

Administrative Procedure Act, 5 U.S.C. 553 (APA). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports and is consistent with the statutory authority set forth in the Debt Collection Improvement Act of 1996, with no issues of policy discretion. Accordingly, we believe that opportunity for prior comment is unnecessary and contrary to the public interest, and we are issuing these revised regulations as a final rule that will apply to all future cases under this authority.

#### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a not significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of E.O. 12866 and has determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Debt Collection Improvement Act of 1996 for specific applicable CMPs. The great majority of individuals, organizations and entities addressed through these regulations do not engage in such prohibited conduct, and as a result, we believe that any aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited conduct in violation of the statute. As such, this final rule and the inflation adjustment contained therein

should have no effect on Federal or state expenditures.

#### V. Regulatory Flexibility Act

The Administrator of General Services certifies that this final rule will not have a significant economic impact on a substantial number of small business entities. While some penalties may have an impact on small business entities, it is the nature of the violation and not the size of the entity that will result in an action by the agency, and the aggregate economic impact of this rulemaking on small business entities should be minimal, affecting only those few who have engaged in prohibited conduct in violation of statutory intent.

#### VI. Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

#### List of Subject in 41 CFR Part 105–70

Administrative hearing, Claims, Program fraud.

Dated: July 18, 2017.

**Timothy Horne,**

*Acting Administrator of General Services.*

Accordingly, 41 CFR part 105–70 is amended as set forth below:

#### PART 105–70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

- 1. The authority citation for 41 CFR part 105–70 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 31 U.S.C. 3809.

#### § 105–70.003 [Amended]

- 2. Amend § 105–70.003 by—
  - a. Removing from paragraph (a)(1)(iv) the amount “5,500” and adding “10,781” in its place; and
  - b. Removing from paragraph (b)(1)(ii) the amount “5,500” and adding “10,781” in its place.

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## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### 47 CFR Chapter V

[Docket No. 151209999–7323–02]

RIN 0660–AA30

#### Scope of NTIA’s Authority Regarding FirstNet Fees

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** Congress authorized the First Responder Network Authority (FirstNet), an independent authority within the National Telecommunications and Information Administration (NTIA), to assess and collect, among other funds, three specific types of fees. By law, NTIA must review and approve these fees on an annual basis. This final rule describes NTIA’s overarching scope, boundaries, and guidelines for its FirstNet fee review and approval process as mandated by the Middle Class Tax Relief and Job Creation Act of 2012 (the Act).

**DATES:** Effective on August 29, 2017.

**FOR FURTHER INFORMATION CONTACT:** Patrick Sullivan; Office of Public Safety Communications; National Telecommunications and Information Administration; U.S. Department of Commerce; 1401 Constitution Avenue NW., Washington, DC 20230; [psullivan@ntia.doc.gov](mailto:psullivan@ntia.doc.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Act established FirstNet as an independent authority within NTIA charged with ensuring the building, deployment, and operation of an interoperable nationwide public safety broadband network (Network).<sup>1</sup> It also requires FirstNet to be self-sustainable.<sup>2</sup> The Act authorizes FirstNet to, among other actions, assess and collect the following specific fees: (1) Network user fees, including user fees associated with state use of elements of the core network; (2) lease fees related to network capacity, pursuant to a covered leasing agreement; and (3) fees from entities seeking to access or use any equipment or infrastructure constructed or otherwise owned by FirstNet.<sup>3</sup> It requires the total amount of these fees,

<sup>1</sup> See 47 U.S.C. 1426(a)–(b)(1).

<sup>2</sup> See 47 U.S.C. 1428(b).

<sup>3</sup> See 47 U.S.C. 1428(a); 47 U.S.C. 1442(f).

for each fiscal year, to be sufficient, but not to exceed, the amount necessary to recoup the total expenses of FirstNet as it carries out its duties under the Act.<sup>4</sup> FirstNet must reinvest amounts received from the assessment of these fees for constructing, maintaining, operating, or improving the Network.<sup>5</sup> Finally, as an element of NTIA's oversight responsibilities for FirstNet, NTIA must review these fees on an annual basis, and such fees may only be assessed if approved by NTIA.<sup>6</sup>

This action: (1) Adopts the tenets of the proposed rule; (2) finds that Congress established a statutory framework for NTIA to use to determine the reasonableness of FirstNet's proposed fees; (3) establishes the scope of NTIA's fee review and approval process in fulfillment of the Act's requirements that FirstNet be self-sustainable and invest back into the Network; (4) defines the fees subject to NTIA review; and (5) details NTIA's fee review and approval methodology, timing, and process.

NTIA published a proposed rule for this action on December 15, 2015 (80 FR 77592). The preamble to the proposed rule gives more background and information on FirstNet's and NTIA's respective duties with regard to the Network and related fees and other income, and describes the scope and method of NTIA's fee review and approval process, which are not repeated here.

## II. Response to Comments

The comment period on the proposed rule ended on January 14, 2016. NTIA received eight comments: two from states, one from a local public safety organization, one from a telecommunications service provider, and four from trade associations. Comments on the proposed rule included several similar positions, inquiries both within and outside the scope of the rule, and recommendations stemming from the proposed rule and its preamble. NTIA has carefully considered each of the comments submitted. It has grouped and summarized the comments according to common themes and has responded accordingly. All written comments can be found at <https://www.regulations.gov/document?D=NTIA-2016-0001-0001>.

### A. Standard of NTIA Fee Review and Approval

*Comment 1:* A majority of commenters agreed that NTIA's fee review and approval should be scoped to determine whether the amount of FirstNet's fees, in aggregate and in combination with any FirstNet non-fee-based income, is sufficient to cover, but does not exceed the amount necessary for, FirstNet's execution of its statutory duties. However, one commenter asserted that the Act is not explicit on NTIA's standard of review and offers no guidance to NTIA that its fee review and approval process should further FirstNet's self-sustainability requirements. Thus, the commenter asserted, NTIA's fee review should include review and approval of each individual fee FirstNet proposes to assess and collect.

*Response:* Congress did not direct NTIA to review each individual fee FirstNet proposes to assess and collect. The Act mandates that "[t]he total amount of the fees assessed for each fiscal year . . . shall be sufficient, and shall not exceed the amount necessary, to recoup the total expenses of [FirstNet] in carrying out its duties and responsibilities [under the Act] for the fiscal year involved,"<sup>7</sup> and that NTIA review these fees annually.<sup>8</sup> Thus, NTIA interprets the fee review requirement to compel an annual review of the aggregate fees assessed by FirstNet and determine whether these fees *in toto* are appropriate to enable FirstNet to recoup its expenses and be self-sustaining. This interpretation corresponds to the Act's goal of creating "permanent self-funding."<sup>9</sup>

### B. Reasonableness of a Proposed Fee

*Comment 1:* While several commenters contend Congress did not require NTIA to conduct a review of the reasonableness of fees proposed by FirstNet, others disagree. One commenter suggests that NTIA misreads the statute in not finding a statutory requirement for a reasonableness review of each fee given the Act's goal of providing broadband service to first responders. Other commenters assert, as a matter of policy, that NTIA should seek state input or otherwise make determinations about the reasonableness of the fees FirstNet proposes to assess and collect.

<sup>7</sup> 47 U.S.C. 1428(b).

<sup>8</sup> See 47 U.S.C. 1428(c) ("NTIA shall review the fees assessed under this section on an annual basis, and such fees may only be assessed if approved by the NTIA.")

<sup>9</sup> 47 U.S.C. 1428.

*Response:* Congress did not mandate that NTIA engage in a reasonableness review of each fee FirstNet proposes to assess and collect.<sup>10</sup> To ensure that the fees that FirstNet assesses are reasonable and not excessive, as noted above, the Act mandates that "[t]he total amount of the fees assessed for each fiscal year . . . shall be sufficient, and shall not exceed the amount necessary, to recoup the total expenses of [FirstNet] in carrying out its duties and responsibilities [under the Act] for the fiscal year involved."<sup>11</sup> This requirement therefore sets the boundaries of what constitutes reasonable fees for FirstNet to assess and collect. Thus, consistent with NTIA's fee review and approval scope, NTIA will approve FirstNet's fees as reasonable only if FirstNet's fees, in aggregate and in combination with any FirstNet non-fee-based income, are sufficient to cover, but do not exceed the amount necessary for, FirstNet's execution of its statutory duties for each fiscal year.

*Comment 2:* One commenter claimed that NTIA should expand its fee review to control the activity of FirstNet's Network partner and discourage any possible anticompetitive activity associated with access to spectrum licensed to FirstNet.

*Response:* The Act does not require NTIA to regulate spectrum use; rather, the Act assigns decisions on the lawful use of FirstNet's spectrum resources to FirstNet. Thus, NTIA's fee review will assess whether the Act's self-sustainability goals are being achieved—not how FirstNet uses its licensed spectrum.

### C. Focus of NTIA Fee Review Methodology

*Comment 1:* Commenters generally agreed with NTIA's method of reviewing FirstNet's proposed fees. One party sought clarification on what total expenses and costs would be included in NTIA's assessment of whether FirstNet's fees and non-fee-based income meet but do not exceed its total expenses.

*Response:* While such expenses and costs were outlined in the preamble of the proposed rule, NTIA agrees that defining the term "expenses" in the rule will provide clarity for FirstNet and other stakeholders. For this reason, NTIA has amended the rule to include a definition of "expenses" as the term is discussed in the proposed rule

<sup>10</sup> See 47 U.S.C. 1428(c).

<sup>11</sup> 47 U.S.C. 1428(b).

<sup>4</sup> See 47 U.S.C. 1428(b).

<sup>5</sup> See 47 U.S.C. 1428(d).

<sup>6</sup> See 47 U.S.C. 1428(c).

preamble.<sup>12</sup> As stated in the final rule below, non-fee-based income received by FirstNet means, for purposes of this rule, FirstNet's receipt of money from any source, transaction, entity, or any other means allowed under 47 U.S.C. 1401 *et seq.*, other than those receipts described in the definition of "fee."

*Comment 2:* Commenters generally agreed that NTIA should defer to FirstNet on any need for reserves, working capital, or similar fund categories. One commenter sought a definition of the term "necessary reserves" for purposes of NTIA's fee review and approval process.

*Response:* NTIA agrees that defining the scope of necessary reserve funds on which it will defer to FirstNet provides further clarity on NTIA's fee review methodology. Accordingly, NTIA has included in the final rule a definition of "necessary reserve funds."<sup>13</sup> Necessary reserve funds means, for purposes of this rule, any amount of money identified by FirstNet in its standard financial documentation to meet expected and unexpected future expenses that may arise in the course of FirstNet executing its statutory powers, duties, and responsibilities under 47 U.S.C. 1401 *et seq.*, including but not limited to capital reserve funds, operating reserve funds, maintenance reserve funds, and improvement reserve funds.

*Comment 3:* One commenter proposed that, if NTIA disapproves FirstNet's fee proposal, it should clearly articulate the reasons for such rejection.

*Response:* NTIA agrees that providing guidance on reasons for any disapproval of FirstNet's proposed fees will assist FirstNet in providing revised fee proposals that may be approved. As with the proposed rule, the final rule requires written notification of NTIA's determination on FirstNet's proposed fees, and NTIA anticipates providing relevant details justifying its decision in that written communication.

*Comment 4:* One commenter proposed that NTIA establish a timeline during which FirstNet must provide its proposed fees and NTIA must review and finalize a determination on FirstNet's proposal.

*Response:* NTIA agrees that providing a detailed timeline for NTIA's fee review and approval process will offer

certainty to potential users of the Network, FirstNet, and its Network partner. Accordingly, NTIA has revised its final rule to include such a timeline for NTIA's fee review process. As stated in the final rule, NTIA will abide by the Fee Review Schedule as set out in § 500.5(g)(1) through (5).

*Comment 5:* One commenter proposed that NTIA should address the possibility that FirstNet's fees may not be approved by the start of the new fiscal year. The commenter proposed that, should FirstNet's fees not be approved by the first day of the fiscal year, FirstNet may operate under the prior year's fees until fees for the next fiscal year are approved.

*Response:* NTIA agrees that providing contingency procedures in the event that NTIA disapproves FirstNet's proposed fees for a given fiscal year may provide continuation of funding sources for the Network while FirstNet revises its fees. Accordingly, NTIA adds a provision to its final rule stating that, should NTIA disapprove FirstNet's proposed fees, fees approved by NTIA for the prior fiscal year may be assessed by FirstNet during the instant fiscal year until such time that NTIA approves FirstNet's proposed fees for the instant fiscal year.

#### *D. Fees Subject to NTIA Review and FirstNet Reconsideration Upon NTIA Disapproval*

*Comment 1:* Commenters generally agreed that NTIA is authorized under the Act to only consider the three types of fees authorized under 47 U.S.C. 1428(a). Two commenters sought further review on this when there is more clarity regarding the specific types of revenue FirstNet will collect, especially with regard to the specific fee structure established with FirstNet's Network partner.

*Response:* During FirstNet's public procurement process, NTIA and stakeholders had sufficient clarity of FirstNet's planned approach to evaluate and shape NTIA's proposed fee review process.<sup>14</sup> Accordingly, NTIA determines that its rule includes all provisions necessary to execute its statutory duties and does not at this time anticipate a need to revise its rule.

#### *E. Income Other Than Fees Is Not Subject to NTIA Fee Review*

*Comment 1:* Commenters sought clarity on whether NTIA would review any charges imposed or income collected by FirstNet or any other party beyond those specific fees authorized under 47 U.S.C. 1428(a). One commenter urged NTIA to review and approve fees charged by FirstNet's Network partner.

*Response:* As indicated in the proposed rule, income received by FirstNet other than from fees authorized under 47 U.S.C. 1428(a) is not directly subject to NTIA review under 47 U.S.C. 1428(b) and (c). NTIA has included language further clarifying this determination in the final rule.

However, NTIA will consider such non-fee-based income of FirstNet as part of its overall determination of whether the total of the fees defined in 47 U.S.C. 1428(a), together with such additional income, will be sufficient to recoup FirstNet's total expenses, but not exceed the amount necessary to carry out its statutory powers, duties, and responsibilities under the Act for the fiscal year involved.

#### *F. Comment Outside the Scope of Rule*

*Comment 1:* One commenter requested that NTIA, in developing requirements for the review of a state's demonstration of the cost effectiveness of its state alternative plan to operate the RAN within that state pursuant to 47 U.S.C. 1442(e)(3)(D)(ii), restrict its assessment to whether the applicant state has sufficient funds to maintain the state's RAN.

*Response:* NTIA has issued a Notice and Request for Comment on its duties with regard to 47 U.S.C. 1442(e)(3)(D) and invites parties to review that Notice and any further Notices in that proceeding.<sup>15</sup>

### **III. Changes From the Proposed Rule**

In response to comments, NTIA included definitions of the terms "expenses," "standard financial documentation," and "necessary reserves." NTIA clarifies that user fees associated with state use of elements of the core network, referenced in 47 U.S.C. 1442(f), are user fees authorized by 47 U.S.C. 1428(a) and subject to NTIA review. NTIA affirms its fee review scope in the context of non-fee-based income as that term is defined in the rule. NTIA also provides

<sup>12</sup> Further, because the proposed rule preamble, fee review methodology, proposed and final rule, and new definition of "expenses" all utilize the term "standard financial documentation," NTIA has provided a definition of this term in the final rule consistent with the proposed rule preamble to provide further clarity to stakeholders.

<sup>13</sup> This definition reflects the term's use in the proposed rule preamble.

<sup>14</sup> For example, Section L.3.3.3 of FirstNet's Request for Proposals for the deployment of the Network (RFP) required a schedule for nationwide payments to FirstNet. Such payment from FirstNet's Network partner, to be made annually, constitute fees identified in 47 U.S.C. 1428(a)(2). See FirstNet Nationwide Public Safety Broadband Network (NPSBN); Request for Proposals, Solicitation Number: D15PS00295E, Department of the Interior (Jan. 13, 2016).

<sup>15</sup> See State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network, Notice and Request for Comments, Docket Number: 160706588-6588-01 (81 FR 46907, Jul. 19, 2016).

contingency provisions in the event NTIA disapproves FirstNet proposed fees and sets a timeline during which FirstNet and NTIA will propose and review fees pursuant to 47 U.S.C. 1428. Finally, NTIA makes minor clarifying edits in conformance with the Act.

#### IV. Classification

The Director of Administration and Chief Financial Officer of the National Telecommunications and Information Administration, who is performing the non-exclusive duties of the Assistant Secretary for Communications and Information, has determined that this final rule is consistent with the Act and other applicable law.

The need to implement these measures in a timely manner constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day waiting period and make the rule effective immediately upon publication in the *Federal Register*. It would be impractical to have to wait 30 days before the rule is effective because FirstNet requires the ability to assess and collect fees in order to ensure the deployment and operation of the Network, which will benefit first responders and the public at large. In addition, this final rule does not impose any requirements or obligations on members of the public.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

It has been determined that the final rule is not major under 5 U.S.C. 801 *et seq.*

The Chief Counsel for Regulations for the Department of Commerce certified at the proposed rule stage that this rule does not have a significant economic impact on a substantial number of small entities. NTIA did not receive any comments on the certification, and the underlying analysis for the certification has not changed since the publication of the proposed rule.

Dated: August 23, 2017.

#### Leonard Bechtel,

Chief Financial Officer and Director of Administration, performing the non-exclusive duties of the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration.

#### List of Subjects in 47 CFR Part 500

Broadband, Fees, First Responder Network Authority, National Telecommunications and Information Administration, Safety, Telecommunications.

■ For the reasons set out in the preamble, the National

Telecommunications and Information Administration adds 47 CFR chapter V to read as follows:

#### 47 CFR Chapter V—The First Responder Network Authority (Parts 500–599)

##### Subchapter A—National Telecommunications and Information Administration Regulations (Parts 500–549)

#### PART 500—REVIEW AND APPROVAL OF FEES PROPOSED BY THE FIRST RESPONDER NETWORK AUTHORITY (FIRSTNET) PARTS 501–549 [RESERVED]

##### Subchapter B—(Parts 550–599) [Reserved]

##### Subchapter A—National Telecommunications and Information Administration Regulations (Parts 500–549)

#### PART 500—REVIEW AND APPROVAL OF FEES PROPOSED BY THE FIRST RESPONDER NETWORK AUTHORITY (FIRSTNET)

##### Sec.

- 500.1 Purpose and scope.
- 500.2 General definitions.
- 500.3 NTIA duty to review FirstNet proposed fees.
- 500.4 Scope of NTIA review of FirstNet proposed fees.
- 500.5 Methodology of NTIA fee review and approval process.

**Authority:** 47 U.S.C. 1401.

##### § 500.1 Purpose and scope.

Sections 500.2 through 500.5 of this part implement 47 U.S.C. 1428(c) as codified pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (Act), which requires the National Telecommunications and Information Administration (NTIA) to annually review fees the First Responder Network Authority (FirstNet) proposes to assess pursuant to 47 U.S.C. 1428(a).

##### § 500.2 General definitions.

*Expenses* means incursions of costs by FirstNet in the course of executing its statutory powers, duties, and responsibilities under 47 U.S.C. 1401 *et seq.*, including but not limited to:

- (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 incurred for future contract award, necessary reserve funds, including for all other permitted purposes under the Act, or other authorized expenses as identified in

FirstNet's standard financial documentation.

*Fee* means:

- (1) FirstNet's receipt of money from:
  - (i) Network User Fees, including User Fees Associated with State Use of Elements of the Core Network;
  - (ii) Lease Fees Related To Network Capacity; or
  - (iii) Lease Fees Related To Network Equipment And Infrastructure, as those terms are defined under 47 U.S.C. 1428(a) and 47 U.S.C. 1442(f).

(2) Income received by FirstNet other than from fees authorized under 47 U.S.C. 1428(a) is not directly subject to NTIA review. However, NTIA will consider such non-fee-based income as part of its determination of whether such income, when combined in aggregate with the fees authorized under 47 U.S.C. 1428(a), will be sufficient to recoup FirstNet's total expenses, but not exceed the amount necessary to carry out its statutory powers, duties, and responsibilities under 47 U.S.C. 1401 *et seq.* for the fiscal year involved.

*FirstNet* means the First Responder Network Authority.

*Fiscal Year* means the 12-month accounting period for the federal government, which begins on October 1 of a given year and ends on September 30 of the subsequent year.

*Necessary reserve funds* means any amount of money identified by FirstNet in its standard financial documentation to meet expected and unexpected future expenses that may arise in the course of FirstNet executing its statutory powers, duties, and responsibilities under 47 U.S.C. 1401 *et seq.*, including but not limited to capital reserve funds, operating reserve funds, maintenance reserve funds, and improvement reserve funds.

*Non-fee-based income received by FirstNet* means FirstNet's receipt of money from any source, transaction, entity, or any other means allowed under 47 U.S.C. 1401 *et seq.*, other than those receipts described above in the definition of "fee."

*NTIA* means the National Telecommunications and Information Administration.

*NTIA's fee review and approval process* means the process by which NTIA executes its duties under 47 U.S.C. 1428(c).

*Standard financial documentation* means documents developed by FirstNet in its ordinary course of business that detail FirstNet's current and projected financial condition, which may include but is not limited to:

- (1) FirstNet's budget documents produced in the normal course of its business;

(2) FirstNet's financial statements produced in the normal course of its business;

(3) FirstNet's annual financial audit documents, which detail FirstNet's revenue categories and statutory authority for such categories;

(4) FirstNet's annual budget reports submitted as part of the President's Budget; and

(5) FirstNet's annual report to Congress.

#### **§ 500.3 NTIA duty to review FirstNet proposed fees.**

As required under 47 U.S.C. 1428(c), NTIA shall exclusively review fees, which must be proposed by FirstNet in writing, through NTIA's review and approval process conducted on an annual basis.

#### **§ 500.4 Scope of NTIA review of FirstNet proposed fees.**

NTIA shall approve FirstNet proposed fees only if such fees, when combined with any non-fee-based income projected to be received by FirstNet, are sufficient, but do not exceed the amount necessary, to recoup FirstNet's projected total expenses in carrying out its powers, duties, and responsibilities under 47 U.S.C. 1401 *et seq.* for the fiscal year involved.

#### **§ 500.5 Methodology of NTIA fee review and approval process.**

(a) *Fee review approach.* To execute NTIA's fee review and approval process, NTIA shall utilize FirstNet's submission and FirstNet's standard financial documentation.

(b) *Deference to FirstNet on necessary reserve funds.* In executing NTIA's fee review and approval process, NTIA shall defer to FirstNet with respect to its designated amount, use, and retention of necessary reserve funds. NTIA shall consider any such designated funds to be a part of FirstNet's total expenses in carrying out its powers, duties, and responsibilities under 47 U.S.C. 1401 *et seq.* for the fiscal year involved.

(c) *Determination of fee review.* (1) NTIA shall make one of the following determinations annually upon review of FirstNet's proposed fees:

(i) FirstNet's proposed fees, in aggregate, when combined with any projected non-fee-based income to be received by FirstNet, meet but do not

exceed FirstNet's projected total expenses;

(ii) FirstNet's proposed fees, in aggregate, when combined with any projected non-fee-based income to be received by FirstNet, do not meet FirstNet's projected total expenses; or

(iii) FirstNet's proposed fees, in aggregate, when combined with any projected non-fee-based income to be received by FirstNet, exceed FirstNet's projected total expenses.

(2) Upon making any of the determinations in paragraphs (c)(1)(i) through (iii) of this section, NTIA will communicate its determination in writing to the Chair of the FirstNet Board and the FirstNet Chief Executive Officer.

(d) *Outcome of determination of fee review.* (1) Should NTIA make the determination listed in paragraph (c)(1) of this section, FirstNet may assess the proposed fees.

(2) Should NTIA make one of the determinations listed in paragraph (c)(2) or (3) of this section, NTIA will disapprove FirstNet's proposed fees, and FirstNet may not assess those proposed fees.

(e) *Revision of proposed fees.* Upon a disapproval of FirstNet's proposed fees as described in paragraph (d)(2) of this section, or upon FirstNet's determination that it must revise NTIA-approved fees to ensure compliance with 47 U.S.C. 1428(b), FirstNet shall prepare a revised written submission to NTIA, which shall evaluate any proposed fees therein consistent with the requirements in §§ 500.1 through 500.5. Should NTIA disapprove of FirstNet's proposed fees pursuant to this section, fees approved by NTIA for the prior fiscal year may be assessed by FirstNet during the instant fiscal year until such time that NTIA approves FirstNet's proposed fees for the instant fiscal year pursuant to paragraph (g) of this section.

(f) *Communication of NTIA fee approval or disapproval.* Approval or disapproval of FirstNet-proposed fees shall be communicated in writing by the Assistant Secretary for Communications and Information and Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce, to the Chair of the FirstNet Board and FirstNet Chief Executive Officer.

(g) *Process and timing of NTIA fee review.* For each fiscal year, FirstNet and NTIA will abide by the following Fee Review Schedule:

(1) Prior to assessing fees for a given fiscal year, FirstNet shall submit to NTIA its proposed fees for that given fiscal year and all standard financial documentation that will support its fee projections pursuant to this part.

(2) No later than 15 days after FirstNet submits items under paragraph (g)(1) of this section, NTIA shall either notify FirstNet of its approval of the FirstNet proposed fees in accordance with paragraph (d) of this section or submit any questions or requests for clarifications to FirstNet regarding the submission listed in paragraph (g)(1).

(3) No later than 15 days after FirstNet receives questions or requests for clarification from NTIA under paragraph (g)(2) of this section, FirstNet shall submit responses to NTIA.

(4) No later than 15 days after receiving responses from FirstNet under paragraph (g)(3) of this section, NTIA shall approve or disapprove FirstNet's proposed fees pursuant to paragraph (d) of this section.

(5) Should NTIA disapprove FirstNet's proposed fees, FirstNet and NTIA will abide by the following Revised Fee Review Schedule until such time as NTIA approves the revised fees:

(i) 15 days after disapproval: FirstNet shall submit revised proposed fees to NTIA pursuant to paragraph (e) of this section.

(ii) 15 days after revised fees submission to NTIA: NTIA shall submit any questions or requests for clarifications to FirstNet regarding the submission listed in paragraph (g)(5)(i) of this section.

(iii) 15 days after NTIA submits questions to FirstNet: FirstNet shall submit responses to the questions listed in paragraph (g)(5)(ii) of this section.

(iv) 15 days after NTIA receives responses from FirstNet to NTIA questions, NTIA shall approve or disapprove FirstNet's revised proposed fees pursuant to paragraph (d) of this section.

## **PARTS 501–549—[RESERVED]**

### **Subchapter B—(Parts 550–599) [Reserved]**

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