



This document is scheduled to be published in the Federal Register on 09/16/2016 and available online at <https://federalregister.gov/d/2016-22361>, and on FDsys.gov

6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket Nos. 12-94, 06-229, 06-150; FCC 16-117]

Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) 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. 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.

DATES: Effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PS Docket No. 12-94, FCC 16-117, adopted on August 24, 2016 and released on August 25, 2016. The document is available for download at

http://fjallfoss.fcc.gov/edocs_public/. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. 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).

1. In 2013, the Commission's Notice of Proposed Rulemaking (NPRM) sought comment on implementation of certain provisions of the Public Safety Spectrum Act, including how to relocate narrowband 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.

2. In the Report and Order, the Commission permits narrowband 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. In addition, the Commission prohibits continued operation by incumbents that have either previously discontinued operations or that are no longer in operation after the effective date of the Report and Order, and prohibits all narrowband incumbents from deploying additional facilities on FirstNet's licensed spectrum beyond those currently deployed as of the adoption date of the Report and Order. Accordingly, as of the adoption date of the Report and Order, the Commission terminates all authority to initiate new deployments

pursuant to waivers previously granted by the Commission or Bureau, which had authorized deployment beyond the 2007 deadline.

3. The Commission states specifies that under existing rules, any TV studio-transmitter links, TV relay stations, and TV translator relay stations operating on the FirstNet spectrum under Part 74, subpart G of the Commission's rules must cease operations within 120 days of receiving notice from FirstNet.

4. The Commission concludes that there is no need or legal basis at this time for it to play a role in resolving disputes between FirstNet and incumbent licensees over relocation costs. The Commission also finds 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.

Procedural Matters

A. Final Regulatory Flexibility Analysis

5. The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix D of the Report and Order.

B. Paperwork Reduction Act of 1995 Analysis

6. The Report and Order document does not contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the NPRM of this proceeding. The

Commission sought written public comment on the IRFA. The RFA requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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). The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

8. In the Report and Order, we 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

9. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

10. 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 proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 SBA.

11. 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. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. 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." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. 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." Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as "small

governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

12. Public Safety Radio Licensees. As a general matter, Public Safety Radio Licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. For the purpose of determining whether a Public Safety Radio Licensee is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. 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. There are 2,442 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of May 23, 2012. We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

13. 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 NPSPAC public safety spectrum as required by the Federal Communications Commission.” 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.” There are 54 formed RPCs and one unformed RPC. 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. Under this category and size standard, we estimate that all of the RPCs and the NRPC can be considered small.

14. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises 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.” 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 fewer than 100 employees and 148 had

more than 100 employees. Thus, under that size standard, the majority of firms can be considered small.

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

15. 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

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching 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 or 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.

17. 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

18. None.

G. Report to Congress

19. The Commission will not send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the Commission did not adopt any rules of particular applicability.

Ordering Clauses

20. Accordingly, IT IS ORDERED that, 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. 112-96, 126 Stat. 156, the Report and Order IS HEREBY ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION.

Gloria J. Miles,
Federal Register Liaison Officer.
Office of the Secretary.

[FR Doc. 2016-22361 Filed: 9/15/2016 8:45 am; Publication Date: 9/16/2016]