utilities, transportation, transit, public works, construction equipment operators, tow truck operators, street and highway workers and sanitation workers. These workers can be important responders during certain kinds of incidents and after most disasters. However, again, the final interpretation of allowable users in the State of Washington must be determined through the state consultation process (see paragraph 4 above).

Entire Entities or Responder Groups within a larger Entity

9. In the *Third Notice*, FirstNet goes through an extensive parsing of the various laws and Acts defining public safety services, attempting to answer the question whether an individual or group smaller than the whole “entity” or “organization” can provide qualifying services and thus constitute public safety entities under the Act.

“Under this refined preliminary interpretation, however, where an organization as a whole, such as a private utility, is not charged with providing public safety services, the entire organization would not necessarily qualify as a public safety entity. The extent to which the individuals or subgroups within the organization providing public safety services would qualify, or whether such individuals or subgroups are always permitted on the network, would be determined within FirstNet policies based on, among other factors, the advantages to the public and public safety of having such individuals always supported by and accessible on the network, the impact on FirstNet’s financial sustainability as required by the Act and our consultations under the Act with the FirstNet Public Safety Advisory Committee, local first responders, and local jurisdictions⁶.”

10. Washington generally agrees with this statement, although we caution against expanding the definition of allowable users merely to increase the number of users and devices using the NPSBN, thereby contributing user fees and improving Firstnet’s financial sustainability.
11. However there are many examples where an entire organization – not just the first responders in that organization – should have access to NPSBN. For example, a Parks Department may have park rangers which perform law enforcement duties within the larger Department. Other personnel in the Parks Department provide a number of other recreational activities such as building and lawn maintenance, administration, beach lifeguarding and so forth. As another example, a Fish and Wildlife Department may have a relatively small group of law enforcement officers who enforce fishing and hunting laws, while most of the department might be administrators, scientists or researchers. Washington agrees that a public safety entity *could*

⁶ *Third Notice*.

just constitute the specific individuals or groups within such departments who perform traditional first responder activities such as law enforcement or work as lifeguards.

12. However Washington believes such an interpretation to be much too narrow and would argue that virtually all individuals in such organizations may be allowable network users. Research scientists of a Fish and Wildlife Department, working in the field, might very well observe public safety issues and incidents and need access to FirstNet to report such incidents. Such incidents could be dumping of hazardous materials into a stream or individuals with firearms performing criminal acts. Most employees of Fish and Wildlife operate in remote field locations which rarely have access to wireless broadband or even cellular networks, placing them at considerable risk when doing their activities.
13. Washington further argues that elected officials and their staff who oversee public safety entities and emergency response (among other, non-public safety duties), also need access to FirstNet, even though their public safety duties may constitute only a small fraction of their overall responsibilities. Nevertheless such individuals and groups can be critical to response during disasters or even relatively minor incidents such as major traffic disruptions on a jammed freeway. As such, Washington argues FirstNet should broadly interpret its authorizing statutes in determining allowable users, always subject to consultation with the states.

Recommendation for Further Research

14. However, such broad interpretations of allowable users may, if implemented upon FirstNet's deployment, have deleterious effects on the NPSBN. As one example, such a wide set of users could reduce the number of users of commercial networks, reducing those networks' viability in serving consumer and business customers. Such a wide set of users could also take precious NPSBN bandwidth for use in routine, non-public-safety work such as transmission of scientific data or routine maintenance of highways and public works. Washington does not believe it was necessarily Congress' intent in the Act to allow such widespread and routine use. FirstNet, working with other organizations such as the Public Safety Communications Research (PSCR) Division of the National Institute of Standards and Technology (NIST) may wish to explore technology solutions to this dilemma.
15. One example is high school teachers. Most teachers are involved in life-safety issues on an occasional, but not routine basis. They may break up hallway fights and arguments which might escalate into incidents where students or teachers are physically harmed. Teachers may be involved in school-wide lockdowns. In such cases it certainly would be helpful for teacher smart phones or tablet computers to have FirstNet capability and access to Band 14, even though the devices are normally connected only to commercial wireless networks. Such band 14 access could be initiated by the individual teacher, or it might be activated on a campus-wide basis for all faculty by a responding fire battalion

chief or police commander. In such cases the teachers and responders could communicate on secure channels using both voice and data. These capabilities – either as network service or apps – would appear to be quite useful to public safety. Exploration of such capabilities might be a fit topic for exploration by PSCR or NIST using their research funds and capabilities.

16. Washington agrees with FirstNet’s conclusion that many kinds of entities may be allowable users, as listed in the *Third Notice*, for example, animal control functions, transportation departments, public and private electric utilities, public works departments, public health departments and hospital emergency rooms, non-governmental emergency support organizations such as the Red Cross and Salvation Army. Washington also notes the many private companies such as Boeing and oil refinery companies operate their own police and fire departments which departments (although not the companies as a whole) are also allowable users.
17. Washington further agrees that traditional first responder entities, and authorized local and state elected officials, may further authorize other functions or departments to use the NPSBN in support of their public safety activities. Examples include tow-truck companies removing vehicles blocking roadways and private ambulance companies.
18. The State of Washington strongly supports the concept of a wireless broadband network for responders, with priority to first responders. Washington emphasizes the need for officials at FirstNet, the FCC, NTIA and Congress to understand that a “first responder” can be almost anyone. Teachers can be first responders⁷. Citizens with first aid training can be first responders. Many, many citizens actively work as first responders by becoming search-and-rescue volunteers, joining volunteer fire departments, and joining the National Guard or Armed Forces Reserve. While such individuals would not fall under the “allowable users” for the NPSBN, FirstNet and the States might consider how they could become users when faced with becoming a First Responder (paragraphs 14 and 15 above).

Conclusion

19. Washington strongly believes in the need for collaboration between local and state responders, state governments and FirstNet in order to achieve the goals and provisions of the Act. Far beyond the Governor’s opt-in/out decision, the

⁷ A teacher at North Thurston High School in Washington tackled and subdued a shooter on April 27, 2015: <http://www.nbcnews.com/news/us-news/teacher-tackles-shooter-washington-high-school-no-injuries-reported-n349066>

ultimate success of FirstNet depends upon individual public safety entities “opting in” and adopting the nationwide public safety wireless broadband network. Interpretations of the Act which emphasize the legal authority of federal entities over such collaboration will have difficulty in achieving that goal.