

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

<i>In the Matter of the</i>)	
)	
Procedures for Commission Review of)	PS Docket No. 16-269
State Opt-Out Requests from the)	FCC 16-117
FirstNet Radio Access Network)	
)	
_____)	

COMMENTS OF THE STATE OF FLORIDA

Introduction

The State of Florida welcomes the opportunity to respond to the Notice of Proposed Rulemaking (“NPRM”) published by the Federal Communications Commission (the “FCC” or “Commission”), on September 21, 2016. The NPRM seeks comments on proposed procedures for administering the FCC’s role in the State opt-out process from the FirstNet radio access network (“RAN”) as provided under the Middle Class Tax Relief and Job Creations Act of 2012 (the “Act”).

The Florida Department of Management Services is the recently designated governmental body for coordination with FirstNet for the State of Florida. Florida is currently estimated to be the third most populous state in the nation with 20.3 million residents¹, over 105 million visitors per year, and 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.

¹ <http://www.census.gov/popest/data/state/totals/2015/index.html>

While Florida is providing comments on the NPRM, such comments should, in no way, be construed as indicative of a current or anticipated decision regarding the State of Florida's RAN. The State of Florida provides these comments for FCC's consideration only.

I. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

“15. . . . The NPRM also seeks comment how notice should be provided and on whether an entity other than a State Governor, such as the Governor's designee should be permitted to complete this filing requirement.”

The Commission should accept filings by the state governors' authorized designee(s) to allow for greater flexibility and convenience.

“16. The NPRM seeks comment on the Act's provision that States choosing to opt out have 180 days to 'develop and complete' requests for proposals (RFPs). In particular, the NPRM seeks comment on what showing is sufficient to demonstrate that a State has 'completed' its RFP within the 180-day period. The NPRM further proposes that, if a State notifies the Commission of its intention to opt out of the NPSBN, the State will have 180 days from the date it provides such notification to submit its alternative plan to the Commission. The NPRM proposes to treat a State's failure to submit an alternative plan within the 180-day period as discontinuing that State's opt out process and forfeiting its right to further consideration of its opt-out request. The NPRM seeks comment on what an opt-out State should be required to include in its alternative plan for the plan to be considered complete for purposes of the Commission's review.”

Florida law mandates that contracts above a certain value be procured through one of several procurement vehicles – the Invitation to Bid, the Request for Proposal, and the Invitation

to Negotiate (ITN)². The ITN, codified in section 287.057(1)(c), Florida Statutes, is similar to some other states' Request for Proposals with negotiations. Florida's ITN process entails evaluating responsive vendors before proceeding to the negotiation stage with selected vendors. If Florida were to "opt-out" and submit its own alternative plan, it would very possibly proceed using an ITN. Therefore, any references to "RFP" in this document are purely for purposes of matching the federal statutory language and should be construed as neither a decision by Florida to use any particular procurement method nor a waiver of Florida's right to choose among the procurement methods available under Florida law.

The Act requires the governor to develop and complete requests for proposals for the construction, maintenance, and operation of the RAN within 180 days after the date on which the governor was provided notice.³ Florida interprets "develop and complete" to mean essentially "begin and finalize the development of" the RFP.

The language of the Act allows for states to submit an alternative plan with something less than full completion of the RFP process. The Act uses different language to describe how advanced FirstNet must be in the development of its plan prior to submission to the states ("upon the completion of the request for proposal *process* conducted by [FirstNet]") and how advanced the state alternative plans must be prior to their submission ("develop and complete requests for proposals"). In light of this pertinent distinction drawn by Congress, it must be concluded that states are not required to complete the entire RFP process, but only the RFPs themselves, by the time they submit their alternative plans. The Commission should be mindful of this clear statutory distinction when issuing its final rule.

² § 287.057(1), F.S.

³ 47 U.S.C. 1442(e)(3)(B)

Fairness also demands that the level of detail required from the state-submitted alternative plan to be no greater than that of the plan provided to each state by FirstNet. FirstNet, which has had more than 180 days to complete the request for proposal process, interprets its obligation to submit completed plans as requiring only “sufficient information to present the State plan with the details required pursuant to the Act for such plan, but not necessarily at any final award stage of such a process.”⁴ Thus, FirstNet, which is required to complete the entire RFP process, does not believe a final award, let alone contract formation, is necessary in satisfying this obligation. It would be anomalous for the Commission to interpret a more rigorous standard on the states in their submission of alternative plans to the Commission.

The interpretation advocated for herein would be in keeping with FirstNet’s interpretation, which considers a state’s RFP to be complete if it has “progressed in such a process to the extent necessary to submit an alternative plan for the construction, maintenance, operation and improvements of the RAN, that demonstrates the technical and interoperability requirements . . .”⁵

The Commission should also not require a state that chooses to opt out to have received bids prior to the Commission’s evaluation of the alternative state plan. Such a requirement would serve only as an arbitrary check point and be of no appreciable benefit to the Commission’s evaluative process of the alternative plans. The bids, which prior to the execution of a contract are merely offers, cannot be relied on to accurately forecast the state’s final alternative plan. Moreover, because of trade secret and public procurement exemptions to the public records law in Florida, the submitted bids would likely be unavailable to the Commission

⁴ Second Notice, Final Interpretation No. 9, at 63505.

⁵ Second Notice, Final Interpretation No. 18, at 63506.

prior to an actual award. Thus, it would appear that a requirement for states to receive bids prior to their submission of alternative plans would be an arbitrary requirement, and while the receipt of bids may create an appearance of advancement in the direction of the state's alternative plan, it guarantees nothing of real substance regarding the state alternative plan.

Finally, states should be granted reasonable time extensions, on a case-by-case basis, when circumstances, especially those beyond the state's control, hinder the timely completion of the RFP.

“17. The NPRM seeks comment on whether States should be required to file their alternative plans in PS Docket No. 16–269, and the scope and types of information that must be included in the submission. The NPRM also seeks comment on whether States should be allowed to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission's decision. Should Commission staff be permitted to discuss or seek clarification of the alternative plan contents with the filer? If a plan is deemed sufficient for our purposes before a State awards a contract pursuant to its RFP, should the Commission condition approval on substantial compliance with the approved plan under the awarded contract, or should this be addressed by NTIA under its “ongoing” interoperability evaluation?”

Since states that opt out are not responding to PS Docket No. 16-269, but are submitting their own alternative opt-out plans for review, a separate portal with passwords and levels of security would be proper. The password would allow states, FirstNet, NTIA, and the public safety entities of the applicant state to access the plan, but not necessarily comment, and allow

the states to securely file (See responses to 18 and 19 for a more complete discussion on which entities should be allowed to access and respond to states' alternative plans).

A state should be allowed to rebut, resubmit, or respond to any commentary of the Commission before the Commission renders a final decision regarding that state's plan. The Commission staff should be permitted to directly discuss or seek clarification of the alternative plan contents with the State's designated point of contact during the review.

With respect to the notion of a conditional approval, it is unclear how the Commission plans to effectuate such a condition. Would the Commission reinsert itself into the approval process following its initial approval? There is serious doubt as to whether the Commission has the authority to reinsert itself into the approval process once the plan is under review by other agencies.

There is no reason why the Commission should reject amendments or supplemental information from states prior to making a decision. If, prior to the Commission's decision, a state advances in the development of its alternative plan, the Commission, and potentially other states and stakeholders, could benefit from that additional information by having a more complete picture of that state's alternative design. Moreover, no party is harmed when a state provides additional information to the Commission. To the contrary, robust communication between the Commission and the states will only lead to a better final result. If the Commission desires clarification on a particular aspect of the state alternative plan, the Commission should not hesitate to request clarification directly from the state. A request for clarification, however, should be limited to requests for information that are necessary for the Commission to complete its review.

“18. Should State plans be treated as confidential with public notice limited to identifying which States have elected to opt out and filed an alternative plan? If so, should the Commission require such filing, and should the public be given an opportunity to comment on them?”

States should be able to view the plans of other states. States may be able to derive useful methodologies or other concepts from other states’ alternative plans. This could, in turn, lead to better procurements, more robust RANs among the states, and ultimately an enhanced safety apparatus. States should not, however, be permitted to comment on other states’ plans as the other states’ motivations are not necessarily aligned with the best interest of the opt-out state’s public safety community. By contrast, members of an opt-out state’s public safety entity community should be allowed to directly comment on their own state’s alternative plan since those individuals will be the ones most directly affected by the plan implementation.

“19. The NPRM also seeks comment on whether FirstNet and/or NTIA should be allowed access and the ability to comment to the Commission on State plans within a defined comment period . . .”

The Commission should allow FirstNet to have access to review the state opt-out plans in order to ensure all plans meet the national interoperability requirements. FirstNet and NTIA should be able to comment on the states’ alternative plans only to the degree that states are afforded the opportunity to amend their plans in response to the feedback received from those agencies. To allow those agencies to simply criticize the state plans, without granting the states an opportunity to address the criticisms, adds nothing constructive or meaningful to the process, especially since those agencies will have their opportunity to formally review the alternative plan later in the process.

“20. The NPRM proposes that each alternative plan submitted to the Commission should receive expeditious review. The NRPM proposes a ‘shot clock’ for Commission action on alternative plans to provide a measure of certainty and expedience on the process. The NPRM seeks comment on what an appropriate shot clock period would be.”

The State of Florida appreciates the NPRM’s sense of urgency, realizing that states will face a great deal of uncertainty during this review period. The State of Florida interprets the concept of the shot clock to mean that if the Commission fails to render a decision during the shot clock period, the state would be deemed, by default, to be in compliance with the two interoperability requirements. If something other is intended, clarification by the Commission is necessary.

Considering the hardship imposed by excessive delays in the decision making process, we commend the use of a “shot clock,” and propose that this be set for 30 calendar days following the Commission’s receipt of a state’s alternate plan. The only variances that should be measured are those between the opt-in proposal and the opt-out proposal. The “shot clock” should only be 30 days. A question and answer period between the Commission and the State(s) may be needed to clarify any unknown requirements from the FCC, or to determine if additional information is needed. Each time the State responds, it is reasonable for the shot clock to reset to 30 days. The Commission should not be permitted to request information it could have previously requested as a pretense to reset the shot clock.

“21. The NPRM seeks comment on the standard against which alternative State plans will be evaluated, specifically with respect to the Act’s requirements that alternative plans demonstrate: (1) that the State will be in compliance with the minimum technical interoperability

requirements developed under section 6203, and (2) interoperability with the nationwide public safety broadband network.”

The State of Florida acknowledges the minimum technical interoperability requirements in the final report of the Technical Advisory Board for First Responder Interoperability, dated May 22, 2012.⁶ Given these requirements have been provided by order of transmittal per FCC 12-68, the State of Florida otherwise withholds specific comments to this paragraph at this time. Florida further acknowledges the need for interoperability with the nationwide public safety broadband network and will expect the standard for the same to be included in alternate State plans or at least incorporated by reference. On a general level, and as stated in the final report, the Interoperability Board has recognized “the possibility that required functions and interfaces that don’t exist within available LTE standards will arise.” (Section 4.1.8, page 39 of 100).

Although we expect full interoperability in alternate State plans, a determination will need to be made in real-time for compliance with, or exceptions to, future standards applied to alternative State plans, deprecated and/or replaced as stated in section 4.1.7 of the final report (page 38 of 100). Further, Florida strongly recommends IPV6 (internet protocol version six) based standards (see requirement #7 in Appendix B of the FCC 16-117) to minimize or eliminate accelerate deprecation and/or replacement of any IPV4 (internet protocol version four) standards. After additional technical review of FCC document, “Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network,” Florida will respond.

⁶ <https://ecfsapi.fcc.gov/file/7021919873.pdf>

Additionally, it remains unclear whether states are to provide vendor information and/or a roadmap detailing the planned life-cycle of the state's proposed RAN, how the state RAN will provide for backward compatibility, and how equipment hardware/software/firmware will be evolved and phased in and out over time consistent with FirstNet's interoperability requirements. Furthermore, it is unknown whether FirstNet is required to show a "planned life-cycle." If it is not, the states should not be held to a higher standard.

"22. Under the first prong, the NPRM seeks comment on the utilization of RAN-related requirements specified in the minimum technical interoperability requirements. Specifically, the NPRM proposes that review under this prong would include requirements (1) – (3), (7)-(10), (20)-(25)... from the Board Report, as documented in Appendix B of the NPRM."

Specific to the requirements under this prong for the RAN, Florida would like to apply the same general comments provided in paragraph 21.

"24. The NPRM seeks comment on the view that if the Commission disapproves a plan, the opportunity for a State to conduct its own RAN deployment will be forfeited and FirstNet 'shall proceed in accordance with its proposed plan for that State.'"

The Commission should not disapprove a plan without first addressing the alleged deficiencies with the State and allowing for the response or corrective action. The process should be an open dialogue between the two parties.

"25. The NPRM seeks comment on the view that the Commission's approval of a State opt-out plan as meeting the interoperability criteria in [S]ection 6302(e)(3)(C) of the Act would not create a presumption that the State plan meets any of the criteria that NTIA is responsible for evaluating under section 6302(e)(3)(D) of the Act."

The Commission's determination with respect to the two prongs under section 6302(e)(3)(C)(i) should create a presumption that the state has the ability to maintain ongoing interoperability with the nationwide public safety broadband network under section 6302(e)(3)(D)(i)(II). A state's present compliance with interoperability requirements is a strong indicator in determining its ability to maintain interoperability going forward.

"26. The NPRM seeks comment on how the Commission should document its decisions to approve or disapprove State opt-out requests under the statutory criteria. Should it issue a written decision or order explaining the basis for each decision, or would it be sufficient to provide more limited notice of approval or disapproval in each case without a detailed explanation."

Due process demands greater detail in the event of a disapproval notice. The Act prescribes a specific forum and standard for judicial review of the Commission's disapproval. Because states have appeal rights to the Commission's decision, the Commission must provide sufficient detail of its decision in order for the states to exercise those rights. A disapproval notice without adequate explanation of the basis for the decision would render judicial review meaningless.

Closing Remarks

For the foregoing reasons, Florida respectfully requests the Commission to issue a rule in accordance with these comments.