

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

January 29, 2016

To: Subcommittee on Communications and Technology Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Status of the Public Safety Broadband Network”

On Tuesday, February 2, 2016, at 10:15 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing titled “Status of the Public Safety Broadband Network.”

I. BACKGROUND

A. Establishment of FirstNet

The Middle Class Tax Relief and Job Creation Act of 2012 (the Act) established the First Responder Network Authority (FirstNet). FirstNet, an independent entity within the Department of Commerce’s National Telecommunications and Information Administration (NTIA), was tasked by the Act with establishing a nationwide interoperable public safety broadband network (NPSBN).¹

The FirstNet board of directors consists of 15 voting members who serve staggered three year terms. The Board includes the Secretary of Homeland Security, the Attorney General, the Director of the Office of Management and Budget, with the rest of the members appointed by the Secretary of Commerce. Among its duties, FirstNet is responsible for issuing Requests for Proposals (RFPs) and entering into contracts for the construction, operation, and management of the NPSBN.²

The Act transfers licenses to use “D Block” and adjacent public safety spectrum to FirstNet for the purpose of building out the NPSBN.³ To fund NPSBN construction, the Act directed the Federal Communications Commission (FCC) to conduct a number of spectrum

¹ 47 U.S.C. § 1426(b).

² 47 U.S.C. § 1426(b)(1).

³ 47 U.S.C. § 1411.

auctions, allocating \$7 billion in proceeds from those auctions to FirstNet for NPSBN construction.⁴ FirstNet has received its full statutory funding of \$7 billion from the FCC's AWS-3 spectrum auction that was completed last year.

The Act also directs the NTIA to administer the State and Local Implementation Grant Program (SLIGP), which supports the efforts of state, regional, tribal, and local jurisdictions to identify, plan, and implement ways to utilize and integrate the assets associated with the NPSBN to satisfy both common and unique public safety needs in those jurisdictions.⁵ The Act grants NTIA borrowing authority not to exceed \$135 million for the SLIGP. NTIA has already awarded \$116.5 million to 54 states and territories.⁶

Under the Act, each governor has the option to decide whether his or her state will conduct its own deployment of a broadband Radio Access Network (RAN).⁷ Specifically, once the FirstNet RFP process has been completed, states have 90 days to decide whether to "opt-out" of FirstNet's RAN deployment plan for that state. If a state decides to opt-out, it has six months to develop and complete its own broadband RAN-RFP process, subject to FCC approval.

B. Role of the FCC

The Act imposed several requirements on the FCC to consult, coordinate, and provide technical assistance, as well as to reallocate and license spectrum to FirstNet.⁸ The FCC was directed to issue an initial 10-year license for the spectrum, with an expectation of renewal upon demonstration that FirstNet has met its duties and obligations under the Act.⁹ Renewal license terms cannot exceed 10 years.¹⁰

Additionally, the Act required the FCC to establish the Technical Advisory Board for First Responder Interoperability (Interoperability Board) in order to develop recommended minimum technical requirements for nationwide interoperability, and to provide those recommendations to the FCC for review.¹¹ The Act required the FCC to approve the recommendations within 30 days of receipt and transmit the approved recommendations to FirstNet.¹²

⁴ 47 U.S.C. §§ 1427(a), 1457(a)-(b).

⁵ 47 U.S.C. §§ 1441-42.

⁶ National Telecommunications and Information Administration, *SLIGP Grant Program* (online at ntia.doc.gov/category/state-and-local-implementation-grant-program).

⁷ 47 U.S.C. § 1442(e)(2).

⁸ See e.g. 47 U.S.C. §§ 1426 and 1433.

⁹ 47 U.S.C. § 1411.

¹⁰ 47 U.S.C. § 1421.

¹¹ 47 U.S.C. § 1423.

¹² *Id.*

The Act also required that the FCC approve or disapprove any alternative state plan if a state “opts out” of FirstNet.¹³ For the FCC to approve a state’s alternative plan, the state must demonstrate compliance with the established interoperability requirements and be interoperable with FirstNet.¹⁴ If the FCC disapproves a state’s alternative plan, FirstNet will continue with construction within that state.¹⁵

Finally, the Act allows the FCC to adopt rules to improve the ability of public safety networks to roam on commercial networks, and provide priority access in times of emergency.¹⁶

II. STATUS OF IMPLEMENTATION

FirstNet is making progress building its organization and developing and executing a strategic plan to meet its goals. FirstNet continues to coordinate with and educate stakeholders in addition to building a detailed public record on which to base key decisions.

A. State Coordination

Recognizing that consultation with local, state, tribal and federal stakeholders is a central requirement of the Act, FirstNet is actively seeking to build partnerships with these jurisdictions. As of October 30, 2015, FirstNet had held formal state consultations with 55 states and territories.¹⁷ Additionally, FirstNet has established a Tribal Working Group and is working with individual tribes, tribal associations, and federal tribal government liaisons. Since 2014, FirstNet has worked with a federal interagency group focused on emergency communications and held a formal consultation with federal agencies in 2015.

B. Request For Proposals Process

Between April 2013 and April 2014, FirstNet issued 12 Requests for Information (RFIs) seeking detailed public comment on issues such as application platforms, devices, the Radio Access Network (RAN), and core network.¹⁸ This process culminated in a subsequent RFI released in September 2014, seeking comment on a draft Statement of Objectives for FirstNet’s comprehensive RFP.¹⁹ The RFI included questions on network buildout; deployment; operations and maintenance; cost considerations and financial sustainability; system hardening; priority and

¹³ 47 U.S.C. § 1442.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 47 U.S.C. § 1431.

¹⁷ FirstNet, *Consultation Meetings* (online at firstnet.gov/consultation/meetings).

¹⁸ FirstNet, *FirstNet Issues RFI on Applications and Applications Platform for Nationwide Wireless Broadband Network* (Nov. 27, 2013) (online at firstnet.gov/news/firstnet-issues-rfi-applications-and-applications-platform-nationwide-wireless-broadband).

¹⁹ FirstNet, *FirstNet Board Takes Action Toward Achieving Program Milestones* (Sept. 17, 2014) (online at firstnet.gov/news/firstnet-board-takes-action-toward-achieving-program-roadmap-milestones).

preemption; and general compliance with its enabling legislation. FirstNet received 122 comments to help shape the RFP.²⁰

Also in September 2014, FirstNet released a Public Notice that sought comment on key provisions of FirstNet’s enabling legislation, which led to the submission of more than 60 comments from a broad group of stakeholders.²¹ Building on this record, FirstNet released a second Public Notice in March 2015 seeking comment on its preliminary statutory interpretations. In April 2015, FirstNet released a third Public Notice for further comment on the definition and scope of the term “public safety entity,” as used in FirstNet’s enabling legislation.²²

In seeking to provide maximum stakeholder input into the final RFP, the FirstNet board approved a proposed framework for network acquisitions and it released certain draft RFP documents for comment in April 2015. Through an Industry Day that FirstNet held on May 14, 2015, FirstNet collected additional feedback on FirstNet acquisition matters. At this forum, 425 stakeholders received an overview and provided input to the Third Public Notice and draft RFP documents.²³ FirstNet also announced it would begin one-on-one meetings with vendors beginning on May 15, 2015.²⁴ FirstNet held a second industry day on August 27, 2015.²⁵

C. Final Request for Proposals

On January 13, 2016, FirstNet issued its final RFP for development and operation of the NPSBN. In this RFP, FirstNet is seeking a single contractor to construct and operate a comprehensive NPSBN covering each of the 56 states and territories. Under the RFP, the contractor selected by FirstNet would be charged with providing:

- (1) A core nationwide network;
- (2) Radio access network (RAN) services;
- (3) Backhaul, aggregation, and the use of national transport networks and operation centers;
- (4) A device ecosystem;
- (5) Use of network infrastructure;
- (6) Deployable network capabilities;
- (7) Use of operational and business support systems;

²⁰ FirstNet, *FirstNet Completes Successful Request for Information and Public Comment Period* (Oct. 28, 2014) (online at firstnet.gov/news/firstnet-completes-successful-request-information-and-public-comment-period).

²¹ FirstNet, *FirstNet Completes Successful Request for Information and Public Comment Period* (Oct. 28, 2014) (online at firstnet.gov/news/firstnet-completes-successful-request-information-and-public-comment-period).

²² *Id.*

²³ FirstNet, *FirstNet Holds Successful First Industry Day* (May 14, 2015) (online at firstnet.gov/news/firstnet-holds-successful-first-industry-day).

²⁴ *Id.*

²⁵ *See* Industry Day – August 27, 2015 (firstnet.gov/content/industry-day-august-27-2015).

- (8) An applications ecosystem;
- (9) Network services; and
- (10) Integration, maintenance, and operational services.²⁶

Under the RFP, the contractor would also be required to provide the ongoing evolution of these systems required for the network to function fully as an operational wireless 3rd Generation Partnership Project standards-based Long Term Evolution NPSBN.²⁷

Once operational, the NPSBN should support the operational needs of public safety officials, ranging from routine law enforcement, fire, rescue, emergency response, and similar operations through major natural and man-made disasters and homeland security and homeland defense missions.²⁸

While FirstNet will maintain oversight responsibilities for all functions, it is expected that the contractor will be responsible for executing marketing, product management, sales, distribution, customer care, communications, strategic partnering, network deployment, operation, and evolution.²⁹

FirstNet will pay the contractor a maximum of \$6.5 billion dollars for its work, depending on the participation of the states and territories in the program. The contractor will be able to keep any of the fees that it charges public safety end users for using the NPSBN.³⁰ The contractor will also have the ability to derive revenue from the 20 MHz of spectrum under FirstNet's license.³¹ Proposals are due by April 29, 2016.³² At this time, FirstNet anticipates potentially awarding a contract in the fourth quarter of 2016.

D. Status of FCC Actions

As required by the Act, the FCC established the Interoperability Board and appointed members in March 2012.³³ The Interoperability Board submitted its report to the FCC in May

²⁶ FirstNet, *Request for Proposal*, at C-2-3 (Jan. 13, 2016) (online at fbo.gov/index?s=opportunity&mode=form&tab=core&id=1787b5355f92ecc50fb1120c56bd1959).

²⁷ *See Id.*

²⁸ *See Id.* at C-4.

²⁹ *See Id.* at B-4.

³⁰ *See Id.* at B-5.

³¹ *See Id.*

³² *See Id.* at A-1.

³³ Federal Communications Commission, *FCC Announces Membership of Technical Advisory Board for First Responder Interoperability*, DA 12-455 (Mar. 22, 2012) (online at fcc.gov/edocs_public/attachmatch/DA-12-455A1.pdf).

2012,³⁴ and after receiving public comment, the FCC transmitted the report to FirstNet on June 21, 2012.³⁵

In September 2012, the Public Safety and Homeland Security Bureau reallocated the D block spectrum pursuant to the Act.³⁶ The FCC also modified its rules to allow for a license to be granted to FirstNet,³⁷ which it granted on November 15, 2012, for an initial 10-year term.³⁸

On March 8, 2013, the FCC released a Notice of Proposed Rulemaking seeking comment on (1) technical service rules; (2) license renewal and interference management, and (3) actions to address existing or planned operations in the FirstNet spectrum.³⁹ On October 28, 2013, the FCC released a Second Report and Order that adopted consolidated technical service rules for the FirstNet spectrum band.⁴⁰

With regards to the FCC's role in the opt-out process, some would expect that the critical timing point would be for the FCC to have its rules in place before FirstNet provides states with their individual plans.

III. WITNESSES

The following witnesses have been invited to testify:

TJ Kennedy

President

First Responder Network Authority

David Furth

Deputy Chief

Public Safety and Homeland Security Bureau

Federal Communications Commission

³⁴ Federal Communications Commission, *Technical Advisory Board for First Responder Interoperability Submits Report to FCC* (May 23, 2012) (online at fcc.gov/edocs_public/attachmatch/DOC-314246A1.pdf).

³⁵ See *Order of Transmittal*, FCC 12-68, PS Docket No. 12-74 (June 21, 2012) (online at fcc.gov/edocs_public/attachmatch/FCC-12-68A1.pdf).

³⁶ See *Report and Order*, DA 12-1462, PS Docket No. 12-74 (Sept. 7, 2012) (online at fcc.gov/edocs_public/attachmatch/DA-12-1462A1.pdf).

³⁷ *Id.*

³⁸ National Telecommunications and Information Administration, *FirstNet Praises FCC for Granting Spectrum License* (Nov. 16, 2012) (online at ntia.doc.gov/print/press-release/2012/firstnet-praises-fcc-granting-spectrum-license).

³⁹ See *Notice of Proposed Rulemaking*, FCC 13-31, PS Docket No. 12-94 (Mar. 8, 2013) (online at fcc.gov/edocs_public/attachmatch/FCC-13-31A1.pdf).

⁴⁰ See *Second Report and Order*, FCC 13-137, PS Docket No. 12-94 (Oct. 28, 2013) (online at fcc.gov/edocs_public/attachmatch/FCC-13-137A1.pdf).