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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 16-269; FCC 17-75]

Procedures for Commission Review of State Opt-Out Request from the FirstNet Radio Access Network

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. The Report and Order adopts procedures for administering the state opt-out process as provided under the Public Safety Spectrum Act, as well delineating the specific standards by which the Commission will evaluate state opt-out applications.

DATES: Effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for § 90.532(b) and (c), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the Federal Register announcing the effective date for those sections.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection

requirements contained herein should be submitted to Nicole Ongele at (202) 418-2991.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-1428. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Nicole Ongele at 202-418-2991, or send an email to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PS Docket No. 16-269; FCC 17-75, adopted and released on June 22, 2016. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554 and can be downloaded at https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-75A1.pdf.

In 2016, the Commission's Notice of Proposed Rulemaking (NPRM), 81 FR 64825, September 21, 2016, sought comment sought comment on implementation of the opt-out review process to be conducted by the Commission, pursuant to certain provisions of the Public Safety Spectrum Act. These included: the procedures and timing for states to notify FirstNet, NTIA, and the Commission of their opt-out elections, completing their RFPs, and for filing their alternative state plans with the Commission; the Commission review process, including timing, defining the scope of participation by interested parties, and treatment of confidential information; what criteria that Commission will use in evaluating alternative state plans; what elements states should include in their alternative state plans to demonstrate compliance with the relevant statutory criteria; and how the

Commission's decisions to approve or disapprove alternative state plans will be documented.

In the Report and Order, the Commission finds that the 90-day period states have to inform the Commission of its opt-out decision shall commence when a state has received statutory "notice" from FirstNet of the final plan for that state. The Commission also finds that within 180 days of providing its opt-out notice to the Commission, a state must have (1) issued an RFP providing for full deployment of the state RAN (i.e., the RFP must cover the actual network build, not merely development of a plan) and (2) received firm commitment bids on the RFP and selected a winning bidder. A state has 240 days from the opt-out notification date to file its alternative plan with the Commission.

The Commission specifies that Plans filed with the Commission must, at a minimum, (1) address the four general subject areas identified in the Act (construction, maintenance, operation, and improvements of the state RAN), (2) address the two interoperability requirements set forth in sections 6302(e)(3)(C)(i)(I) and (II) of the Act, and (3) specifically address all of the requirements of the Technical Advisory Board for First Responder Interoperability.

The Commission will treat each state opt-out application as a separate restricted proceeding under our rules. The parties to these proceedings will initially include the state filing the application, FirstNet, and NTIA. Other persons or entities seeking to participate in a proceeding may petition the Commission for leave to intervene based on a demonstrated showing of interest. The Commission further imposes a 90-day aspirational shot clock upon itself for Commission action on a properly filed alternative plan.

The Commission will confine its review to the RAN elements of state alternative plans, which it defines as all the cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum including standard E-UTRAN elements (e.g., the eNodeB) and including, but not limited to, backhaul to FirstNet designated consolidation points.

Finally the Commission states that the full Commission will issue a separate Order for each opt-out request. Each order will provide a brief explanation of the Commission's decision based on the statutory criteria as applied to the information submitted in the record.

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In this present document, we have assessed the effects of state opt-out procedures and find that they have no effect on businesses with fewer than 25 employees.

The Commission sent a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Common carriers, Radio, Reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90---PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

2. Section 90.532 is amended by revising the section heading, designating the undesignated paragraph as paragraph (a), adding a paragraph heading to newly designated paragraph (a), and adding paragraphs (b) through (f) to read as follows:

§ 90.532 Licensing of the 758-769 MHz and 788-799 MHz Bands; State opt-out election and alternative plans.

(a) First Responder Network Authority license and renewal. * * *

(b) State election to opt out of the First Responder Network Authority Nationwide Network. No later than 90 days after receipt of notice from the First Responder Network Authority under section 6302(e)(1) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (Spectrum Act), any State Governor or the Governor's designee shall file with the Commission a notification of the Governor's election to opt out and conduct its own deployment of a State radio access network pursuant to section 6302(e)(2)(B) of the Middle Class Tax Relief and Job Creation Act of 2012. This notification shall be sent to a dedicated e-mail address specified by the

Commission or via certified mail to the Secretary's office. At the conclusion of the opt-out notification period, the Public Safety and Homeland Security Bureau shall issue one or more Public Notices denoting which states have elected to opt out. In addition:

(1) Such notification shall also certify that the State has notified the First Responder Network Authority and the National Telecommunications and Information Administration of its election.

(2) If such notice is filed by the Governor's designee, it shall include memorialization of the Governor's delegation of authority in writing with the notice.

(c) Petitions for leave to intervene. Entities other than the First Responder Network Authority, the National Telecommunications and Information Administration, and the relevant state may petition the Commission for leave to intervene. Such a petition must be made within 30 days of the Public Notice issued in conformance with paragraph (b) of this section. The petition must note the specific plan on which the filer wishes to comment and clearly detail the filer's interest in the proceeding. This includes an explanation of the filer's interest in the outcome of the particular state's application, as well as an explanation of how the filer's interests are not otherwise represented by the state, FirstNet, or NTIA, or how its participation would otherwise aid the Commission in a full evaluation of the facts.

(d) Filing of alternative state plans by states electing to opt out. No later than 240 days after filing notice of a State's election with the Commission under paragraph (b) of this section, the State Governor or the Governor's designee shall file an alternative plan with the Commission for the construction, maintenance, operation, and improvements of the State radio access network. Alternative plans may be sent to a dedicated e-mail address specified by the Commission or via certified mail to the Office of the Secretary.

(e) Contents of alternative state plans. An alternative state plan shall include:

(1) An interoperability showing, demonstrating:

(i) Compliance with the minimum technical interoperability requirements developed under section 6203 of the Middle Class Tax Relief and Job Creation Act of 2012; and

(ii) Interoperability with the nationwide public safety broadband network.

(2) Certifications by the State Governor or the Governor's designee, attesting:

(i) Adherence to FirstNet network policies identified by FirstNet as relating to technical interoperability; and

(ii) Completion of the state's request for proposal within 180 days of receipt of notice of the State Plan furnished by the First Responder Network Authority. Such certification may only be made if the state has:

(A) Issued a request for proposal for the state's Radio Access Network;

(B) Received bids for such network; and

(C) Selected a vendor(s).

(f) Commenting on alternative state plans. Within 10 business days of the submission of an alternative state plan the Public Safety and Homeland Security Bureau shall determine whether the plan is acceptable for filing under the criteria set forth under paragraphs (d) and (e) of this section. The Bureau shall issue a Public Notice identifying each plan that has been accepted for filing and initiating an abbreviated comment cycle.

(1) The First Responder Network Authority, the National Telecommunications and Information Administration, and any entity granted party status under paragraph (c) of this section may file comments within 15 days of the issuance of the Public Notice set forth in this paragraph (f).

(2) The relevant state may file reply comments within 30 days of the issuance of the Public Notice set forth in this paragraph (f).

(3) States can file the plans, and those granted party status to each proceeding may file comments on the plan, in the specified state docket via a dedicated e-mail address specified by the Commission or via certified mail to the Office of the Secretary.

[FR Doc. 2017-21596 Filed: 10/5/2017 8:45 am; Publication Date: 10/6/2017]