

FirstNet Releases Third Public Notice Seeking Comment On The Scope Of "Public Safety Entity"

April 27, 2015

On April 24, 2015, the First Responder Network Authority (FirstNet) Board released a Third Public Notice (Third Notice) seeking further comment on its proposed interpretation of the term "public safety entity," as defined by FirstNet's enabling legislation, the Middle Class Tax Relief and Job Creation Act of 2012 (the Act). The Third Notice comes as FirstNet, an independent entity housed within the National Telecommunications and Information Administration (NTIA), moves forward with the release of a Special Notice seeking public input on a draft Request for Proposals (RFP) detailing the framework for FirstNet's acquisition approach to build, deploy, and operate a high-speed, nationwide network dedicated to public safety.

Under the Act, public safety entities are entitled to primary and direct access to FirstNet's nationwide network. In September 2014, FirstNet released a First Public Notice (First Notice) interpreting the term "public safety entity" broadly. The First Notice concluded that as long as an entity provided a non-*de minimis* amount of public safety services, it would qualify as a public safety entity. Some commenters responded with concern that FirstNet had interpreted the term too broadly to include entities that should not be given primary access to the network, while others expressed support.

Noting the divergent views on FirstNet's interpretation, the Third Notice seeks comment on a refined preliminary interpretation of public safety entity. In particular, the Third Notice sets forth a framework for determining whether an individual or subgroup of a larger organization may qualify as a public safety entity. Under the framework, where an organization as a *whole* is not charged with

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providing public safety services (e.g. a utility), the entire organization would not necessarily qualify as a public safety entity. However, individuals or subgroups of the organization may qualify as public safety entities if they provide or are reasonably likely to provide public safety services "for a non-*de minimis* amount of time." Those members of the organization that "materially contribute to or help enable or support the provision of public safety services" by other members of the organization would also qualify as public safety entities.

In addition, for non-traditional first responders, the Third Notice preliminarily concludes that an individual or subgroup within a non-governmental organization qualifies as a public safety entity to the extent such individual or subgroup provides public safety services, including emergency response services or services "the sole or principal purpose of which is to protect the safety of life, health or property" not "made commercially available to the public" and authorized by a governmental public safety entity. The Third Notice again preliminarily concludes that as a policy matter, FirstNet may narrow the scope of users served by the network within the bounds of the public safety entity definition.

Comments will be due 30 days after publication in the Federal Register. A copy of the Third Notice is available [here](#).