

**Before the
DEPARTMENT OF COMMERCE
FIRST RESPONDER NETWORK AUTHORITY
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, D.C. 20230**

In the Matter of the)
)
First Responder Network Authority) Docket No. 150306226-5226-01
Further Proposed Interpretations of Parts of)
The Middle Class Tax Relief and Job)
Creation Act of 2012)

COMMENTS OF THE STATE OF FLORIDA

Introduction

Florida welcomes the second opportunity to respond to the First Responder Network Authority (“FirstNet”), National Telecommunications and Information Administration (“NTIA”), and U.S. Department of Commerce, Notice and Request for Comment (“Second Notice”). The Second Notice seeks comment on FirstNet’s further interpretations of Middle Class Tax Relief and Job Creation of 2012 (“Act”), which governs its purpose and activities.¹ We believe this Second Notice is a significant step towards implementing the National Public Safety Broadband Network (“NPSBN”).

The Florida Department of Highway Safety and Motor Vehicles is the designated governmental body for coordination with FirstNet for the State of Florida. Florida is currently the third most populous State in the nation with an estimated 19.9 million residents. The large

¹ Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156 (2012)(Act); *see* Department of Commerce, NTIA Docket No. 150306226-5226-01, RIN 0660-XC017, *First Responder Network Authority Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, Fed. Reg. Vol. 80, No. 49, 13336 (March 13, 2015)(*Second Notice*)

population is spread throughout the State, with four metropolitan areas with populations over one million. To ensure the safety of the entire population, Florida maintains, and continually improves, the capabilities of the thousands of public safety practitioners operating within the State.

It is our belief that a strong partnership between Florida and FirstNet will foster an avenue for increasing the capabilities of our first responders in both their daily activities, and in disaster situations. We expect a reciprocal data exchange in order to aid both FirstNet and Florida in determining the needed policy framework that will govern the NPSBN. Such a collaborative exchange will ensure that Florida's public safety entities receive the needed features, coverage, capacity, and devices to perform their missions.

While Florida is providing comprehensive comments on FirstNet's interpretations, such comments should, in no way, be construed as indicative of a current or anticipated decision by the State regarding FirstNet's future plan for the State of Florida's radio access network (RAN). The State of Florida provides these comments for FirstNet's consideration and looks forward to the continuing FirstNet State consultation process.

A. Technical Requirements Relating to Equipment for Use on the NPSBN

Florida agrees with FirstNet's conclusion that equipment for the use "on", rather than "constituting", the network shall fulfill the requirements imposed by Section 6206(b)(2)(B). Florida also agrees that in order to meet the interoperability goals of the Act, end-user devices must operate seamlessly across the Network, regardless of which RAN option a State chooses.

Florida suggests that, in order to promote innovation and economic feasibility, devices should not be subject to further requirements beyond those minimally identified in the Interoperability Board Report. We note, however, that these devices must meet “nationwide standards” to ensure interoperability.² These standards must be clearly defined, and FirstNet should ensure that vendors and manufactures are compliant with all aspects of such standards. Florida seeks further clarification regarding which entity will be responsible for standards compliance after implementation of the NPSBN.

To further increase competition within the device marketplace, Florida agrees with FirstNet’s conclusion that as long as a device could be used by any public safety entity, it fulfills the requirements of the Act.³ Florida notes, however, that the term “capable” should be determined through a certification process that ensures capability throughout one or more of the public safety disciplines. As long as a device meets the “standards” detailed above, the manufacturing and vending process should be as flexible as possible to increase economic feasibility through competition.

Florida agrees with FirstNet’s conclusion that “across all public safety broadband networks operating in the 700MHz band”⁴ applies to both vendors and public safety entities. Devices capable of being used on the entire 700MHz band would help create further competition in the marketplace. Moreover, devices capable of utilizing the entire 700MHz spectrum will create needed redundancy in the event of a Band 14 outage. The purpose of the Act is to establish a NPSBN within the spectrum leased from FirstNet. Therefore, Florida believes that

² Act §6206(b)(A)

³ Act §6206(b)(2)(B)(ii)

⁴ *Id.*

public safety broadband networks,⁵ other than Band 14, should be protected from preemption by FirstNet.

Florida agrees that backward-compatibility is necessary to achieve our robust public safety mission. It is imperative that all public safety entities have voice, data, and video capabilities in the event that Band 14 experiences an outage. It is our opinion that public safety entities and States should develop the criteria for determining whether such capabilities are necessary, while FirstNet partners may determine if such capabilities are technically and economically reasonable.

B. FirstNet Network Policies

B. II. Network Policies

Florida agrees that some “network policies”⁶ should apply to all States, regardless of which RAN option a State chooses. This will ensure that the interoperability goals of the Act will be maintained as technology evolves.

Florida understands that, according to the language within the Second Notice, “many of these policies will be informed by the partners chosen to help deploy the network”.⁷ In Section 6206(b), the Act states that “[FirstNet] shall...take all actions necessary to ensure the building, deployment, and operation of the network in consultation with Federal, State, tribal, and local public safety entities...” Therefore, Florida maintains that the network policies⁸ should be shaped by States, Tribes and public safety partners, and may be informed by private partners.

⁵ §6001(14)

⁶ §6206(c)(1)

⁷ *Second Notice* at 13339

⁸ *Supra* note 6

Specifically, private partners, in consultation with the States, Tribes and public safety partners, may help shape the technical requirements, while the public safety partners will determine the operational requirements. FirstNet must consult the “Public Safety Advisory Committee” while carrying out its duties and responsibilities, including, but not limited to, establishing these network policies.⁹ Furthermore, the policy detailed in Section 6206(c)(1)(E)(ii) specifically states “ongoing compliance review and monitoring of the -- practices and procedures of the entities operating on and the personnel using such network.” Therefore, Florida believes that Congress intended to have public safety entities, acting through the States, establish the operational policies that govern the network. As such, the private partners should take a subordinate role to the States, Tribes, and public safety partners in these matters.

Florida also notes that States must be consulted in the formation of the network policies¹⁰ and many other aspects of the network as highlighted in Section 6206(c).

C. A State's Opportunity To Assume Responsibility for Radio Access Network Deployment and Operation

C. II. FirstNet Presentation of a State Plan

The Act states the network is to be established in a timely manner. Therefore, Florida agrees that FirstNet may submit a State plan on an individual basis, rather than waiting until all requests for proposals (RFPs) have been completed. We understand that a National RFP process would be too lengthy and introduce additional volatility due to State-built RAN deployment

⁹ Act §6205(a)(1)

¹⁰ §6206(c)(2)(A) “In...carrying out its responsibilities, [FirstNet] shall consult with...State...jurisdictions regarding the distribution and expenditure of any amounts required to carry out the policies established under paragraph (1)...”

decisions affecting the purchasing power of FirstNet. It is highly important to the States, however, that FirstNet provide a schedule for delivery of FirstNet State plans as soon as possible.

Florida understands that, according to the language in the Second Notice, FirstNet has made the following decision: “FirstNet may not be able to provide the level of certainty in State plans that would ordinarily be assumed to emerge from the final award of a contract to a vendor to deploy in a State.”¹¹ Florida, however, expects some level of certainty from which to base its decisions. Should FirstNet not be able to provide such certainty in its State plan, nor should the States be required to provide such certainty in their State-built RAN plan. Specifically, the aforementioned “policies” developed by FirstNet partners, States, and public safety entities must be guaranteed nationwide. Additionally, Congress requires consultations with States during the RFP process. Therefore, Florida believes that the “circularity of...information needs”¹² between FirstNet and States can be remedied by establishing the required dialogue long before a FirstNet RFP, or State plan, is “complete”.

The intent of Congress is to establish a robust interoperable NPSBN. This goal would be diminished if a State agreed to a FirstNet State plan that was developed via the required State consultation, but failed to deliver upon the provisions discussed in Section 6206(c)(2)(A). Therefore, any substantial deviation from the FirstNet State plan should allow a State the opportunity to reconsider their RAN deployment decision. A State’s public safety capabilities would be severely disadvantaged without such protection.

C. III. Content of a State Plan

¹¹ *Second Notice* at 13342

¹² *Id.*

Florida suggests that the minimum legally required contents of a State plan shall be in accordance with those a State-built RAN deployment would be required to present to the FCC,¹³ NTIA, and FirstNet.¹⁴ It is imperative that a State receive this information in order to have a clear understanding of the benchmarks with which the FCC, NTIA, and FirstNet will employ.

Without such criteria, States will be unable to develop and submit an acceptable State-built RAN plan to the FCC, NTIA, and FirstNet. The policies and procedures must be developed and conveyed to the States well in advance of FirstNet's presentation of a plan to a State. This information will inform the States prior to their deciding upon the option they want to pursue with regard to the NPSBN. Any other approach may be contrary to Congress's intent to balance a State's sovereignty, by forcing a State into a FirstNet RAN deployment scenario.

C. IV. Governor's Role in the State Plan Process

Florida agrees that the Governor's RAN deployment decision is to be binding upon all levels of government within the State. Florida believes that FirstNet should not construe a Governor's decision as infringing upon the rights of the sovereign Tribes in their State. As such, Florida has established a strong working relationship with the Tribes within Florida's geographic boundaries and will continue to consult with them throughout this process. It is important to note that a Tribe's RAN decision may be different from a State's. Therefore, FirstNet should clarify the process for consultation with sovereign Tribal nations within a State's geographic boundaries.

¹³ Act §6302(e)(3)(C)(i)

¹⁴ §6302(e)(3)(D)

FirstNet concludes that “sub-State jurisdictions”¹⁵ could work with their State and FirstNet to deploy additional RAN capabilities. Florida agrees and stresses that FirstNet flexibility, and State control, regarding additional capacity and coverage is in the best interest of all public safety entities within a state’s geographic boundaries.

C. V. Timing and Nature of State Decision

It is difficult for a State to make a decision on when it may decide to build its own RAN or accept FirstNet’s State plan without further information. Florida encourages FirstNet to find opportunities to share more information gathered at the National level with regard to policies, procedures, technology, and economic feasibility. Providing this information would offer States a level of comfort with regard to the information being used in forming the FirstNet Plan for its State. Florida believes this is the core purpose of the consultation process with FirstNet and that FirstNet has a duty to share its information with the states.

C. VI. Notification of State Decision

Florida agrees that a Governor’s RAN deployment decision shall be provided to FirstNet, NTIA, and the FCC upon the same day of making such a decision. This interpretation will ensure the timely development of the NPSBN.

C. VII. The Nature of FirstNet’s Proposed State Plan

Florida understands that, according to the language within the Second Notice, FirstNet’s proposed State plan does not represent a contractual agreement. The Act, specifically 6302 (e)(3)(C)(i), however, requires that the State “shall demonstrate – that the State will be in compliance with the minimal technical interoperability requirements developed under section 6203; and interoperability with the [NPSBN]”. Additionally, Section 6302(e)(3)(D) introduces

¹⁵ *Second Notice* at 13342

many other criteria a State-built RAN must meet in order to be approved by the NTIA and to enter a spectrum lease with FirstNet. Therefore, Florida expects certainty regarding these criteria. Without such a guarantee, States will not be provided with the information needed to make an appropriate RAN deployment decision. Furthermore, without such guarantees, the FirstNet proposed State plan may deviate too far from the agreed upon RAN deployment that was decided to be in the best interest of such a State's public safety entities. Deviations from the plan could adversely impact the State's public safety mission. Moreover, if the proposed State plan does not establish such criteria, FirstNet will not have a benchmark to approve and issue spectrum leases to States that choose to build their own RAN.¹⁶

C. VIII. State Development of an Alternative Plan

FirstNet "...encourage[s] States that may contemplate [building their own RAN] to engage FirstNet as early as possible to increase the specificity of the alternative plans they can present to the FCC and NTIA."¹⁷ Florida notes that this should be done during the required State consultations.¹⁸ Additionally, Florida believes that this consultation must be a continued avenue for information sharing between the State and FirstNet and vice versa.

Florida agrees with FirstNet that a State-built RAN alternative is "complete" when the technical and NPSBN interoperability requirements are met.¹⁹ We seek clarification on the 180-day deadline and process for the submission of a State-built RAN plan to the FCC,²⁰ NTIA, and FirstNet²¹. Florida seeks further clarification on the timeline of assessments, approvals, and the effect of minor discrepancies on the process. Florida encourages FirstNet to develop a

¹⁶ Act §6302(e)(3)(D)

¹⁷ *Second Notice* at 13344

¹⁸ Act §6206(b)

¹⁹ §6302(e)(3)(C)(i)

²⁰ §6302(e)(3)(C)(ii)

²¹ §6302(e)(3)(C)(iii)

collaborative and continued consultation process for States that decide to build their own RAN. Such a process will ensure the success of the NPSBN.

Florida understands that FirstNet concludes “that where a State fails to ‘complete’ its request for proposal process in the 180-day period under the Act, the State would forfeit its ability to submit an alternative plan in accordance with paragraph (e)(3)(C).”²² We encourage FirstNet to provide for an extension process due to the many complexities that exist in the provision of such a comprehensive plan and to clearly articulate the process to the states prior to provision of a state’s FirstNet plan.

C. IX. Responsibilities of FirstNet and a State Upon a State Decision To Assume Responsibility for the Construction and Operation of Its Own RAN

Florida recommends that FirstNet clarify the process by which a State-build RAN plan receives approval from the FCC, NTIA, and FirstNet. We note that a State-built RAN process is time-sensitive and will require a large amount of resources to develop an RFP of this magnitude. Therefore, Florida requests a clarification on the timeline of events, evaluation criteria, procedures, and processes regarding both a FirstNet RAN buildout plan and a State-built RAN deployment from FirstNet, the NTIA, and the FCC.

D. Customer, Operational and Funding Considerations Regarding State Assumption of RAN Construction and Operation

D. II. Customer Relationships in States Assuming RAN Construction and Operation

Florida acknowledges the complexity regarding the customer relationship role in a State-built RAN option. Therefore, Florida agrees with FirstNet’s conclusion that Congress intended to

²² *Supra* note 17

promote flexibility with such customer-facing roles.²³ We encourage the implementation of models that are currently in place and widely accepted. These best practices can be found in both private business and government operations. By utilizing models already in place, FirstNet will mitigate the possible “confusion among public safety entities”.²⁴

FirstNet asserts, “A resale or MVNO-like arrangement permitting States that assume RAN responsibilities to offer service to public safety entities could create disparities in, among other things, terms and conditions, service/feature offerings and availability, priority and preemption governance schemes, and pricing and billing practices between opt-out States and opt-in States.”²⁵ Florida agrees with FirstNet that these possible disparities are to be addressed prior to the issuance of a spectrum lease by FirstNet.²⁶ Therefore, if FirstNet grants such a State a spectrum capacity lease, it has implicitly approved of a State’s “comparable security, coverage, and quality of service to that of the [NPSBN]”.²⁷ For the reasons enumerated above, Florida seeks further consultation on such a structure, with respect to distribution of revenues created, allowable future expenditures, and control of the above.

D. III. State Use and Reinvestment of Funds Received From Building and Operating a RAN

FirstNet “believe[s] as a general matter that Congress did not intend for a few, high-density States to be able to withhold material funding for all other States under the Act”.²⁸ Florida agrees with the general intent of the previous statement, but stresses that Congress also did not intend for a few, high-density States to materially fund all other states under the Act at

²³ *Second Notice* at 13347

²⁴ *Id.*

²⁵ *Id.*

²⁶ Act §6302(e)(3)(D)

²⁷ §6302(e)(3)(D)(iii)

²⁸ *Second Notice* at 13348

the expense of fully developing, maintaining, and funding its own RAN based on its own determined needs and features. In fact, the Act specifies other revenue sources that FirstNet may utilize²⁹ in addition to the \$7 billion dollars in cash, subscriber fees, and covered leasing agreements (CLAs) between FirstNet and secondary parties.³⁰ Therefore, Florida suggests that FirstNet extensively consult with States that have dense population areas in order to determine what features, coverage, capacity, and devices are required by the public safety entities of such a State that FirstNet intends to provide in its State plan. Such consultation will be necessary for both a FirstNet State plan and a State-built RAN plan.

Congress was careful to balance the authority of FirstNet with a State's right to deploy a State-built RAN. Therefore, Florida requests that FirstNet establish a definition of "cost-effectiveness".³¹ Florida also seeks clarification on the spectrum lease approval process, including timelines and requirements.

Based on the language of the Act, Congress intended to delineate CLAs as distinct of PPPs. Precisely, Section 6302(g)(2) confirms that a State-built RAN deployment can enter into a CLA and use the excess revenues for the RAN of the State, whereas Section 6302(g)(1) allows a State-built RAN deployment to enter a PPP and use the excess revenues to reinvest into the network within the State.

Closing Remarks

For the foregoing reasons, Florida urges FirstNet to interpret the Act consistent with comments provided herein that will reflect upon future forthcoming proposals, interpretative

²⁹ Act §6206(b)(4)(C)

³⁰ §6208

³¹ §6302(e)(3)(D)(ii)

rules, and network policies. We especially look forward to the continuing consultation process in order to ensure that our public safety entities receive the features, capacity, coverage, and devices required to perform their missions. Florida is eager to deploy the network as early as possible, and we believe that through the consultation process, FirstNet will understand what a large and diverse State, such as Florida, needs and expects from the NPSBN.