FIRST RESPONDER NETWORK AUTHORITY

BOARD RESOLUTION 50

Approval of Spectrum Lease Agreement with the State of New Jersey

December 17, 2013

WHEREAS, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012 (Act), which mandates the creation of a nationwide interoperable wireless broadband network that will enable police, firefighters, emergency medical service professionals, and other public safety officials to more effectively communicate and perform their missions;

WHEREAS, the Act creates the First Responder Network Authority (FirstNet), an independent authority within the Department of Commerce's National Telecommunications and Information Administration (NTIA), charged to take “all actions necessary” to build, deploy, and operate the network, in consultation with State, local, tribal, and territorial entities;

WHEREAS, on February 12, 2013, the Board adopted a Resolution (Resolution # 18) to authorize its member, Sue Swenson, to negotiate on FirstNet’s behalf on spectrum lease agreements (Agreements) with the Broadband Technology Opportunities Program (BTOP) public safety recipients for a period no longer than 90 days following the adoption of the Resolution;

WHEREAS, Resolution 18 authorized the 90-day negotiation period, which closed on May 13, 2013, to be extended for a brief period of time upon the mutual agreement of FirstNet and a recipient;

WHEREAS, on May 8, 2013, June 12, 2013, and July 22, 2013, the Board adopted three Resolutions (Resolution # 28, Resolution # 32, and Resolution # 35) to extend the period for negotiations on the Agreements with the BTOP public safety recipients through June 12, 2013, July 12, 2013, and August 13, 2013, respectively; and authorized Sue Swenson to continue such negotiations on FirstNet’s behalf;

WHEREAS, on October 25, 2013, the Board adopted a Resolution (Resolution # 46) to extend the period of negotiations on the Agreements with the BTOP public safety recipients of the State of Mississippi, the Bay Area Regional Interoperable Communications System Authority/Motorola Solutions, Inc., the New Jersey Department of Treasury, and Adams County Communications Center, Inc.; and authorized FirstNet's General Manager, Bill D'Agostino, and Deputy General Manager, TJ Kennedy, to continue such negotiations on FirstNet's behalf;

NOW THEREFORE BE IT RESOLVED that the FirstNet Board hereby approves the attached Spectrum Manager Lease Agreement with the State of New Jersey, a BTOP public safety recipient, and authorizes the General Manager to execute the agreement on FirstNet's behalf.

I, the undersigned, Secretary of the First Responder Network Authority, do hereby certify that the above is a true and correct copy of a resolution adopted at a meeting of the Board of the First Responder Network Authority on December 17, 2013, at which a quorum was present and voted.

_____
Uzoma Onyeije, Secretary

SPECTRUM MANAGER LEASE AGREEMENT

BETWEEN

THE FIRST RESPONDER NETWORK AUTHORITY

AND

THE STATE OF NEW JERSEY by and through

OFFICE OF INFORMATION TECHNOLOGY

I. PARTIES AND PURPOSE

This non-exclusive Spectrum Manager Lease Agreement ("SMLA" or "Agreement") is entered into by the **First Responder Network Authority** ("FirstNet" or "Licensee") and the State of New Jersey by and through the Office of Information Technology ("NJOIT" or "Lessee"), through which FirstNet will lease spectrum usage rights to operate on the 700 MHz public safety broadband spectrum ("FirstNet Spectrum"), the single, nationwide license which was granted to FirstNet by the Federal Communications Commission ("FCC") under Call Sign WQQE234. Further, this SMLA is a spectrum manager lease arrangement pursuant to Section 1.9020 of the FCC's rules (47 C.F.R. § 1.9020), subject to applicable provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96) ("Tax Relief Act"), the Communications Act of 1934 (47 U.S.C. § 151 *et seq.*), as amended ("Communications Act"), and FCC rules, regulations and policies.

The parties to this Agreement have entered into it with full awareness that while the fundamental goal of the Tax Relief Act is the deployment and operation of a nationwide interoperable public safety broadband network under the authority of FirstNet, the single, national network architecture for that network has not yet been established, and the technical standards for the network are continuing to evolve. Thus, the parties acknowledge that during the term of this Agreement, FirstNet may adopt additional or different technical requirements or operational standards to ensure the operability, interoperability, security, reliability, resiliency or similar capabilities of its single, national network architecture, and such additional requirements or standards may require the replacement or modification of any existing Lessee's Infrastructure. The parties further acknowledge that should that event occur, they will negotiate in good faith towards an agreement concerning how the costs of such replacements or modifications will be covered.

Subject to the terms and conditions below, the SMLA authorizes the Lessee to provide wireless communications services to public safety entities as described in Section 6001 of the Tax Relief Act ("Public Safety Entities"), and as otherwise provided for herein in Section II.D. Subject to the terms and conditions below, FirstNet intends for this Agreement to continue until the time at which FirstNet has provided the governors of each of the states with the details of its proposed plan for the build-out of the nationwide, interoperable broadband network, and the Governor of State of New Jersey ("State") has made the decision required under Section 6302(e) of the Tax Relief Act on whether the State will participate in the deployment of the nationwide interoperable broadband network as proposed by FirstNet, or will seek approval to conduct its own deployment of a radio access network within the State ("State's Decision"). The parties acknowledge, thereafter, any operations of the Lessee on FirstNet Spectrum will be pursuant to terms and conditions established by the implementation of the State's Decision.

One of the primary purposes of this Agreement is to minimize any disruptions in the availability of Lessee's wireless communications services to Public Safety Entities. To that end, as set forth below, FirstNet and the Lessee intend to make good faith efforts to minimize any disruptions in the availability of Lessee's wireless communications services to Public Safety Entities, and to ensure the interests of the State of New Jersey are included in any such good faith efforts that follow the date of the State's Decision. Although this is a non-exclusive agreement, to the extent that FirstNet leases this spectrum to third party users, it will work closely and in good faith with the Lessee to ensure that such third party uses

will not impede or interfere with Lessee's wireless communications to Public Safety Entities and others, as provided for herein.

II. TERMS AND CONDITIONS

A. **Responsibilities of the Parties.** The parties agree to the following responsibilities:

1. FirstNet shall:
   (a) Ensure that the Lessee complies with the Communications Act and all applicable policies and rules directly related to the FirstNet Spectrum by providing oversight and enforcement of the Lessee's use of the FirstNet Spectrum;
   (b) Be responsible for the final resolution of all interference-related matters, including conflicts between the Lessee and third parties, after first permitting the Lessee to resolve these matters;
   (c) Maintain a reasonable degree of actual working knowledge of the Lessee's activities;
   (d) Be responsible for all FCC-required filings and reports, including the filing of necessary notifications and all other required documents (i.e., FCC Form 608);
   (e) Retain the right to terminate the SMLA as provided in Section IV of this Agreement; and
   (f) Retain a copy of the SMLA in its records.

2. Lessee shall:
   (a) Comply with the requirements of the Communications Act and all applicable policies and rules related to the FirstNet Spectrum, including service rules for Call Sign WQQE234;
   (b) Be independently accountable to the FCC for complying with the Communications Act and FCC policies and rules;
   (c) Provide FirstNet with a copy of any filing to be made by Lessee to the FCC related to the use of the FirstNet Spectrum at least two (2) business days in advance of its submission;
   (d) Permit FirstNet to inspect its facilities and equipment used to operate on the FirstNet Spectrum, upon reasonable notice in accordance with Section II. O., below;
   (e) Accept FCC oversight and enforcement for the lease of the spectrum usage rights associated with FCC license authorization for Call Sign WQQE234;
   (f) Promptly respond to any FirstNet request for information to comply with FirstNet's reporting or oversight requirements; and
   (g) Retain a copy of the SMLA in its records.

B. **Compliance with FCC Rules.** The parties agree to comply with all of the rules, regulations, policies, decisions of the FCC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act (collectively, "Communications Laws") for the spectrum usage rights associated with FCC license authorization for Call Sign WQQE234.

C. **Geographic Scope of Operations.** The Lessee shall operate on the FirstNet Spectrum only within the geographic boundaries of the State of New Jersey ("Service Area")(see attached map), except as set forth below. The Lessee's primary area of operations shall be within its Broadband Technology Opportunity Program ("BTOP") project Service Area, as set forth in its BTOP Award Agreement, including any Special Award Conditions or amendments. In the event the Lessee must operate outside its BTOP project Service Area, including for purposes of fulfilling Key Learning Conditions as set forth in Section II. L. below, the Lessee shall notify FirstNet as soon as practicable of the location, movements and operational status of deployable assets that use the FirstNet Spectrum. The parties shall develop a process and standard for such notifications as part of the Key Learning Conditions Plan, as set forth in Section II. L. below.

D. **Eligible services.** The Lessee shall use the FirstNet Spectrum to provide wireless communications services to Public Safety Entities as defined under the Tax Relief Act. In addition, and for the purposes of this Agreement, the definition of Public Safety Entities is further expanded to include any government or private entity with statutory responsibility to protect life, property, and/or the environment in the jurisdiction, and

those entities assisting or cooperating in the mitigation of emergency incidents as defined in the Glossary of Terms by the Department of Homeland Security's Federal Emergency Management Agency ("FEMA") National Incident Management System ("NIMS") (all such entities are collectively, "Public Safety Entities").

E. **Subleasing.** The Lessee may not sublease the FirstNet Spectrum to any entity, nor offer any excess capacity on the FirstNet Spectrum to any entity for any purpose other than the provision of wireless communications services to Public Safety Entities.

F. **Consideration.** In consideration of Lessee's agreement to the Key Learning Conditions as set forth in Section II. L., FirstNet agrees to authorize the Lessee to use the FirstNet Spectrum. This section does not relieve the Lessee of any obligation it may have to pay any future fees associated with use of the nationwide public safety broadband network, pursuant to sections 6208 and 6302 of the Tax Relief Act. The Lessee agrees that this Agreement does not impair FirstNet's right to enter into a "Covered Leasing Agreement" as authorized by section 6208(a) of the Tax Relief Act.

G. **Protection of Incumbents.** Lessee shall comply with the FCC's rules, both current and as may be adopted in the future, for protection of Incumbents.

H. **Lessee's Infrastructure.** The Lessee shall ensure that all LTE-related devices, hardware, software, and any supporting infrastructure required for its operations on the FirstNet Spectrum (including LTE network services or applications platforms that may affect the operations and maintenance of the network under the single, national network architecture established by FirstNet) ("Lessee's Infrastructure"):

1. operate on 3GPP Band 14 in a 10 X 10 MHz configuration, to the extent compatible with international agreements concerning operations in border regions;

2. comply with the recommended minimum technical requirements of the Technical Advisory Board for First Responder Interoperability, as provided to FirstNet by the FCC, and as those minimum technical requirements evolve over time; and,

3. are built and operated according to open, non-proprietary and commercially-available standards.

If, during the term of this Agreement, FirstNet adopts additional or different technical requirements or operational standards to insure the operability, interoperability, security, reliability, resiliency or similar capabilities of its single, national network architecture, and such additional requirements or standards would require the replacement or modification of any existing Lessee's Infrastructure, the Lessee shall not be obliged to implement such changes until the Lessee and FirstNet have first entered into an agreement concerning how the costs of such replacements or modifications shall be covered. Lessee will not be responsible for any added costs resulting from FirstNet's adoption of any additional or different technical requirements or operational standards, if the parties fail to successfully negotiate an agreement regarding how such costs will be covered. Further, failure of the parties to successfully negotiate such an agreement cannot serve as the basis for termination of this Agreement by FirstNet. Lessee is, however, still obligated to implement changes required as a result of FCC rules or regulations.

I. **Environmental Compliance.** Lessee shall comply with all applicable Federal and State Environmental laws, regulations, and rules, including the completion of necessary environmental reviews. Prior to commencing operations on the leased portion of the FirstNet Spectrum, Lessee shall complete all environmental reviews required by Federal or State law.

J. **Participation by Public Safety Agencies.** Prior to commencing operations on the FirstNet Spectrum, the Lessee shall provide FirstNet with a written certification that it has received written notifications from a significant representation of the public safety agencies that are within the geographic scope of Lessee's operations of their intent to receive wireless communications services from the Lessee's operations.

K. **Consultation on Requests for Proposal and Agreements.** The Lessee shall consult with FirstNet prior to issuing any Requests for Proposal ("RFP"), executing any agreement with a supplier, or modifying any existing agreement with a supplier ("Project Supplier"), if such RFP or agreement concerns the Lessee's operations on the FirstNet Spectrum.

To the extent that FirstNet and Lessee agree to integrate the Lessee's LTE related devices, hardware and software (hereinafter "Equipment") into the FirstNet nationwide network architecture and implementation program, it may become necessary for the Lessee's Equipment to be relocated and reinstalled in another location. Such new location may be in another city, county or state within the United States of America where, in FirstNet's judgment, the Equipment can be more effectively and/or economically integrated into the FirstNet nationwide network to provide wireless broadband services to first responders and public safety users.

Upon FirstNet providing written notification to the Lessee, the parties shall enter into good faith negotiations for an agreement for the transfer of control and relocation of the Equipment consistent with the Lessee's obligations under 15 C.F.R. § 24.32 and the terms and conditions of its BTOP Award. Any relocation of Lessee's Equipment will be done in a manner that will not result in any degradation of Lessee's provision of wireless communications services to Public Safety Entities, including availability, coverage, performance or functionality of service provided to Public Safety Entities. Lessee will not be responsible for any costs associated with relocation of Lessee's Equipment. FirstNet will also not seek to relocate Lessee Equipment that was acquired in part, with Lessee's funds, unless the Parties enter into a subsequent agreement.

L. **Key Learning Condition(s).** Subject to the Key Learning Conditions Plan ("Plan") required by this subsection , the Lessee shall conduct the following activities as part of its operations on the FirstNet Spectrum, in order to assist FirstNet in the development, deployment, and management of the nationwide public safety broadband network:

i. Lessee agrees to demonstrate and document the use and capabilities of rapidly deployable assets, including such aspects as storage, maintenance, and management of deployable assets; efficient and effective transportation and activation of deployable assets in emergency situations; physical form factors; equipment hardening; satellite connectivity and backhaul; and development of a standard agreement governing deployment of Lessee's Infrastructure to entities other than the State of New Jersey.

ii. Lessee further agrees to conduct emergency management exercises that will showcase the capabilities of a deployable system, as well as provide training and experience in the use of deployable assets.

iii. Lessee further agrees to document a Network Operations Center (NOC) notification approach aligned with best industry practices for the notification of key personnel of important events associated with the network, such as maintenance, site visits, and upgrades. As a collaborative effort with FirstNet, the procedure will outline a trouble ticketing system, reporting, prioritization, and trouble ticket close out process.

Not later than 90 days following the execution of this Agreement, the Lessee and FirstNet shall develop a Key Learning Conditions Plan (the "Plan") which shall describe in more detail these activities and any related obligations of the parties.

M. **Compliance with Conditions of BTOP Award.** Within 15 days of execution of this Agreement, the Lessee shall seek the approval of the National Telecommunications and Information Administration ("NTIA") to lift its partial suspension of funds awarded to the Lessee under the BTOP. Following the Lessee's submission of such a request, and provided that the Lessee is in compliance with this Agreement, FirstNet will provide NTIA with a copy of this Agreement and a written recommendation that supports the Lessee's request to lift the partial suspension of the funds awarded to Lessee under the BTOP. The Lessee shall comply with the terms and conditions specified in its BTOP award, as amended.

N. **Co-Location Services.** Following the date of the State's Decision and after serving a written request to do so, FirstNet shall enter into good faith negotiations with Lessee and any underlying property owner and/or lessor from which Lessee is leasing LTE site space, for an agreement for co-location services, on a non-exclusive basis, for FirstNet to locate certain equipment on any of the Lessee's Federally-funded LTE sites and infrastructure (e.g., towers), to the extent permitted by the underlying property owner and/or lessor.

O. **Access to Information and Information Sharing.** In order to help inform FirstNet on the planning, deployment and operation of the nationwide public safety broadband network, the Lessee shall provide reasonable access to its operations, and shall facilitate the collection and sharing of information about its operations. Such access shall be provided to FirstNet's technical teams or other personnel authorized by FirstNet, as previously approved by Lessee, provided, however, that Lessee's confidential, security sensitive or proprietary information may be subject to appropriate non-disclosure agreements, as determined by Lessee in its sole discretion.

Prior to commencing operations on FirstNet Spectrum, the Lessee shall ensure that any agreement with its Project Suppliers expressly provides for:

1. the Project Supplier to disclose and share information to FirstNet or other authorized personnel, subject to appropriate non-disclosure agreements on the Project Supplier's confidential, security sensitive or proprietary information; provided, however, Project Supplier is not required to disclose proprietary financial information; and,

2. the testing and certification of any of the Lessee's Infrastructure provided by the Project Supplier for deployment in Lessee's operations, at approved labs for FCC type certification in 3GPP Band 14 and PTCRB certification specific to 3GPP Band 14 devices.

P. **Reporting.** The Lessee shall provide FirstNet with the following, where Lessee may clearly label any information provide as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY":

1. Quarterly written reports on the operations of Lessee's project that use the FirstNet Spectrum, Lessee's experiences with its Project Suppliers, its progress in achieving project milestones, and the experiences of users of its wireless communications services; and

2. Copies of its reports to government entities that relate to Lessee's use of the FirstNet Spectrum, including its BTOP reports and any environmental reports.

III. DURATION OF THE AGREEMENT AND AMENDMENTS

This Agreement will become effective when signed by both parties. This Agreement shall have an initial term of five (5) years. FirstNet will notify Lessee at least three months prior to the date upon which FirstNet intends to present the Governor of the State of New Jersey with the details of its proposed plan for build-out within the State under Section 6302(e) of the Tax Relief Act. Six months prior to the expiration of the initial term of this Agreement, or upon receipt of FirstNet's notification of the date on which it intends to present its proposed build-out plan to the Governor as described above, whichever first occurs, the Lessee shall initiate discussions with FirstNet. Such discussions shall review the progress of this project and address the possible need for a renewal or extension of this Agreement, or the negotiation of a new agreement, to maintain Lessee's access to FirstNet Spectrum in order to minimize the disruption of the availability of wireless communications services to Public Safety Entities in the Service Area prior to the implementation of the State's Decision and to facilitate FirstNet's access to the FirstNet Spectrum for partnerships and other agreements in support of a nationwide public safety broadband network. The parties shall make good faith efforts to minimize the disruption of the availability of wireless communications services to Public Safety Entities in the Service Area.

This Lease may be amended by mutual written consent of the Parties.

IV. TERMINATION AND CANCELLATION CLAUSE

A. This Agreement shall terminate upon the occurrence of any of the following conditions:

1. The day following the termination date of the Agreement; or

2. FirstNet's License Authorization for Call Sign WQQE234 is revoked, cancelled, terminated or otherwise ceases to be in effect.

B. FirstNet may terminate the Agreement in the event the Lessee:

1. fails to obtain approval of its request to NTIA to lift its suspension of BTOP funds;

2. fails to comply with material terms of the Agreement and/or applicable FCC requirements, following written notice and reasonable opportunity to cure the non-compliance;

3. commits a material breach of the Terms and Conditions of this Agreement or its BTOP Award, and thereafter fails to bring its operations into compliance within a reasonable period of time;

4. fails to obtain written approval from the Governor of New Jersey, or his/her designee, to continue the Lessee's spectrum usage rights under this Agreement, without interruption of Lessee's service, within 60 days after the State's Decision, provided that such period shall be extended if the Governor has not given written approval through no fault of the Lessee; or

5. fails to obtain written approval from the Governor of New Jersey, or his/her designee, to continue the Lessee's spectrum usage rights under this Agreement, without interruption of Lessee's service, within 60 days after the State of New Jersey fails to obtain Federal approval regarding the implementation of the State's Decision, provided that such period shall be extended if the Governor has not given written approval through no fault of the Lessee.

Upon termination of this Spectrum Manager Lease Agreement for any reason, FirstNet and the Lessee shall make good faith efforts to minimize any disruptions in the availability of Lessee's wireless communications services to Public Safety Entities in the Service Area.

V. RESOLUTION OF DISAGREEMENTS

Should any disputes arise under this Agreement, the parties agree that:

A. prior to initiation of litigation, the parties shall meet to attempt to resolve the dispute. The results of the meeting shall be memorialized in writing signed (either manually or electronically) by the head of each party; and

B. prior to initiation of discovery or the filing of a dispositive motion in litigation, the parties shall participate in mediation. The mediator may either be selected by the parties, or each party shall designate an unrelated party, who together shall select an unrelated third party, and the majority shall select the mediator, or one selected by a court of competent jurisdiction; and

C. Any litigation shall be filed in a Federal court of competent jurisdiction.

VI. GENERAL PROVISIONS

A. **Assignment**. This Spectrum Manager Lease Agreement is not an assignment, sale, or transfer of FirstNet's license for Call Sign WQQE234. This Spectrum Manager Lease Agreement shall not be assigned to any entity that is ineligible or unqualified to enter into a spectrum lease agreement. The Licensee shall not consent to an assignment of this Agreement unless such assignment complies with applicable FCC rules and regulations.

B. **Notices**. The parties agree that if there is a change regarding the information in this Agreement, the party making the change shall provide written notice to the other party. Such notices may be provided by U.S. mail, facsimile, or in person to the contacts as set forth below.

The contacts of each party of this Agreement are:

For Licensee:

FirstNet

Bill D'Agostino
General Manager
National Telecommunications and
Information Administration (NTIA)
1401 Constitution Avenue
Washington, DC 20230
Phone: _____
Email: bill.dagostino@firstnet.gov

For Lessee:

State of New Jersey by and through
Office of Information Technology
William Drew
Public Safety Broadband Program Manager
300 Riverview Plaza
Trenton, NJ 08625
Phone: 609-777-2650
Email: William.Drew@oit.state.nj.us

C. **Representations and Warranties**. Each Party to this Spectrum Lease represents and warrants to the other that each of them has the requisite authority and has taken all action necessary in order to execute and deliver this Spectrum Lease.

D. **Governing Law**. This Spectrum Lease shall be governed by Federal law.

E. **Subject to the Availability of Funds.** This agreement is subject to the availability of funds in accordance with Federal Appropriations law or if required by changes in State law, or because of court order, or because of insufficient appropriations made available by the New Jersey Legislature for the performance of this Agreement.

F. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

G. **Integration.** This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by both parties.

H. **Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

I. **Most Favored BTOP Lessee.** The spectrum usage rights granted to the Lessee to operate on the FirstNet Spectrum in this Agreement will be no less favorable than those granted to any other BTOP lessee by FirstNet. In the event FirstNet offers more favorable terms to another BTOP lessee, FirstNet will notify the Lessee promptly and provide Lessee the option of amending this Agreement such that it contains the more favorable term.

This Agreement may be executed originally or by facsimile signature in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

For the First Responder Network Authority:

_____ Date: _____

Bill D'Agostino
General Manager
First Responder Network Authority

For the State of New Jersey by and through Office of Information Technology:

_____ Date: 1/6/14

E. Steven Emanuel
Chief Technology Officer
Office of Information Technology
State of New Jersey

This Agreement may be executed originally or by facsimile signature in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

For the First Responder Network Authority:

Bill D'Agostino
General Manager
First Responder Network Authority

Date: 12-19-13

For the State of New Jersey by and through Office of Information Technology:

E. Steven Emanuel
Chief Technology Officer
Office of Information Technology
State of New Jersey

Date: 1/6/14