

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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WASHINGTON, DC 20515-6115

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**MEMORANDUM**

**June 15, 2015**

**To: Subcommittee on Communications and Technology Democratic Members and Staff**  
**Fr: Committee on Energy and Commerce Democratic Staff**  
**Re: Subcommittee Hearing on “Progress Toward a Nationwide Public Safety Broadband Network”**

On Tuesday, June 16, at 2:00 p.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing titled “Progress Toward a Nationwide 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 (PSBN).<sup>1</sup> In addition, the Act directs the Federal Communications Commission (FCC) to conduct numerous spectrum auctions, allocating \$7 billion in proceeds from those auctions for PSBN construction.<sup>2</sup> Further, the Act transfers licenses to use “D Block” and adjacent public safety spectrum to FirstNet for the purpose of building out the PSBN.<sup>3</sup> It is expected that FCC will be able to fully fund the \$7 billion allocation from the AWS-3 auction it completed earlier this year.

The FirstNet board of directors consists of 15 voting members who serve staggered 3-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

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<sup>1</sup> 47 U.S.C. § 1426(b).

<sup>2</sup> 47 U.S.C. §§ 1427(a), 1457(a)-(b).

<sup>3</sup> 47 U.S.C. § 1411.

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 PSBN.<sup>4</sup>

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 PSBN to satisfy their jurisdiction's unique public safety needs.<sup>5</sup> 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.<sup>6</sup>

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).<sup>7</sup> 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 then has six months to develop and complete its own broadband RAN- RFP process, subject to FCC approval.

**B. Broadband Technology Opportunities Program (BTOP) Public Safety Projects**

In 2010, NTIA awarded seven Broadband Technology Opportunities Program (BTOP) grants totaling \$382.5 million for deploying public safety wireless broadband network projects. The awardees were Charlotte, North Carolina; Adams County, Colorado; the state of Mississippi; the New Mexico Department of Information Technology (New Mexico); Los Angeles Regional Interoperable Communications System Authority (LA-RICS); the New Jersey Department of Treasury (New Jersey); and Motorola (BayWEB), located in San Francisco, California.

Since the Act's passage, FirstNet has reached spectrum lease agreements in connection with four BTOP projects: (1) Adams County, CO,<sup>8</sup> (2) the state of New Jersey,<sup>9</sup> (3) the state of

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<sup>4</sup> 47 U.S.C. § 1426(b)(1).

<sup>5</sup> 47 U.S.C. §§ 1441-42.

<sup>6</sup> National Telecommunications and Information Administration, *SLIGP Grant Program* (online at [www.ntia.doc.gov/category/state-and-local-implementation-grant-program](http://www.ntia.doc.gov/category/state-and-local-implementation-grant-program)).

<sup>7</sup> 47 U.S.C. § 1442(e)(2).

<sup>8</sup> See FirstNet Press Release, "*FirstNet Board Approves Spectrum Lease Agreements with Adams County, Colo. and New Jersey*" (online at [www.firstnet.gov/news/firstnet-board-approves-spectrum-lease-agreements-adams-county-colo-and-new-jersey](http://www.firstnet.gov/news/firstnet-board-approves-spectrum-lease-agreements-adams-county-colo-and-new-jersey)).

<sup>9</sup> *Id.*

New Mexico,<sup>10</sup> and (4) the Los Angeles Regional Interoperable Communications System Authority (LA-RICS).<sup>11</sup> These projects are set to be completed by September 30 of this year. Additionally, a spectrum lease agreement has been executed with the state of Texas for Harris County, a project funded through a pre-Act DHS grant.<sup>12</sup> These five agreements will help to provide lessons learned, additional data relating to increasing efficiencies, and other key findings that will inform further design of, and improvements to the nationwide network.<sup>13</sup>

## II. RECENT DEVELOPMENTS

Since the subcommittee's last hearing on the topic in 2013, FirstNet has made significant progress building its organization and developing and executing a strategic plan to meet its goals. FirstNet is coordinating with and educating stakeholders in addition to building a detailed public record on which to base key decisions.

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 May 29, 2015, FirstNet had held formal state consultations with 31 states and had scheduled 18 more.<sup>14</sup> FirstNet has established a Tribal Working Group and is working with individual tribes, tribal associations and federal tribal government liaisons. Since 2014, FirstNet

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<sup>10</sup> NTIA Press Release, "*FirstNet Approves Spectrum Lease Agreement with New Mexico; Provides Status Update on Remaining Projects*" (Aug. 13, 2013) (online at [www.ntia.doc.gov/press-release/2013/firstnet-approves-spectrum-lease-agreement-new-mexico-provides-status-update-rem](http://www.ntia.doc.gov/press-release/2013/firstnet-approves-spectrum-lease-agreement-new-mexico-provides-status-update-rem)).

<sup>11</sup> NTIA Press Release, "*FirstNet Approves Resolutions on Spectrum Lease Agreement with LA-RICS and Personnel Acquisition Strategy*" (June 27, 2013) (online at [www.ntia.doc.gov/press-release/2013/firstnet-approves-resolutions-spectrum-lease-agreement-la-rics-and-personnel-acqu](http://www.ntia.doc.gov/press-release/2013/firstnet-approves-resolutions-spectrum-lease-agreement-la-rics-and-personnel-acqu)). NTIA temporarily suspended BTOP funding for the LA-RICS project in April but lifted the suspension after approving a revised network design. *See* [www2.ntia.doc.gov/files/grantees/larics\\_infrastructure\\_amendment10\\_revised SuspensionLetter.pdf](http://www2.ntia.doc.gov/files/grantees/larics_infrastructure_amendment10_revised SuspensionLetter.pdf).

<sup>12</sup> *See* FirstNet Press Release, "*FirstNet Board Approves Spectrum Lease Agreements with State of Texas*" (online at [www.firstnet.gov/news/firstnet-board-approves-spectrum-lease-agreement-state-texas](http://www.firstnet.gov/news/firstnet-board-approves-spectrum-lease-agreement-state-texas)).<sup>13</sup> Mississippi and Motorola (BayWEB) were unable to reach agreement with FirstNet and, consequently are closing out their awards. Charlotte, NC is continuing its project without access to FirstNet spectrum.

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<sup>14</sup> *See* FirstNet, *Consultation Meetings* (online at <http://firstnet.gov/consultation/meetings>).

has worked with a federal interagency group focused on emergency communications and held a formal consultation with federal agencies earlier this year.

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.<sup>15</sup> This process culminated in a subsequent RFI released in September 2014 seeking comment on a draft Statement of Objectives for FirstNet's comprehensive RFP.<sup>16</sup> The RFI included questions on network buildout; deployment; operations and maintenance; cost considerations and financial sustainability; system hardening; priority and preemption; and general compliance with its enabling legislation. FirstNet received 122 comments to help shape the RFP.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup>

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, 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.<sup>20</sup> FirstNet also announced it would begin one-on-one meetings with vendors beginning on May 15.

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<sup>16</sup> See FirstNet Press Release, "*FirstNet Board Takes Action Toward Achieving Program Milestones*" (Sept. 17, 2014) (online at [www.firstnet.gov/news/firstnet-board-takes-action-toward-achieving-program-roadmap-milestones](http://www.firstnet.gov/news/firstnet-board-takes-action-toward-achieving-program-roadmap-milestones)).

<sup>17</sup> See FirstNet Press Release, "*FirstNet Completes Successful Request for Information and Public Comment Period*" (Oct. 28, 2014) (online at [www.firstnet.gov/news/firstnet-completes-successful-request-information-and-public-comment-period](http://www.firstnet.gov/news/firstnet-completes-successful-request-information-and-public-comment-period)).

<sup>18</sup> See FirstNet Press Release, "*FirstNet Completes Successful Request for Information and Public Comment Period*" (Oct. 28, 2014) (online at [www.firstnet.gov/news/firstnet-completes-successful-request-information-and-public-comment-period](http://www.firstnet.gov/news/firstnet-completes-successful-request-information-and-public-comment-period)).

<sup>19</sup> *Id.*

<sup>20</sup> See FirstNet Press Release, "*FirstNet Holds Successful First Industry Day*" (May 14, 2015) (online at [www.firstnet.gov/news/firstnet-holds-successful-first-%E2%80%9Cindustry-day%E2%80%9D](http://www.firstnet.gov/news/firstnet-holds-successful-first-%E2%80%9Cindustry-day%E2%80%9D)).

### III. OFFICE OF INSPECTOR GENERAL REPORT

In response to concerns raised by a former FirstNet Board Member and a subsequent Special Review Committee convened by FirstNet's board, FirstNet requested that the Department of Commerce Office of Inspector General (OIG) conduct an independent review of procurement and ethics concerns.<sup>21</sup>

OIG issued a report on December 5, 2014, that found: (1) inadequate confidential and public disclosure monitoring procedures; (2) a need for improvement in filing of timely disclosure reports and monitoring of potential conflicts of interest; and (3) lack of transparency and monitoring of contracting practices for staff support hiring.<sup>22</sup>

In response, FirstNet Chairwoman Sue Swenson indicated that FirstNet is incorporating lessons learned from the OIG report by examining its financial disclosure report filing and procurement oversight practices as well as identifying potential conflicts of interest.<sup>23</sup>

### IV. GAO REPORT

In April 2015, GAO released a study assessing FirstNet's progress in establishing the PSBN, which included (1) FirstNet's progress carrying out its responsibilities and establishing internal controls; (2) how much the network was estimated to cost and how FirstNet planned to become self-funding; and (3) what lessons could be learned from the early builder BTOP projects.<sup>24</sup> GAO recommended that FirstNet complete its risk assessment and develop standards of conduct as well as an evaluation plan for early builder projects.<sup>25</sup>

FirstNet agreed with all of GAO's recommendations, indicating it had initiated a legal compliance risk assessment focusing on key legal risks, and that it reviews significant enterprise-wide risks with management on a bi-weekly basis.<sup>26</sup> It plans to start a full risk assessment and to

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<sup>21</sup> National Telecommunications and Information Administration, *Statement of FirstNet Board Chairman Sam Ginn* (Oct. 25, 2013) (press release).

<sup>22</sup> U.S. Department of Commerce Office of Inspector General, *FirstNet Must Strengthen Management of Financial Disclosures and Monitoring of Contracts*, OIG-15-013-A. (Dec. 5, 2014).

<sup>23</sup> See Testimony of Sue Swenson, Chairwoman, FirstNet before the Committee on Commerce, Science, and Transportation, U.S. Senate (Mar. 11, 2015).

<sup>24</sup> See GAO Report, "Public Safety Broadband Network: FirstNet Should Strengthen Internal Controls and Evaluate Lessons Learned," GAO-15-407 (Apr. 2015).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 66.

establish supplemental standards of conduct related to existing FirstNet policies.<sup>27</sup> FirstNet also committed to establishing an appropriate evaluation plan for lessons from the BTOP early builder projects.<sup>28</sup>

**V. WITNESSES**

The following witnesses have been invited to testify:

**Mr. Stu Davis**

State Chief Information Officer

Assistant Director

Ohio Department of Administrative Services

**Mr. TJ Kennedy**

Acting Executive Director

First Responder Network Authority

**Mr. Fred Scalera**

Public Safety Broadband Program Manager

Office of Homeland Security and Preparedness

State of New Jersey

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*