

**Executive Committee  
Meeting**

**June 26, 2015**

**9:00AM**

# Agenda

- I. Roll Call
  - 1. Executive Committee Members EXH. A
- II. Chair Remarks
- III. Executive Committee Members - Call for Vote
  - 1. Department of Transportation—Paul Steinman Bio EXH. B
  - 2. Executive Committee Vacancies
- IV. FirstNet Activities
  - 1. 2nd Public Notice
    - i. Overview EXH. C
    - ii. FAQs EXH. D
    - iii. Notice EXH. E
    - iv. Response EXH. F
  - 2. 3rd Public Notice
    - i. Overview EXH. G
    - ii. FAQs EXH. H
    - iii. Notice EXH. I
    - iv. Response EXH. J
  - 3. Draft RFP
    - i. Overview EXH. K
    - ii. FAQs EXH. L
    - iii. Special Notice EXH. M
    - iv. Questions Overview EXH. N
    - v. Submitted Questions EXH. O
  - 4. Data Collection & FirstNet Factsheet EXH. P
- V. Technical Committee Activities EXH. Q
  - 1. New Members
  - 2. FirstNet RFC/Draft RFP
  - 3. Contact Information/Contract Vehicle Survey Status
  - 4. PSCR, Charter, Mission Statement
- VI. Project Plan/Budget Overview EXH. R
- VII. Upcoming Events EXH. S
- VIII. Previous Meeting Minutes EXH. T

# Executive Committee

**Chair:** Terry L. Rhodes, Department of Highway Safety and Motor Vehicles

**Governor's Office:** Jason Allison, Chief Information Officer

**Homeland Security Advisor:** Donna Uzzell, Florida Department of Law Enforcement

**Florida Police Chiefs Association:** Daniel Alexander, Boca Raton Police Department

**Tribal Representative:** Bobby Brown, Seminole Tribe of Florida

**Tribal Representative:** Ray Weeks, Miccosukee Tribe

**Florida Sheriffs Association:** Steve Casey, Executive Director

**Department of Management Services:** Vacant

**Department of Emergency Management:** Phil Royce, SWIC

**Florida Department of Health:** Mike McHargue

*Ex Officio: Dr. Joe Nelson, Florida EMS Advisor*

*Ex Officio: John Wilgis, Florida Hospital Association*

*Ex Officio: April Henkel, Florida Health Care Association*

*Ex Officio: Dr. Peter Pappas, Holmes Regional Medical Center, SparrowNet*

**Technical Committee Chair:** Greg Holcomb, Lake County Public Safety

**Finance Committee Chair:** Vacant

**Florida Department of Economic Opportunity:** Sherri Martin, Rural Economies

**Private Sector:** Mike Sole, Florida Power & Light

**Private Sector:** Vacant

**Florida Fire Chiefs Association:** Kevin Herndon, Deputy Chief

**State-wide EMS Representative:** Greg Rubin, Miami-Dade Fire Rescue

**Florida Army National Guard:** Major Ralph Sullenberger

# DOT Representative

## Department of Transportation Representative

### Paul J. Steinman, P. E.

*District Seven Secretary*

Florida Department of Transportation

District Seven includes Hillsborough, Pinellas, Pasco, Hernando and Citrus counties in the Tampa Bay area

**Education:** BSCE—Michigan State University

Paul Steinman was named the District Seven Secretary in March of 2013. He has more than 25 years of DOT transportation experience in Florida, Idaho and Michigan. Paul is a 1989 graduate of Michigan State University with a bachelor's degree in Civil Engineering. He holds engineering licenses in Florida, Idaho, Michigan and North Carolina. Paul has an extensive construction background and previously served as the FDOT State Construction Engineer.

As the District Seven Secretary, Paul provides administrative oversight for the planning, development and operations for all transportation modes within Citrus, Hillsborough, Hernando, Pasco and Pinellas counties. He serves as a member of the FDOT Executive Team, the Tampa Hillsborough Expressway Authority (THEA) Board and the Tampa Bay Area Regional Transportation Authority (TBARTA) Board.

Secretary Paul Steinman is also an active participant in the department's effort for incorporating and implementing autonomous vehicle technologies within the transportation network. He currently serves as the representative for the American Association of State Highway and Transportation Officials (AASHTO) on the First Responder Network Authority (FirstNet) Public Safety Advisory Committee (PSAC). Steinman was also recently appointed to a two-year term as Chair of the Special Committee on Wireless Communications Technology (SCOWCoT). Within the Florida Department of Transportation, Secretary Steinman serves on the Automated Vehicle Steering Committee which provides oversight for the preparation and implementation of efforts to support autonomous and connected vehicles. His goal is to help refine the direction of the automated vehicle initiative in Florida and use the Florida model to guide the direction of this effort at the national level.



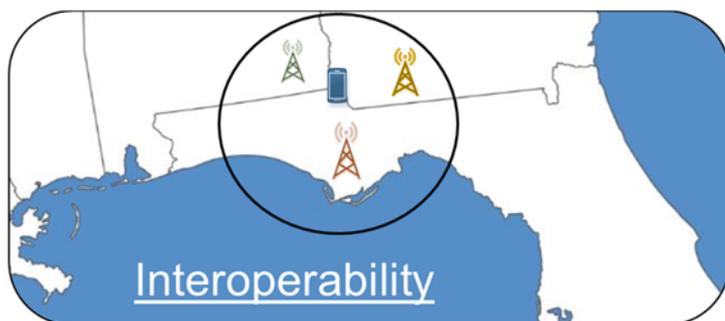
# 2nd Public Notice Overview

## FirstNet's 2nd Public Notice

This notice covered a wide range of topics, with the most focus placed upon:

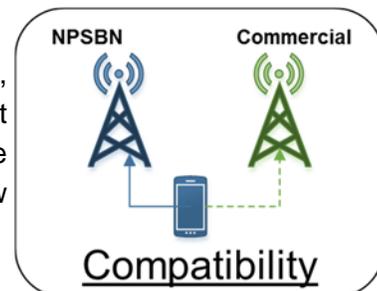
- Devices
- Network policies
- FirstNet State Plan
- State-Built RAN.

### Devices

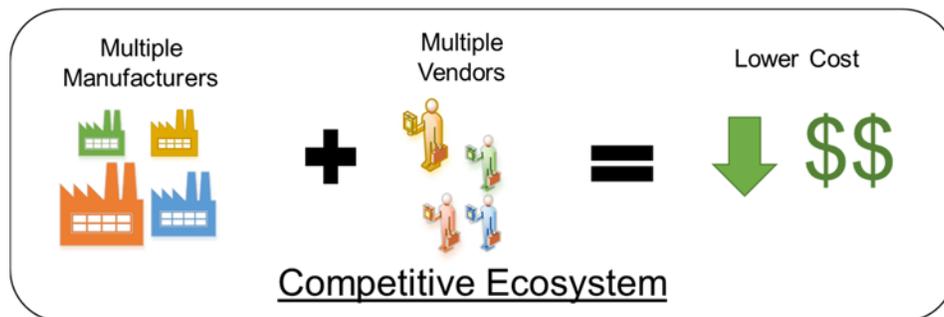


The devices on the Network are to operate seamlessly across the Network, regardless of State RAN deployment option. This is important for the State of Florida, which shares a large border with two neighboring States. Additionally, in a large scale disaster, such as a hurricane, it is common for the Gulf States to provide mutual aid. Without device interoperability, public safety users from one State would not be able to access the data, applications, and coverage needed to complete their mission.

The devices on the network must operate across the entire 700 MHz spectrum, and be backwards compatible with earlier technologies. Such a requirement creates needed redundancy in the event of Band Class 14 outage. We stressed, however, that FirstNet must not preempt the Public Safety Narrow Bands or commercial networks.



The device ecosystem should be flexible in order to promote competition in the marketplace by allowing for multiple manufacturers and multiple vendors. A device will meet the intent of the Act as long as it utilizes open standards for network protocols and interconnectivity. This conclusion provides devices with patented technologies, or proprietary operating systems, access to the Network. By allowing a wide array of manufacturing and vending methods, the introduced competition should naturally lead to increased savings for the public safety entities operating on the Network.

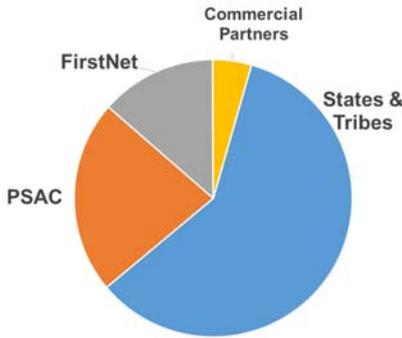


# 2nd Public Notice Overview

## FirstNet's 2nd Public Notice

### Network Policies

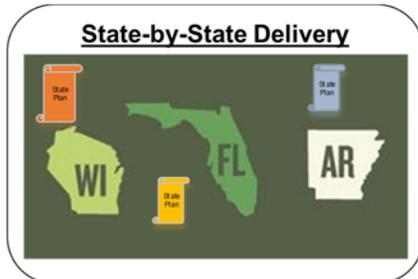
#### Proportional Influence



We believe that it was Congressionally mandated by the Act for FirstNet to develop the Network policies through direct consultations with State, Tribes, and public safety entities. Additionally, the Public Safety Advisory Committee must be consulted while FirstNet is carrying out its duties and responsibilities, including, but not limited to, establishing these network policies. Contrary to FirstNet's interpretation, we believe that commercial partners may help shape some technical requirements, while public safety partners are to determine the operational requirements.

### FirstNet State Plan

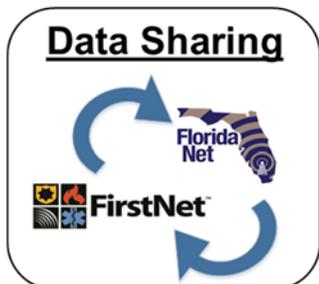
FirstNet asserts that a FirstNet State Plan does not carry any contractual guarantees, as a State "participates" in the Network. In response, we stress that FirstNet should allow a State to reconsider its RAN decision if any material changes occur after acceptance. Such a provision will assure that public safety's mission will not be impaired.



FirstNet State Plans can be implemented on a State-by-State basis, rather than waiting for a nation-wide plan. This methodology should provide for the timely deployment of the Network, since an issue in one State will not affect the buildout in the rest.

A FirstNet State Plan should, at a minimum, contain those items that a State would have to present to the FCC, NTIA, and FirstNet in a State-Built RAN option. This conclusion is based on the FirstNet assertion that a State-Built RAN deployment would be compared to a FirstNet State Plan. Therefore, the criteria should be available to the State in case it would like to deploy and operate its on RAN.

The Congressionally mandated reciprocal data sharing between FirstNet and Florida, via the direct State consultation process, will allow FirstNet to understand what features, capacity, coverage, and devices are needed by our Public Safety Entities, while Florida will gain insight on the contents of FirstNet's State Plan. FirstNet is considering their RFCs, webinars, and Draft RFP to fulfill their State consultation obligations. We believe this is insufficient, and FirstNet must consult with the States in a direct fashion.

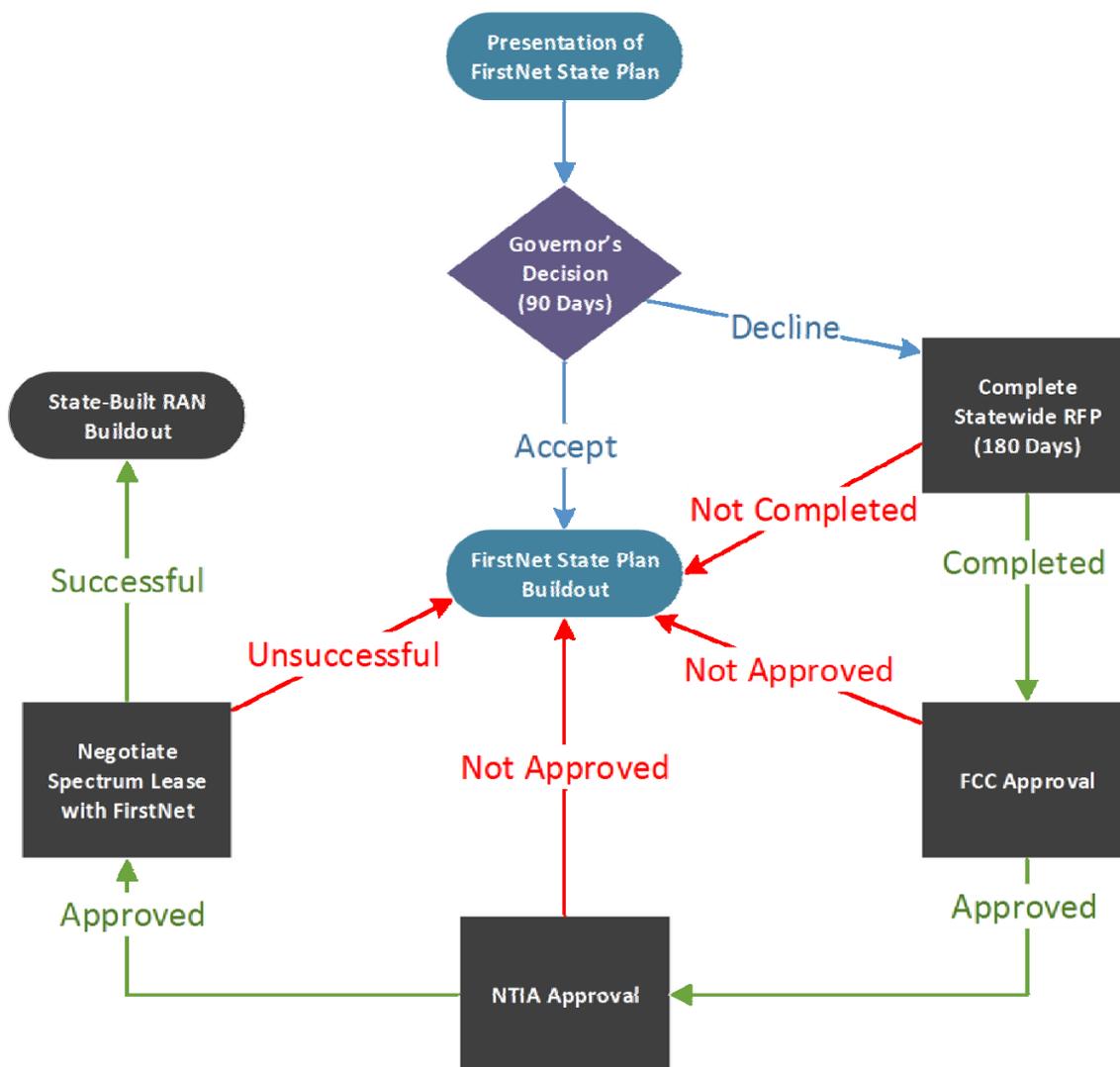


Contents	Interoperability
	Technical capabilities
	Timeline
	Cost-effectiveness
	Security
	Coverage
	Quality of Service

# 2nd Public Notice Overview

## FirstNet's 2nd Public Notice

### State-Built RAN



- The Governor cannot make a RAN decision until presented a FirstNet State Plan. This decision is to be binding on all jurisdictions of the State and occur within 90 days.
- To be considered complete, the RFP must demonstrate technical and interoperability requirements with the Network, rather than awarding a contract.
- The FCC approval process and timeline has yet to be clarified.
- NTIA approval will be based on several factors listed in the ACT: funding, interoperability, comparable timelines, cost-effectiveness, and comparable security, coverage, and quality, of service to that of the nationwide Network.
- The negotiated spectrum lease with FirstNet process and timeline has yet to be clarified.
- If at any point the State-Built RAN option fails to gain approval, the FirstNet State Plan will be followed.



# FirstNet™



## FirstNet's Second Public Notice Regarding Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012 ("Second Notice")

### Frequently Asked Questions (FAQs)

#### WHERE CAN I FIND THE FULL TEXT OF THE ENABLING LEGISLATION FOR FIRSTNET?

The Middle Class Tax Relief and Job Creation Act of 2012 (the "Act") can be found at [47 U.S.C. 1401 et seq.](#)

#### WHAT IS THE PURPOSE OF THE ACT?

The Act requires FirstNet to ensure the establishment of a nationwide, interoperable public safety broadband network (NPSBN) based on a single national network architecture that evolves with technological advances and initially consists of a core and radio access network (RAN).

#### WHAT IS THE PURPOSE OF FIRSTNET ISSUING THIS SECOND NOTICE AND REQUESTING COMMENTS, AND HOW WILL THOSE COMMENTS BE LEVERAGED?

The primary purpose is to seek public comment on key interpretations of the Act that impact operational and economic issues regarding the planning, deployment, operation, and sustainability of NPSBN. Responses to the Second Notice will, among other things, inform FirstNet's development of requests for proposals (RFPs) and the plans to be presented by FirstNet for NPSBN build out in each State or territory, both of which are required under the Act. The Second Notice, like the First Notice, is an important element of FirstNet's consultations with a variety of parties under the Act.

#### DOES THE SECOND NOTICE ADDRESS ISSUES FROM THE FIRST PUBLIC NOTICE?

No, the Second Notice addresses new issues. It aims to provide more clarity around important customer, operational, and funding considerations regarding state/territory planning for the NPSBN. It also addresses technical requirements required under the act for the NPSBN and the user devices accessing the network. FirstNet plans to address the final conclusions resulting from reviewing comments on the First Notice in an upcoming release. Both notices are part of FirstNet's open and transparent approach to consulting with stakeholders on key decisions around the NPSBN.

## **ARE THE INTERPRETATIONS IN THE SECOND NOTICE FINAL?**

No, the Second Notice seeks comments on preliminary interpretations. FirstNet will review those comments in making any final conclusions, and the preliminary interpretations could change as a result of such a review. For that reason, we encourage all stakeholders to review the Second Notice and provide comments within the comment period of 30 days after publication of the Second Notice in the Federal Register.

## **WHAT ISSUES DO YOU ADDRESS IN THE SECOND NOTICE?**

In the Second Notice, FirstNet seeks comments regarding statutory interpretations of various terms and provisions, including, but not limited to:

- Technical requirements for equipment to be used on the network, including open standards for connectivity and device competition;
- The nature and application of FirstNet network policies, including those that aim to preserve interoperability in states and territories that assume responsibility for building and operation of the RAN;
- The state/territory decision regarding assumption of the responsibility to build and operate a RAN, related approval processes and standards, and the roles and responsibilities of states throughout the process; and
- Customer, operational, and funding considerations regarding state/territory assumption of the responsibility to build and operate a RAN.

## **DOES THE SECOND NOTICE ADDRESS HOW THE NETWORK COULD OPERATE IN STATES OR TERRITORIES THAT ASSUME RAN RESPONSIBILITY?**

Yes, the Second Notice (and the First Notice) reach preliminary conclusions under the Act about how, both technically and operationally, the network will function in general in states or territories that assume RAN responsibility. FirstNet and such states or territories, however, will have to work closely together to address myriad operational issues to ensure that public safety entities receive the services they deserve.

## **HOW DOES THE SECOND NOTICE ADDRESS THE ISSUE OF WHO SERVES PUBLIC SAFETY ENTITY CUSTOMERS IN STATES THAT DECIDE TO ASSUME RAN RESPONSIBILITY?**

We preliminarily conclude in the Second Notice that the Act provides enough flexibility to accommodate a wide variety of arrangements between FirstNet and a state or territory that wants to assume RAN responsibility. States and territories may want to approach their operation of the RAN, if they elect to operate it, in different ways, and under the preliminary interpretation of the Second Notice, FirstNet and such states or territories could agree on custom arrangements by state or territory.

## HOW IS THE NATIONWIDE NETWORK FUNDED WHEN STATES OR TERRITORIES DECIDE TO ASSUME RAN RESPONSIBILITY?

Overall, funding for the network comes primarily from three sources: (1) \$7 billion in cash provided by the Federal government; (2) fees generated from commercial use of the network's capacity when not being used by public safety entities; and (3) subscriber fees from public safety entities. Our approach to funding issues in the Second Notice is informed by preliminary modeling and analyses indicating that a few states and territories will generate fees in the latter two funding sources in excess of the costs of building a robust RAN in the state or territory. However, our preliminary analysis also shows that the RAN in most states and territories, including rural states, will cost more than the fees generated in the state or territory. For those states and territories that ultimately fall in the first group, the Second Notice proposes a preliminary interpretation that would allow FirstNet and such states and territories to agree, in connection with a spectrum capacity lease for the state or territory, on both funding such states' or territories' RAN, and funding for other states and territories, including rural states and territories. We preliminary conclude in the Second Notice that this approach is consistent with Congress' intent to fund the network nationwide while providing states options for RAN deployment.

## WHERE CAN I SUBMIT COMMENTS TO THE NOTICE?

Written comments may be submitted electronically within 30 days after publication of the Notice in the Federal Register through [www.regulations.gov](http://www.regulations.gov) or by mail to FirstNet, 12201 Sunrise Valley Drive, Reston, VA 20192, Mail Stop 243, Attention: Responses to FirstNet's Second Public Notice and Comment. Written comments will be made part of the public record without change.

## IS THERE A MAXIMUM LENGTH FOR COMMENTS?

There is no maximum length for comments to the Second Notice.

## WILL THERE BE AN EX PARTE MEETING OR A REPLY COMMENT PERIOD?

In an effort to avoid any potential conflicts related to the acquisition process, we do not plan to schedule either an ex parte meeting or a reply comment period at this time.



technology to protect the integrity and confidentiality of information submitted to the USPTO. PKI employs public and private encryption keys to authenticate the customer's identity and support secure electronic communication between the customer and the USPTO. Customers may submit a request to the USPTO for a digital certificate, which enables the customer to create the encryption keys necessary for electronic identity verification and secure transactions with the USPTO. This digital certificate is required in order to access any secure online systems USPTO provides; including the systems for electronic filing of patent applications and viewing confidential information about unpublished patent applications.

*Affected Public:* Businesses or other for-profits; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

This information collection request may be viewed at [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

*OMB Desk Officer:* Nicholas A. Fraser, email: [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov).

Once submitted, the request will be publicly available in electronic format through [reginfo.gov](http://reginfo.gov). Follow the instructions to view Department of Commerce collections currently under review by OMB.

Paper copies can be obtained by:

- *Email:* [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include "0651-0045 copy request" in the subject line of the message.

- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before *April 13, 2015* to Nicholas A. Fraser, OMB Desk Officer, via email to [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov), or by fax to 202-395-5167, marked to the attention of Nicholas A. Fraser.

Dated: March 9, 2015.

**Marcie Lovett,**

*Records Management Division Director, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2015-05779 Filed 3-12-15; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF COMMERCE

### Notice of Public Meeting of the Advisory Committee on Commercial Remote Sensing

**AGENCY:** National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet April 28, 2015.

**DATES:** Date and Time: The meeting is scheduled as follows: April 28, 2015, 9:00 a.m.–4:00 p.m. The first part of the meeting will be closed to the public. The public portion of the meeting will begin at 2:00 p.m.

**ADDRESSES:** The meeting will be held in the George Washington University Elliott School of International Affairs, Room 505 located at 1957 E St. NW., Washington, DC 20052.

**SUPPLEMENTARY INFORMATION:** As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

#### Matters To Be Considered

The meeting will be partially open to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94-409 and in accordance with Section 552b(c)(1) of Title 5, United States Code.

The Committee will receive a presentation on updates of NOAA's commercial remote sensing issues and licensing activities. The Committee will also receive public comments on its activities.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910.

#### Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or

written comments should contact Tahara Dawkins, Designated Federal Officer for ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8136, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from Thomas Smith at (301) 713-0573, fax (301) 713-1249, or email [thomas.smith@noaa.gov](mailto:thomas.smith@noaa.gov).

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 15 copies) received in the NOAA/NESDIS/CRSRA on or before April 20, 2015, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

**FOR FURTHER INFORMATION CONTACT:** Tahara Dawkins, NOAA/NESDIS/CRSRA, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910; telephone (301) 713-3385, fax (301) 713-1249, email [Tahara.Dawkins@noaa.gov](mailto:Tahara.Dawkins@noaa.gov), or Thomas Smith at telephone (301) 713-0573, email [Thomas.Smith@noaa.gov](mailto:Thomas.Smith@noaa.gov).

**Tahara D. Dawkins,**

*Director Commercial Remote Sensing and Regulatory Affairs.*

[FR Doc. 2015-05698 Filed 3-12-15; 8:45 am]

**BILLING CODE 3510-HR-P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### First Responder Network Authority

[Docket Number 150306226-5226-01]

RIN 0660-XC017

#### Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012

**AGENCY:** First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The First Responder Network Authority ("FirstNet") publishes this *Second Notice* to request public comment on certain proposed interpretations of its enabling legislation that will inform, among other things, network policies, forthcoming requests

for proposals, and interpretive rules. With the benefit of the comments received from this *Second Notice*, FirstNet may proceed to implement these or other interpretations with or without further administrative procedure.

**DATES:** Submit comments on or before April 13, 2015.

**ADDRESSES:** The public is invited to submit written comments to this *Second Notice*. Written comments may be submitted electronically through [www.regulations.gov](http://www.regulations.gov) or by mail (to the address listed below). Comments received related to this *Second Notice* will be made a part of the public record and will be posted to [www.regulations.gov](http://www.regulations.gov) without change. Comments should be machine-readable and should not be copy-protected. Comments should include the name of the person or organization filing the comment as well as a page number on each page of the submission. All personally identifiable information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; 703-648-4167; or [elijah.veenendaal@firstnet.gov](mailto:elijah.veenendaal@firstnet.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction and Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the “Act”) established the First Responder Network Authority (“FirstNet”) as an independent authority within the National Telecommunications and Information Administration (“NTIA”). The Act establishes FirstNet’s duty and responsibility to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (“NPSBN”).<sup>1</sup>

As detailed in our “Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012” (“*First Notice*”) the rights and obligations of FirstNet, States and territories, and state, federal, local, and tribal public safety entities, among other stakeholders, turn on interpretation of

the Act’s terms and provisions.<sup>2</sup> In this *Second Notice*, we make preliminary conclusions on a range of issues, including the equipment for use on the FirstNet network, the nature and application of FirstNet’s required network policies, FirstNet’s presentation of a state plan and its implications for the rights and duties of other stakeholders, and the rights of States choosing to assume responsibility to build and operate a radio access network (“RAN”) in said State. We believe that consideration of these preliminary conclusions and ultimately making final determinations on these matters will further guide all parties with regard to the building, deployment, and operation of the NPSBN.

Consistent with our approach in the *First Notice*, although FirstNet is exempt from the procedural requirements of the Administrative Procedure Act (“APA”),<sup>3</sup> FirstNet desires to solicit public comments on foundational legal issues, in addition to technical and economic issues, to guide our efforts in achieving our mission.<sup>4</sup> Thus, in general FirstNet may pursue APA-like public notice and comment processes such as this *Second Notice*, and we intend to rely upon comments filed in response to this *Second Notice* to inform our actions, including the establishment of network policies, development of requests for proposals (“RFPs”), and other duties FirstNet is assigned under the Act.

With respect to this *Second Notice*, in instances where we have drawn a preliminary conclusion and sought comments thereon, we currently intend to issue a subsequent document indicating final interpretive determinations, taking into consideration the comments received. This subsequent document might not precede release of the above-mentioned RFPs, which will nonetheless incorporate and constitute such final interpretive determinations in light of the received comments. Further, although we may, we do not currently anticipate issuing further public notices and/or opportunities for comment or reply comments on the preliminary conclusions made in this *Second Notice*, and thus encourage interested parties to provide comments in this proceeding.

In instances where we have not drawn a preliminary conclusion, but have sought information and comment on an

issue, we may issue additional notices seeking comments on any preliminary conclusions we may reach following review and consideration of the comments responding to this *Second Notice*. That notice, if issued, may then be followed by notice of final determinations. However, because we may not issue such a further notice of preliminary conclusions at all or prior to releasing the above-mentioned RFPs, we again encourage interested parties to provide comments in this proceeding.

##### II. Issues

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

In the *First Notice*, we explored the network elements that comprise the NPSBN. We address below a separate section of the Act concerning equipment for use on the network. Our overarching considerations in these interpretations are the Act’s goals regarding the interoperability of the network across all geographies and the cost-effectiveness of devices for public safety.

Section 6206(b)(2)(B) requires FirstNet to “promote competition in the equipment market, including devices for public safety communications, by requiring that equipment for use on the network be: (a) Built to open, non-proprietary, commercially available standards; (b) capable of being used by any public safety entity and by multiple vendors across all public safety broadband networks operating in the 700 MHz band; and (c) backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable.”<sup>5</sup> Several critical terms in this provision must be interpreted to allow FirstNet to develop requests for proposals and network policies that will fulfill these requirements.

First, we must determine the scope of the “equipment” that must satisfy the requirements of Section 6206(b)(2)(B). The Act states that this Section applies only to equipment “for use on” the NPSBN, rather than, for example, “equipment of” or “equipment constituting” the network. Further, the Act makes clear that the range of equipment implicated in the Section must at least include “devices,” which, in the telecommunications market, is often a reference to end user devices, rather than equipment used inside the network to provide service to such devices. Finally, whatever the scope of the term “equipment,” such equipment

<sup>2</sup> The pronouns “we” or “our” throughout this *Second Notice* refer to “FirstNet” alone and not FirstNet, NTIA, and the U.S. Department of Commerce as a collective group.

<sup>3</sup> 47 U.S.C. 1426(d)(2).

<sup>4</sup> See 79 FR 57058-9 (September 24, 2014).

<sup>5</sup> 47 U.S.C. 1426(b)(2)(B).

<sup>1</sup> 47 U.S.C. 1426(b).

must be “built to open, non-proprietary, commercially available standards.”

In Section 6202, the Act describes the components of the NPSBN itself, including a core network and RAN, and requires each to be based on “commercial standards.”<sup>6</sup> Thus, when describing criteria for the equipment with which the network itself is to be constructed, the Act requires use of only equipment built to commercial standards, whereas in describing the equipment of Section 6206(b)(2)(B), the Act requires that such equipment must be built not only to commercial standards, but also “open, non-proprietary” standards.<sup>7</sup> Therefore, given the “for use on” language of the provision, the distinct addition of the terms “open, non-proprietary,” and the separate section of the Act describing and prescribing requirements for the components of the network itself, it appears that the equipment described in Section 6206(b)(2)(B) refers to equipment using the services of the network, rather than equipment forming elements of the NPSBN core network or the RAN.

This interpretation is supported by the other two elements appearing in Section 6206(b)(2)(B). For example, Section 6206(b)(2)(B)(ii) requires that such equipment be “capable of being used by any public safety entity,” which would seem inconsistent with a requirement applicable to complex network routing and other equipment used inside the network. Similarly, Section 6206(b)(2)(B)(iii) requires such equipment to be “backward-compatible with existing commercial networks” in certain circumstances, which would again make sense in the context of end user devices, but not equipment being used to construct the network. This interpretation is also consistent with section 4.1.5.1, entitled “Device or UE,” of the Interoperability Board Report.<sup>8</sup>

<sup>6</sup> See *id.* § 1422(b).

<sup>7</sup> *Id.* § 1422(b)(2). We interpret the terms “commercially available standards” and “commercial standards” as having the same meaning as “commercial standards” defined in the Act.

<sup>8</sup> Section 6203 of the Act established the Technical Advisory Board for First Responder Interoperability (“Interoperability Board”) and directed it to develop minimum technical requirements to ensure the interoperability of the NPSBN. 47 U.S.C. 1423. On May 22, 2012, the Interoperability Board, in accordance with the Act, submitted its recommendations to the FCC in a report. See Interoperability Board, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network* (“Interoperability Board Report”) (May 22, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7021919873>. On June 21, 2012, the FCC completed its review of the Interoperability Board’s final report and approved it for transmittal to FirstNet. See FCC

Thus, we preliminarily conclude that Section 6206(b)(2)(B) applies to any equipment, including end user devices, used “on” (*i.e.*, to use or access) the network, but does not include any equipment that is used to constitute the network. Given the interoperability goals of the Act and that end user devices will need to operate seamlessly across the network regardless of State decisions to assume RAN responsibilities, we also preliminarily conclude that this provision applies whether or not the equipment is to access or use the NPSBN via a RAN in a State that has chosen to assume responsibility for RAN deployment.<sup>9</sup> We seek comments on these preliminary conclusions, and on what if any equipment, other than end user devices, would fall under the scope of Section 6206(b)(2)(B) under this conclusion.

Having preliminarily concluded that Section 6206(b)(2)(B) applies to end user devices, we turn to the requirements of this provision. Section 6206(b)(2)(B)(i) requires that all equipment used to access the NPSBN must be built to “open, non-proprietary, commercially available standards.”<sup>10</sup> We seek comments on the scope of these requirements, including in particular the extent to which they impose requirements beyond the minimum requirements identified in the Interoperability Board Report, and whether they would preclude, for example, proprietary operating systems on devices. Such an expansive interpretation could eliminate use of commercial Long-Term Evolution (“LTE”) devices used by public safety entities today.

The Act, however, defines “commercial standards” as “technical standards . . . for network, device, and Internet Protocol *connectivity*.”<sup>11</sup> We thus preliminarily conclude that the Act’s goal of “promot[ing] competition in the equipment market” would still be served, as it is today in the commercial market, by applying these requirements to only those parameters necessary to maintain interoperability with the NPSBN—that is, “connectivity”—and which are included in the Interoperability Board Report or otherwise in FirstNet network policies. We recognize that, for innovation to

Order of Transmittal, Recommendations of the Technical Advisory Board for First Responder Interoperability, PS Dkt. No. 12–74, FCC 12–68 (rel. June 21, 2012), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-12-68A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-68A1.pdf).

<sup>9</sup> See *infra* Section II.B.ii. (further discussing the term “network” as used in, for example, Section 6206(b)(2)).

<sup>10</sup> 47 U.S.C. 1426(b)(2)(B)(i).

<sup>11</sup> *Id.* § 1401(10) (emphasis added).

bring forth improved products for the NPSBN, and for FirstNet and public safety entities to benefit from competition, product differentiation must be allowed to thrive. However, such differentiation must be balanced with the interoperability goals of the Act. Thus, certain network technical attributes must be met by the equipment under the terms of Section 6206(b)(2)(B), but other equipment attributes may be left to individual vendors to develop. We seek comments on this preliminary conclusion and the appropriate delineation between attributes for “connectivity” and others.

Beyond the Act’s requirement that equipment for use on the network comply with specific types of standards, Section 6206(b)(2)(B)(ii) requires that the equipment be “capable of being used by any public safety entity and by multiple vendors across all public safety broadband networks operating in the 700 MHz band.” First, the requirement that the equipment be capable of being used by any public safety entity would appear to serve the cause of both interoperability and competition in the equipment market by ensuring the largest market possible for such devices. We seek comment on the limits of this requirement, including whether use of the word “capable” permits sufficient flexibility for product differentiation by public safety discipline or application. For example, we preliminarily conclude that this requirement would not preclude devices primarily designed for police applications so long as such devices were technically capable of being used by, for example, emergency medical services.

Next, we examine the requirement that such equipment be “capable of being used . . . by multiple vendors.”<sup>12</sup> We seek comments on the distinction between Congress’ use of the terms “used . . . by multiple vendors” and, for example, if Congress had used the terms “manufactured by multiple vendors,” and whether this distinction should be interpreted as requiring devices that are at least capable of being sold to public safety entities through multiple suppliers who are not themselves manufacturing the devices. We seek comments on how this requirement should be interpreted to further the interoperability goals of the Act.

The final phrase of the requirement—“across all public safety broadband networks operating in the 700 MHz band”—could be interpreted to modify just the vendor clause, but we preliminarily conclude that, taken as a

<sup>12</sup> *Id.* § 1426(b)(2)(B)(ii).

whole, it appears that Congress desired both the public safety entity clause and multiple vendor clause to be modified by the phrase.<sup>13</sup> We seek comments on this preliminary conclusion. The term 700 MHz band is a defined term under the Act, and includes not just the frequencies licensed to FirstNet, but all frequencies from 698 to 806 megahertz.<sup>14</sup> Thus, we also seek comments on the appropriate definition of, and which “public safety broadband networks”<sup>15</sup> other than FirstNet would qualify under this clause, and note that the Act contains a separate definition for “narrowband spectrum.”<sup>16</sup>

Finally, Section 6206(b)(2)(B) requires equipment for use on the network to be “backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically reasonable.”<sup>17</sup> Such backwards compatibility could prove very valuable for roaming and in the unlikely event that FirstNet’s Band 14 network encounters an outage. We seek comments on the scope of the term “backward-compatible,” particularly with respect to whether non-LTE networks (including switched-voice networks) are implicated, and the criteria for determining whether such capabilities are necessary and technically and economically reasonable.

## B. FirstNet Network Policies

### i. Overview

Under Section 6206(b), FirstNet must “take all actions necessary to ensure the building, deployment, and operation of the [NPSBN].”<sup>18</sup> In addition to this general charge, subsection (b) of Section 6206 itemizes a long list of specific actions FirstNet must take in fulfilling this obligation.

In the next subsection (c) of Section 6206, however, FirstNet is tasked with establishing “network policies” in carrying out these requirements of subsection (b).<sup>19</sup> In particular, under subsection (c)(1), FirstNet must develop the appropriate timetables, coverage areas, and service levels for the requests for proposals referenced in subsection (b), along with four sets of policies covering technical and operational areas.<sup>20</sup> In paragraph (2) of subsection

(c), FirstNet is required to consult with State and local jurisdictions regarding the distribution and expenditure of amounts required to carry out the network policies established in paragraph (1).<sup>21</sup>

We explore these requirements below considering the overall interoperability goals of the Act. These network policies, along with the Interoperability Board Report, will form the fundamental basis of such interoperability for public safety, and thus their scope and applicability must be clear to equipment and device manufacturers, network users, and any States that choose to assume RAN responsibilities in their States.

### ii. Network Policies

Under Section 6206(c)(1), entitled “ESTABLISHMENT OF NETWORK POLICIES,” FirstNet is required to develop five groups of items, the first being “requests for proposals with appropriate” timetables, coverage areas, service levels, performance criteria, and similar matters.<sup>22</sup> Unlike the remaining four groups of items in paragraph (1), this first group might not ordinarily be thought of as the subject of a “policy” based on a plain language interpretation. The title of the entire paragraph, however, does reference “policies.” In addition, the consultation required in paragraph (2) of subsection (c) is with regard to the “policies established in paragraph (1),” and expressly includes topics such as “construction” and “coverage areas” that are the subject of the requests for proposals listed in paragraph (1)(A).<sup>23</sup> Thus, we preliminarily conclude that the items listed in paragraph (1)(A) are “policies” for purposes of paragraph (2) and as the term is generally used in subsection (c).

In addition to the appropriate timetables, coverage areas, and other items related to the requests for proposals in paragraph (1)(A), FirstNet must develop policies regarding the technical and operational requirements of the network; practices, procedures, and standards for the management and operation of such network; terms of service for the use of such network, including billing practices; and ongoing compliance reviews and monitoring.<sup>24</sup>

Taken as a whole, these policies, including the elements of the requests for proposals, form the blueprint and operating parameters for the NPSBN. Many of these policies will be informed

by the partners chosen to help deploy the network, and will likely change over time, with increasing specificity as FirstNet begins operations. Some of these policies, such as those related to the “technical and operational requirements of the network,” will prescribe how the FirstNet core network and RAN will interconnect and operate together, consistent with the Interoperability Board Report. This interaction is among the most important “technical and operational” aspects of the network given the Act’s definition of these terms and our preliminary interpretations in the *First Notice*.<sup>25</sup> For example, this interaction would determine how the FirstNet core network implements authentication and priority and preemption at the local level, including the framework for such authentication and prioritization provided to local jurisdictions to enable them to control important aspects of such authentication and prioritization. Other technical, operational, and business parameters essential to the nationwide interoperability of the network will be determined by such policies governing core network and RAN interactions. This raises the question as to whether and how FirstNet’s policies developed under subsection (1) apply to States that assume responsibility for deployment of the RAN in such States under Section 6302.

The Act does not expressly state whether only FirstNet, or both FirstNet and a State assuming RAN responsibilities must follow the network policies required under Section 6206(c)(1).<sup>26</sup> Sections 6202 (defining the NPSBN) and 6206 (establishing FirstNet’s duties) only refer to the “nationwide public safety broadband network” or the “network”, without expressly indicating whether such State RANs are included in the term. We preliminarily conclude below that, given the provisions of the Act, the

<sup>25</sup> 79 FR 57059 (September 24, 2014) (discussing elements of the network).

<sup>26</sup> We preliminarily determined in our *First Notice* that such State RANs must use the FirstNet core network when service is provided to public safety entities. We stated that this preliminary conclusion, which is supported by the express provisions in the Act and sections of the Interoperability Board Report, was also “supported by the overall interoperability goal of the Act, which would, from a technical and operational perspective, be more difficult to achieve if States deployed their own, separate core networks to serve public safety entities.” 79 FR 57059 (September 24, 2014). We received comments generally supporting this conclusion overall, with some commenters suggesting that we also provide a measure of flexibility to States assuming RAN responsibility so long as the interoperability goals of the Act were achieved.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* § 1401(1) (defining 700 MHz band).

<sup>15</sup> *Id.* § 1426(b)(2)(B)(ii) (emphasis added).

<sup>16</sup> 47 U.S.C. 1401(20) (defining narrowband spectrum).

<sup>17</sup> *Id.* § 1426(b)(2)(B)(iii).

<sup>18</sup> *Id.* § 1426(b)(1).

<sup>19</sup> *See id.* § 1426(c)(1).

<sup>20</sup> *See id.*

<sup>21</sup> *See id.* § 1426(c)(2)(A).

<sup>22</sup> 47 U.S.C. 1426(c)(1)(A).

<sup>23</sup> *See id.* § 1426(c).

<sup>24</sup> *See id.* § 1426(c)(1).

Interoperability Board Report, and the overall interoperability goals of the Act and the effect on such interoperability of not having the network policies of Section 6206(c)(1) apply to opt-out RANs, such policies must so apply to ensure interoperability.

Section 6302(e), addressing the process by which a State may submit a plan to assume RAN deployment, states that the alternative RAN plan must demonstrate “interoperability with the [NPSBN].”<sup>27</sup> This interoperability demonstration is separate from a State’s demonstration that it will comply with the minimum technical interoperability requirements of the Interoperability Board Report, and thus must require a demonstration of interoperability in addition thereto. Similarly, Section 6302(e)(3)(D) requires such States to demonstrate “the ability to maintain ongoing interoperability with the [NPSBN].”<sup>28</sup>

A literal reading of these provisions could be interpreted as indicating a distinction between the NPSBN and such State RANs, such that the policies required by Section 6206, which apply to the “nationwide public safety broadband network” or “the network” could theoretically be interpreted as not directly applying to such RANs. We preliminarily conclude, however, that such an interpretation reads too much into the wording of Section 6302, which could also be interpreted as requiring the State RAN to interoperate with “the rest of” the NPSBN.

The Act’s primary goal is the creation of an interoperable network based upon a “single, national network architecture that evolves with technological advancements” and is comprised of both a core network and RAN.<sup>29</sup> This suggests that network policies established by FirstNet pursuant to Section 6206(c)(1) should apply to all elements of the network, including RANs built by individual States, to ensure interoperability. In addition, Congress did not differentiate between opt-in and opt-out States in the provisions of Section 6206(c)(2) requiring consultation with States on the policies of Section 6206(c)(1), and such consultations would presumably not be required for States assuming RAN responsibility if the policies in question (at least those applicable to RANs following opt-out) did not apply to their RAN deployment.

In the context of the Act, we thus preliminarily conclude that an important aspect of a State’s

demonstrations of interoperability under Section 6302(e)(3) would be a commitment to adhering to FirstNet’s interoperability policies implemented under Section 6206(c) that are applicable to NPSBN RANs. This could be particularly important because such policies will likely evolve over time as the technology, capabilities, and operations of the network evolve. An alternative reading could result in freezing in time the interoperability of an opt-out State RAN contrary to the goals of the Act. We seek comments on these preliminary conclusions.

Notwithstanding these conclusions, however, the policies established under Section 6206(c) would, if not directly, likely apply indirectly to a State seeking to assume State RAN responsibilities. As discussed above, such States must demonstrate interoperability with the NPSBN, and from a practical perspective such interoperability will largely depend, as is the case with FirstNet’s deployed core networks and RANs, on compliance with the network policies of Section 6206(c)(1).<sup>30</sup> In addition, such States must also demonstrate “comparable security, coverage, and quality of service to that of the [NPSBN].”<sup>31</sup> FirstNet’s policies will establish requirements for such security, coverage, and quality of service standards for the NPSBN, and thus States seeking to assume State RAN responsibilities would, practically speaking, need to demonstrate “comparable” capabilities to those specified in these policies. The Federal Communications Commission (“FCC”) and NTIA will presumably use these policies in making this comparison at least at the point in time when a State applies to assume RAN responsibilities.

Finally, given that FirstNet has a duty to ensure the deployment and operation of a “nationwide” public safety broadband network, we preliminarily conclude that, independent of the interpretations discussed above, FirstNet could require compliance with

<sup>30</sup> It is important to note that Congress required that a State RAN plan demonstrate to the FCC both compliance with the Interoperability Board Report and interoperability with the NPSBN, indicating that the requirements of the Interoperability Report are distinct from those further requirements that may be necessary to interoperate with the NPSBN. See 47 U.S.C. 1442(e)(3)(C). The Interoperability Board Report focused on “technical interoperability,” noting that this term was more limited than general network interoperability. See Interoperability Board Report at 23. To establish NPSBN interoperability therefore, we believe a broader set of technical, business, and operational standards must be developed pursuant to Section 6206(c)(1) and demonstrated by any State seeking State RAN build and operation authority. *Id.* § 1426(e)(1).

<sup>31</sup> *Id.* § 1442(e)(3)(D)(iii).

network policies essential to the deployment and interoperable operation of the network for public safety in all States as a condition of entering into a spectrum capacity lease under Section 6302(e)(3)(C)(iii)(II).<sup>32</sup> Accordingly, in order to ensure the interoperability goals of the Act and for the reasons discussed above, we preliminarily conclude that FirstNet’s network policies will either directly or indirectly apply to any State RAN deployment. We note that FirstNet is subject to extensive consultation requirements with States regarding such policies under Section 6206(c)(2), and thus States will have substantial opportunities to influence such policies and, as is discussed more fully below, FirstNet will want to work cooperatively and over time with States in their establishment. We seek comments on these preliminary conclusions.

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

#### *i. Overview of Statutory Provisions on Deployment of State Networks*

Section 6302(e) describes the process for determining whether FirstNet or a State will conduct the deployment of the RAN within such State.<sup>33</sup> As we preliminarily concluded in the *First Notice*, the Act requires FirstNet to provide the core network in all States.<sup>34</sup> The process for determining who will deploy the RAN in a State requires FirstNet to provide States with (a) notice that FirstNet has completed its request for proposal process for the construction and operation of the nationwide network, (b) details of FirstNet’s proposed plan for buildout of the NPSBN in such State, and (c) the funding level, as determined by NTIA, for such State.<sup>35</sup> The Governor of a State, after receiving the notice, must then choose to either participate in the deployment of the network as proposed by FirstNet, or conduct its own deployment of a RAN in such State.<sup>36</sup>

It is important to note that the provisions of the Act, and the interpretations discussed below, address what is essentially the final or official plan presented to a State. FirstNet expects to work cooperatively, and in keeping with its consultation obligations, with each State in

<sup>32</sup> *Id.* § 1442(e)(3)(C)(iii)(II).

<sup>33</sup> See *id.* § 1442(e).

<sup>34</sup> 79 FR 57059 (September 24, 2014) (describing that the core network provides the primary control layer of the network and connects the RAN to the Internet and public switched network).

<sup>35</sup> 47 U.S.C. 1442(e)(1).

<sup>36</sup> *Id.* § 1442(e)(2).

<sup>27</sup> See 47 U.S.C. 1442(e)(3)(C)(II).

<sup>28</sup> *Id.* § 1442(e)(3)(D).

<sup>29</sup> See *id.* § 1422(b).

developing its plan, including an iterative approach to plans in order to achieve both a State's local and FirstNet's nationwide goals for the NPSBN. Accordingly, none of the discussions in this *Second Notice* should be interpreted as implying a unilateral or opaque approach to plan development prior to the presentation of the official "plan" reflected in the Act.

Following such a FirstNet plan presentation, a decision by the Governor to assume responsibility for deployment of the State's RAN sets in motion an approval process for the State's alternative RAN deployment plan.<sup>37</sup> The FCC must approve the plan.<sup>38</sup> If this alternative RAN plan is approved, the State *may* apply to NTIA for a grant to construct the RAN within the State and *must* apply to NTIA to lease spectrum capacity from FirstNet.<sup>39</sup> Conversely, if a State alternative plan is disapproved, the RAN in that State will proceed in accordance with FirstNet's State plan.<sup>40</sup>

The Act is not entirely clear about the economic and operational effects of an approved alternative State plan. The interpretations discussed below will have substantial effects on the operation, funding, and potentially the viability of the FirstNet program. Congress drew a balance between the interoperability and self-sustainment goals of the Act and preserving the ability of States to make decisions regarding the local implementation of coverage, capacity, and many other parameters if they wanted to exercise such control. FirstNet has a duty to implement the Act in a manner that is faithful to this balance and to the opportunity of States to exercise local deployment control. But in balancing the above interests, Congress was careful not to jeopardize the overall interoperability and self-sustainment goals of the Act in its express provisions. For example, a State's ability to exercise local control of deployment is with respect to the RAN only, not the core network, and the State must demonstrate that its alternative plan for the RAN maintains the overall goals of the Act through, among other things, demonstrating interoperability and cost-effectiveness.

In the discussions below we continue this balancing through our preliminary interpretations of often complex provisions. These interpretations are preliminary, and they attempt to remain faithful to the balance Congress appears to have intended by affording States the

right to assume RAN responsibilities, but not at the cost of jeopardizing the interoperability and self-sustainment goals of the Act on which public safety entities and the overall program will depend.

#### ii. FirstNet Presentation of a State Plan

FirstNet must present its plan for a State to the Governor "[u]pon the completion of the request for proposal process conducted by FirstNet for the construction, operation, maintenance, and improvement of the [NPSBN] . . . ." <sup>41</sup> The Act does not further define when such process is "complete." The process cited is presumably the request for proposal process detailed in subsections 6206(b) and (c), which describe FirstNet's duty to develop and issue "requests for proposals." <sup>42</sup> Because Section 6206 speaks in terms of plural "requests for proposals," the "process" referenced in subsection 6302(e) could be interpreted to require completion of all such requests for proposals, particularly given that Section 6302(e) refers to the request for proposal process for the "nationwide . . . network," rather than just a process for the State in question. This would require the completion of requests for proposals for all States prior to any one State receiving a plan from FirstNet.<sup>43</sup>

We tentatively conclude, however, that it is reasonable to interpret subsection 6302(e) to merely require completion of the process for the State in question, rather than the nation as a whole, prior to presentation of the plan to the State, assuming that FirstNet can at that stage otherwise meet the requirements for presenting a plan (and its contents) to such State.<sup>44</sup> First, Section 6206 provides FirstNet with flexibility in deciding how many and of what type of requests for proposals to develop and issue. This flexibility inures to the benefit of public safety and the States by allowing FirstNet to reflect the input of regional, State, local, and tribal jurisdictions under the required consultations of Section 6206. If Section 6302 were read to require all States to await the completion of all such requests for proposals, FirstNet would likely constrain the range of RFPs it might otherwise conduct to avoid substantial delays nationwide, and in

doing so constrain its ability to reflect the input from consultative parties.

Second, such a "wait for all" approach could, depending on how such requests for proposals are issued, nevertheless substantially delay implementation of the network in many or most States contrary to the Act's apparent emphasis "to speed deployment of the network."<sup>45</sup> For example, if a protest or litigation delayed proposals for one State or a region, the entire network could be held hostage by such litigation, creating substantial incentives for gamesmanship. Finally, if Congress had wanted such an extreme result, we believe it would have been more explicit than the generalized reference to "network" in subsection (e).<sup>46</sup> Thus, we preliminarily conclude that a State plan can be presented to a State upon the completion of the request for proposal process only to the extent necessary to develop such a plan for such State. We seek comments on this preliminary conclusion.

An additional question regarding the interpretation of the term "completion" in subsection 6302(e) concerns the specific stage of the request for proposal process that constitutes such "completion." The process prescribed by the Act itself may impose a practical limit on the extent of such completion. Although we interpret the effects of a State decision to assume RAN deployment responsibilities in detail in subsequent sections of this *Second Notice*, for purposes of our discussion here it is important to note that although a Governor's decision to assume RAN responsibilities is on behalf of his or her State, depending on the interpretations discussed below, an individual State's decision could materially affect all other States and thus the request for proposal process.

For example, depending on such interpretations, if a State chooses to assume RAN responsibilities, it potentially takes with it subscriber fees and/or excess network capacity fees that would have helped fund the FirstNet network in all other States.<sup>47</sup> Independent of funding issues, by assuming RAN responsibilities the State also reduces FirstNet's costs, at least with regard to the RAN, but also the volume of purchase from a potential vendor. The net amount of such reduced funding and costs, and the impact to economies of scale, determines whether all other States will have a net reduction

<sup>37</sup> See *id.* § 1442(e)(3).

<sup>38</sup> See *id.* § 1442(e)(3)(C).

<sup>39</sup> See *id.* § 1442(e)(3)(C)(iii).

<sup>40</sup> See *id.* § 1442(e)(3)(C)(iv).

<sup>41</sup> 47 U.S.C. 1442(e).

<sup>42</sup> See *id.* § 1442(b)(1)(B), § 1442(b)(2).

<sup>43</sup> We note that FirstNet is still in the process of determining whether it will follow a single, nationwide RFP process or regional, State, or other multiple RFP processes.

<sup>44</sup> See 47 U.S.C. 1442(e).

<sup>45</sup> *Id.* § 1426(b)(1)(C).

<sup>46</sup> *Id.* § 1442(e).

<sup>47</sup> See *infra* Section II.D.iii.

in available funding and/or increased costs due to the opt-out.<sup>48</sup>

Given this dynamic, the specific States, and number thereof that choose to assume RAN responsibilities will affect, potentially materially, the final awards in the request for proposal process.<sup>49</sup> The funding level in particular will determine the amount and quality of products and services FirstNet can afford for public safety in the request for proposal process to construct the network. In addition, the information on the specific and number of opt-out States is an important factor determining economies of scale and scope represented by the FirstNet opportunity to potential vendors (and thus their pricing to and the determination of costs for FirstNet).

Under the Act, however, FirstNet must “complete” the request for proposal process before presenting plans to the States and obtaining this important information. States will, of course, want their plans to provide as much specificity regarding FirstNet’s coverage and services as possible, which would ideally be determined on the basis of the final outcomes of the request for proposal process (which, as is discussed above, ideally requires the State opt-out decisions). Accordingly, because of the circularity of these information needs, 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. Thus, we preliminarily conclude that “completion” of the request for proposal process occurs at such time that FirstNet has obtained sufficient information to present the State plan with the details required under the Act for such plan, which we discuss below, but not necessarily at any final award stage of such a process. We seek comments on this preliminary conclusion.

### iii. Content of a State Plan

FirstNet must provide to the Governor of each State, or a Governor’s designee, “details of the proposed plan for build out of the [NPSBN] in such State.”<sup>50</sup> Section 6302 does not provide express guidance as to what are the “details of the proposed plan” that must be

provided. Other provisions of the Act, however, provide some guidance in this regard.

Because the plan details are to be provided upon completion of the RFP process, we can of course reasonably conclude that such details are contemplated to include outputs of such process, as discussed in the previous section of this *Second Notice*.<sup>51</sup> Further, Section 6206(c)(1)(A) requires that FirstNet include in RFPs “appropriate” timetables for construction, coverage areas, service levels, performance criteria, and other “similar matters for the construction and deployment of such network.”<sup>52</sup> Therefore, it is reasonable to conclude that Congress expected that FirstNet would be able to include at least certain outcomes of the RFP process on such topics in a State plan for the State in question. This is particularly true with regard to construction and deployment of the RAN, regarding which the Governor must make a decision in response to being presented with the plan. We note that Section 6302(e)(1)(B) states that the details provided are for the buildout of the network “in such State” only, although FirstNet may choose to include details of, for example, core functionality that will be implemented nationally or outside the State with benefit to the State.

Other sections of the Act provide further insight as to what should be included in a State plan. A State that seeks to assume responsibility for the RAN in the State must present an alternative plan to the FCC that “demonstrate[s] . . . interoperability with the [NPSBN].”<sup>53</sup> Thus, the State must at that point have knowledge of how such interoperability can be achieved, either through receipt of FirstNet network policies or the FirstNet plan for the State, or both. Further, in order for a State to obtain grant funds or spectrum capacity, it must “demonstrate . . . that the State has . . . the ability to maintain ongoing interoperability with the [NPSBN] . . . and the ability to complete the project within specified *comparable* timelines specific to the State.”<sup>54</sup> Thus, for example, implicitly the State must have been presented with FirstNet timelines with which NTIA may “compare” to the State alternative plan.

In order to obtain grant funds or spectrum capacity, a State must also “demonstrate . . . the cost-effectiveness of the State plan . . . and . . .

comparable security, coverage, and quality of service to that of the [NPSBN].”<sup>55</sup> Thus, similar to the timelines discussed above, implicitly the FirstNet plan (in combination with FirstNet network policies) must provide the State with sufficient information to enable NTIA to make comparisons of cost-effectiveness, security, coverage, and quality of service. We seek comments on the above preliminary conclusions regarding the minimum legally required contents of a FirstNet plan for a State.<sup>56</sup> Finally, as discussed above, we preliminarily conclude that certain limitations regarding plan content are inherent in the plan process prescribed by the Act.<sup>57</sup>

### iv. Governor’s Role in the State Plan Process

Section 6302(e)(2), entitled “State decision,” is clear that “the Governor shall choose” whether a State participates in the FirstNet proposed plan or conducts its own deployment of a RAN in such State.<sup>58</sup> Thus, we preliminarily conclude that the decision of the Governor in this regard will, for purposes of the Act, be binding on all jurisdictions within such State. For example, if the Governor of a State decides the State will participate in FirstNet’s plan for buildout of the State, a city or county within the State would not be able to separately choose to deploy a RAN.<sup>59</sup> Aside from the clear language of the Act regarding the Governor’s role and decision, such sub-State level opt-out, if permitted, could create potential islands of RANs which do not meet the interoperability and other similar goals of the Act, and FirstNet would have to agree to use of its spectrum in such cases. We note, however, that FirstNet and a State could agree that, as part of FirstNet’s plan, FirstNet and the State (or sub-State jurisdictions) could work together to permit, for example, State implementation of added RAN coverage, capacity, or other network components beyond the FirstNet plan to the extent the interoperability, quality of service, and other goals of the Act were met. These further customizations of State deployments over time may form an important aspect of the FirstNet implementation nationwide. These additions have been raised in

<sup>48</sup> We note that FirstNet will be able to impose a user fee for use of the FirstNet core network by such a State, which could make up for, among other things, any added costs to integrate the State RAN with the FirstNet core network.

<sup>49</sup> From a timing standpoint, this holds true during the pendency of such a State’s application to assume RAN responsibilities even if such application is ultimately unsuccessful.

<sup>50</sup> 47 U.S.C. 1442(e).

<sup>51</sup> See *supra* Section II.C.ii.

<sup>52</sup> See 47 U.S.C. 1422(c).

<sup>53</sup> *Id.* § 1442(e)(3)(C)(ii).

<sup>54</sup> *Id.* § 1442(e)(3)(D) (emphasis added).

<sup>55</sup> *Id.* § 1442(e)(3)(D).

<sup>56</sup> As stated above, however, FirstNet may provide more details than are legally required under the Act.

<sup>57</sup> See *supra* Section II.C.ii.

<sup>58</sup> See 47 U.S.C. 1442(e)(2) (emphasis added).

<sup>59</sup> We discuss certain post-State-decision aspects of this issue in subsequent sections of this *Second Notice*.

consultation with state and local jurisdictions and could improve the network and provide additional coverage. We seek comments on the above preliminary conclusions. We also seek comments, considering the provisions of the Act and other applicable law, on the effect of both, a Governor's decision to participate in FirstNet's plan for a State, and a Governor's decision to apply for and assume RAN responsibilities in a State, on tribal jurisdictions in such a State.

#### v. Timing and Nature of State Decision

Section 6302(e)(2) requires that the Governor make a decision "[n]ot later than 90 days after the date on which the Governor of a State receives notice under [Section 6302(e)(1)]."<sup>60</sup> This phraseology raises the question as to whether a Governor could make such a decision prior to receiving such notice.

We preliminarily conclude that the Governor must await such notice and presentation of the FirstNet plan prior to making the decision under Section 6302(e)(2). The language of Section 6302(e)(2) creates a 90-day period "after the date" the notice is received, and the decision is clearly designed to be informed by the FirstNet plan.

In addition, any alternative interpretation would not fit within the process contemplated by the Act. Even if a State were able to make a qualifying decision prior to such notice, and we preliminarily conclude it could not, such a decision would trigger the 180-day clock for submitting an alternative plan to the FCC, discussed below. Without a FirstNet plan having been presented, the State's premature decision would not enable the FCC to make the assessments required to approve the State's alternate plan, or if such plan is approved, enable NTIA to review and determine whether to grant an application for grant funds and/or spectrum capacity. For example, without the FirstNet plan, a State would not be able to demonstrate to the FCC that its alternative RAN would be interoperable with the yet-unspecified FirstNet core network interconnection points within the State. Nor would a State be able to demonstrate "comparable" timelines, security, coverage, or quality of service, as required by Section 6302(e)(3)(D).<sup>61</sup> Thus, the Governor's premature decision, prior to a FirstNet plan, would likely be unworkable under the requirements in the Act.<sup>62</sup> We seek

comments on this preliminary conclusion.

#### vi. Notification of State Decision

The Act does not require the Governor of a State to provide notice of its decision to participate in the FirstNet proposed network under Section 6302(e)(2)(A) to FirstNet, or any other parties. Rather, notice is only required, as is discussed in detail below, should the Governor of a State decide that the State will assume responsibility for the buildout and operation of the RAN in the State.<sup>63</sup> Thus, we preliminarily conclude that a State decision to participate in the FirstNet proposed deployment of the network in such State may be manifested by a State providing either (1) actual notice in writing to FirstNet within the 90-day<sup>64</sup> decision period or (2) no notice within the 90-day period established under Section 6302(e)(2). We seek comments on these preliminary conclusions.

Read literally, the 90-day period established under Section 6302(e)(2) applies to the Governor's decision, rather than the notice of such decision, which is addressed in Section 6302(e)(3). We preliminarily conclude, however, that it is clear from the language of Section 6302(e)(3) that the notice is to be provided to FirstNet, NTIA, and the FCC "[u]pon making a decision . . . under paragraph (2)(B)."<sup>65</sup> Thus, we interpret the requirement to issue such notice as an immediate (*i.e.* same day) requirement, and that Congress did not intend to apply an artificial deadline on the Governor's decision, and then permit an indefinite period to lapse before providing notice of such decision. Such an indefinite period would run contrary to the Act's emphasis on the "speed of deployment" of the network for public safety.<sup>66</sup> We seek comments on this preliminary conclusion.

State has adequate information to determine whether the State would receive a greater benefit from either participating in the FirstNet proposed network plan for such State or by conducting its own deployment of the RAN in such State. More specifically, the contents of the notice provided under Section 6302(e)(1) will be necessary for a State to make an informed decision as to whether the State has the resources and capability to demonstrate it can meet the minimum technical, operational, funding, and interoperability requirements described throughout Section 6302(e). See 47 U.S.C. 1442(e).

<sup>60</sup> See *id.* § 1442(e)(3).

<sup>61</sup> In the absence of language to the contrary, we interpret the days specified in the Act as calendar days and seek any comments on this preliminary interpretation.

<sup>62</sup> 47 U.S.C. 1442(e)(3).

<sup>63</sup> See *e.g.*, 47 U.S.C. 1426(b)(1)(C) (describing the need for use of existing infrastructure to speed deployment of the network); see also *e.g.*, 47 U.S.C. 1426(b)(3) (encouraging FirstNet to seek cost

vii. The Nature of FirstNet's Proposed State Plan

The Act describes what FirstNet is to propose to each State as a "plan."<sup>67</sup> Section 6302 describes a process for the implementation of the nationwide public safety broadband network in each State.<sup>68</sup> FirstNet's presentation of a plan to the Governor of each State for buildout in that State and his/her decision to participate in such buildout as proposed by FirstNet or to deploy the State's own RAN are important steps of this process. However, we preliminarily conclude that FirstNet's presentation of a plan to a Governor and his/her decision to either participate in FirstNet's deployment or follow the necessary steps to build a State RAN, do not constitute the necessary "offer and acceptance" to create a contract.

Nowhere does the Act use words of contract, such as "offer," "execute," or "acceptance" in relationship to the FirstNet plan. For example, a Governor's decision is whether to "participate" in the FirstNet plan. The Act provides the Governor with 90 days to make a decision once presented with the plan, which would be an extremely short period within which to negotiate a final contract of this magnitude if a contract were contemplated. Notwithstanding this preliminary conclusion, a State would, however, ultimately benefit from any contractual remedies that FirstNet can enforce against its contracting parties for deployment of the network in the State.

In addition, we believe this interpretation is reasonable given that establishing the plan as a contract between FirstNet and a State would likely be unrealistic in light of the nature of the FirstNet program. For example, as discussed above, the process prescribed in the Act itself may make contract-like promises at the plan stage difficult.<sup>69</sup> In addition, subscriber adoption and fees will form an important funding and self-sustaining basis for FirstNet, dictating at least part of the scope of its ongoing buildout, features, and timing. These levels of subscriber adoption and fees across the network overall will not be known at the State plan stage and will likely be express assumptions thereunder.

Unlike the plan itself, however, when public safety entities subscribe to

effective opportunities to speed deployment in rural areas).

<sup>67</sup> A plan is defined as "a detailed proposal for doing or achieving something." Oxford Dictionaries, available at <http://www.oxforddictionaries.com/us/definition/english/plan>.

<sup>68</sup> 47 U.S.C. 1442(e).

<sup>69</sup> See *supra* Section II.C.ii.

<sup>60</sup> 47 U.S.C. 1442(e)(2).

<sup>61</sup> *Id.* § 1442(e)(3)(D)(iii).

<sup>62</sup> The Act's requirement that a State be presented a plan prior to rejecting it also ensures that each

FirstNet's services, those subscription agreements are expected to take the form of contracts with FirstNet, including contractual remedies in the event FirstNet service does not meet promised-for service levels. Similarly, to the extent FirstNet enters into contracts with State or local agencies for use of local infrastructure, those contracts will be negotiated and presumably contain contractual remedies for both parties.<sup>70</sup> We seek comments on the above preliminary conclusions.

#### viii. State Development of an Alternative Plan

Section 6302(e)(3)(B) requires, not later than 180 days<sup>71</sup> after a Governor provides a notice under Section 6302(e)(3)(A), that the Governor develop and complete requests for proposals for construction, maintenance, and operation of the RAN within the State.<sup>72</sup> We believe the Act imposes this 180-day period to ensure that the public safety entities in and outside the State gain the benefit of interoperable communications in the State in a reasonable period of time, either through the FirstNet plan or a State plan.

Consistent with our preliminary interpretation of the "completion" of the FirstNet request for proposal process,<sup>73</sup> we preliminarily conclude that the phrase "complete requests for proposals" means that a State has progressed in such process to the extent necessary to present an alternative that could demonstrate the technical and interoperability requirements described in Section 6302(e)(3)(C)(i).<sup>74</sup> Like FirstNet, States will potentially have gaps in information at the time of their request for proposal process, and subsequently at the time of their submission of an alternative plan. For example, to the extent such States have not negotiated at least the material parameters of a spectrum capacity lease agreement with FirstNet at the time of an RFP, they will be unable to finally determine the terms, which may be materially affected by such parameters, of any covered leasing agreement ("CLA") the State would enter into to offset some or all their costs of construction. Nor will NTIA have potentially approved of such spectrum capacity leasing rights at that point. Thus, we encourage States that may

contemplate such a process to engage FirstNet as early as possible to increase the specificity of the alternative plans they can present to the FCC and NTIA.

In keeping with this interest in timely network deployment, we preliminarily conclude 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).<sup>75</sup> This forfeiture would result in the construction, maintenance, operations, and improvements of the network within the State proceeding in accordance with the FirstNet plan. We expect that the FCC will establish procedures regarding the filing of alternative State plans where States have completed their requests for proposal in a timely fashion. We seek comments on these preliminary conclusions.

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

Under Section 6302(e)(3)(C)(ii), States with alternative plans approved by the FCC may apply to NTIA for a grant to construct a RAN within that state and must apply to NTIA to lease spectrum capacity from FirstNet.<sup>76</sup> We preliminarily conclude that approval by the FCC of an alternative State plan results in that State being solely responsible for the construction, operation, maintenance, and improvement of the RAN in such State in accordance with the State's approved plan, thereby extinguishing any obligation of FirstNet to construct, operate, maintain, or improve the RAN in such State.<sup>77</sup> Certainty as of the date upon which the FCC approves or disapproves the alternative plan is important for FirstNet in determining the final economics of its network and business planning and thus its ability to move forward, with vendors and otherwise, in that and other States. We seek comments on this preliminary conclusion.

<sup>75</sup> *Id.* § 1442(e)(3)(C).

<sup>76</sup> *Id.* § 1442(e)(3)(C)(iii).

<sup>77</sup> Such a State would, however, at a minimum still require approval from NTIA for spectrum capacity leasing rights and still fulfill their contractual requirements of any spectrum capacity lease negotiated with FirstNet. In addition to FirstNet's obligations under such a spectrum capacity lease, FirstNet would also have to fulfill its obligations, including any supervision obligations, under FCC rules as the licensee of the FirstNet spectrum with regard to any such State's use thereof.

The Act, however, does not provide a mechanism for a State, following an FCC-approved State RAN plan, to reinitiate an "opt-in" process where FirstNet would assume the duty to build the NPSBN in that State. For example, if the sequence of events ended with a State receiving approval of its alternative plan by the FCC but being unable to reach agreement on a spectrum capacity lease with FirstNet or being denied approval of such spectrum capacity leasing rights or needed grant funds by NTIA, the State subsequently would be unable to operate the RAN in the State. Although we intend to work closely with the FCC, NTIA, and States to try to anticipate and avoid any such unnecessary process issues, we preliminarily conclude that the inability of a State to implement its alternative plan for such reasons would not preclude a State and FirstNet from agreeing to allow FirstNet to implement the RAN in such State. FirstNet's duty is the deployment of the network nationwide, and deployment in all States greatly benefits the nation as a whole. As such, we do not believe Congress intended to put such States in limbo with regard to the NPSBN.

Further, because such uncertainty in any one State would affect the benefits of the NPSBN nationwide, we preliminarily conclude that denial by NTIA of at least the spectrum capacity leasing rights would then permit FirstNet to implement a plan in the State.<sup>78</sup> Absent this interpretation, any one State could indefinitely delay, among other things, construction of the network in such State, the funding derived from spectrum capacity leases in such State, and the positive effects of economies of scale and scope from construction and operation in such State, all to the detriment of all other States and citizens through the effect on the FirstNet program. In the absence of express provisions under the Act, we believe this preliminary interpretation appropriately balances Congress' intent to have a nationwide network implementation as soon as possible with the rights of States to conduct their own RAN deployment if, and only if, they can meet the requirements under Section 6302(e)(3). We seek comments on this preliminary conclusion and any alternative processes that meet the requirements of the Act.

Beyond the above scenarios, if a State initially enters into a spectrum capacity lease with FirstNet and receives all

<sup>78</sup> Following denial of the application for a spectrum capacity lease in Section 6302(e)(3)(C)(iii)(II), FirstNet would remain the licensee of the spectrum in question. *See* 47 U.S.C. 1442(e)(3)(C)(iii)(II).

<sup>70</sup> FirstNet is specifically authorized to make contracts with Federal, State, regional, and local agencies. *See* 47 U.S.C. 1426 (a)(3), (b)(4)(A).

<sup>71</sup> In the absence of language to the contrary, we interpret the days specified in the Act as calendar days.

<sup>72</sup> 47 U.S.C. 1442(e)(3)(B).

<sup>73</sup> *See supra* Section II.C.ii.

<sup>74</sup> *See* 47 U.S.C. 1442(e)(3)(C)(i).

necessary approvals, because of FirstNet's authority to enter into contracts with State and local agencies, we preliminarily conclude that a State may ultimately seek to have FirstNet, assuming mutually acceptable terms, take over some or all RAN responsibilities in the State through a contractual agreement.<sup>79</sup> Given the benefit to the nation of a functioning network within all States, we believe this capability is important in the event, for example, that a State plan fails after approval and execution of a spectrum capacity lease. We seek comments on these preliminary conclusions.

Finally, under Section 6302(e)(3)(C)(iv), if the FCC disapproves an alternative State plan, the construction, maintenance, operation, and improvements of the radio access network in that State will proceed in accordance with the State plan proposed by FirstNet.<sup>80</sup> Thus, we preliminarily conclude that once a plan has been disapproved by the FCC, subject only to the additional review described in Section 6302(h), the opportunity for a State to conduct its own RAN deployment under Section 6302(e) will be forfeited, and FirstNet may proceed in accordance with its proposed plan for that State.<sup>81</sup> This certainty of obligation is important for both FirstNet planning regarding self-sustainability and to ensure that the network is built in a timely manner. We seek comments on these preliminary conclusions.

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

##### *i. Overview*

Having discussed above many of the procedural aspects of a State's decision to assume RAN responsibilities, we turn to some of the potential substantive ramifications of such a decision. Importantly, and as is also discussed above, these ramifications can reach beyond the borders of the State making the decision. They include potential effects in and outside the State on public safety customers, FirstNet's costs and available funding nationally, including its ability to meet substantial rural milestones, and the purchasing

<sup>79</sup> How such an agreement or the circumstances giving rise to the agreement, if permitted, would be treated by the FCC or NTIA under Section 6302(e)(3) would depend on such decisions, rules, or regulations of the FCC or on NTIA's decisions. See 47 U.S.C. 1442(e)(3).

<sup>80</sup> 47 U.S.C. 1442(e)(3)(C)(iv).

<sup>81</sup> *Id.* § 1442(h) (describing the jurisdiction and standard of review for reviewing the disapproval of a plan by the FCC).

power of FirstNet on behalf of public safety. In addition to these critical considerations, in order to achieve the goals of the Act following a State decision to assume RAN responsibilities, FirstNet and such a State must in all cases define and implement a potentially complex operational relationship to serve public safety.

In arriving at the preliminary interpretations below, we endeavored to remain faithful to the balance Congress struck between the deployment of a nationwide network as soon as practicable, and the right of States to deploy their own RAN under the conditions outlined in the Act. The most difficult of these preliminary interpretations relate to areas where the Act is either completely silent or provides only inferential guidance. These include topics such as who actually provides service to public safety entities in opt-out States, who receives and may use fees from such services and for what purposes, and whether Congress intended the right to opt-out under the Act to include, particularly with respect to fees for use of excess network capacity, the right to fundamentally affect the complex funding structure of the FirstNet program in all other States in favor of the State opting out.

We discuss below preliminary conclusions regarding these issues, but expect the highly complex legal and operational landscape in these areas to also mature over time, particularly in light of FirstNet consultations, including most importantly the comments received from this *Second Notice*.

##### *ii. Customer Relationships in States Assuming RAN Construction and Operation*

The Act does not expressly define which customer-facing roles are assumed by a State or FirstNet with respect to public safety entities in States that have assumed responsibility for RAN construction and operation. Generally speaking all wireless network services to public safety entities will require technical operation of both the RAN, operated by the State in this case, and the core network, operated by FirstNet in all cases as we preliminarily concluded in the *First Notice*.<sup>82</sup> We received predominantly supportive comments in response to this preliminary conclusion in the *First Notice*, with some commenters suggesting flexibility, on a State-by-State basis, in the precise delineation of

technical and operational functions performed by the FirstNet core network and States assuming RAN responsibilities in such States.<sup>83</sup> A core network, for example, would typically control critical authentication, mobility, routing, security, prioritization rules, and support system functions, including billing and device services, along with connectivity to the Internet and public switched network. The RAN, however, would typically dictate, among other things, the coverage and capacity of last mile wireless communication to customer devices and certain priority and preemption enforcement points at the wireless interface of the network. Either alone is an incomplete network and each must work seamlessly with the other. As a result, FirstNet and such States must similarly work together to ensure that public safety is provided the critical wireless services contemplated by the Act.

These technical and operational functions and interactions between the RAN and core network, however, can vary to a limited extent that would not necessarily jeopardize the interoperability goals of the Act. FirstNet preliminarily concludes that it will maintain a flexible approach, advocated by some States in their comments to the *First Notice*, to such functions and interactions in order to provide the best solutions to each State so long as the interoperability and self-sustainability goals of the Act are achieved.<sup>84</sup> The allocation of such technical and operational functions,

<sup>83</sup> See, e.g., Comments of the State of Florida at 3–4 (stating “Florida acknowledges that the Act requires FirstNet to build the core network. The Act, does not however, prohibit any other party from building and operating a core network, as long as it meets the interoperability and operational standards promulgated by FirstNet. Florida encourages FirstNet to remain flexible when creating its network architecture to provide options for the various States to best meet their broadband needs in support of their public safety missions.”) available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0013>; See also, e.g., Consolidated Response of the MACINAC Initiative to the Request for Information For Comprehensive Network Solution(s) and Public Notice and Comment Request for Comments at 8 (stating “MACINAC is not interested in operating a core, nor is it advocating for State-run cores; instead we are suggesting that when considering the line of demarcation between RAN and core, FirstNet must be careful to respect the distinction between technology [the hardware, software, and standards] and the policy and operation of the core services. Public safety entities will be unlikely to support the network unless FirstNet provides States and local governments the means to control and manage services such as billing, location, and device services.”) available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0008>.

<sup>84</sup> FirstNet is continuing to review comments in response to the preliminary conclusions in its *First Notice* and makes no final determinations with respect thereto in this *Second Notice*.

<sup>82</sup> See 79 FR 57059 (September 24, 2014).

however, does not entirely dictate who assumes public safety customer-facing roles, such as marketing, execution of customer agreements, billing, maintaining service responsibility, and generating and using fees from public safety customers. States assuming RAN responsibilities could, for example, operate as partial resellers or enter into Mobile Virtual Network Operator (“MVNO”)-like arrangements<sup>85</sup> with FirstNet to use part or all of its core network to offer service to public safety entities in a State. Alternatively, such States could act as a RAN supplier to FirstNet, customizing the RAN to local needs but placing the responsibility with FirstNet to market, serve, and bill public safety entities in the State. There are a variety of such possible arrangements, and we preliminarily conclude below that the Act provides sufficient flexibility to accommodate many of them so long as the interoperability and self-sustainment goals of the Act are met.

We first note, as we preliminarily concluded in the *First Notice*, that the State decision is as to whether to control deployment of the RAN, not the core network, and as is discussed above, the RAN alone is insufficient to offer wireless service. Under Section 6302(f), FirstNet is authorized to charge States assuming such RAN responsibilities user fees for “use of elements of the core network.”<sup>86</sup> This clause could be interpreted as evidence of Congress’ contemplation of such a State’s use of the FirstNet core network to provide service to public safety entities in a resale or MVNO-like arrangement. But there are a variety of circumstances, other than providing end user services, under which a State may want to use elements of the FirstNet core network. For example, the FirstNet core network would have to be used to enable RAN sharing as specified by the Interoperability Board Report in connection with a CLA between the State and a third party. In addition, if the State itself subscribed to FirstNet services, because the State is responsible for the RAN, the State and FirstNet would have to negotiate an agreement addressing, among other things, State use of the core network. Thus, this clause alone does not, generally speaking, appear to indicate one way or another who is to be the customer-facing service provider in a State that has assumed RAN

responsibility and could provide flexibility in this regard.

Similarly, Section 6302(e)(3)(D) indicates that such a State is to “operate . . . the State radio access network” and “maintain ongoing interoperability with the [NPSBN].”<sup>87</sup> Neither of these requirements necessarily indicates a customer-facing role. The State is expressly operating the RAN, not the NPSBN as a whole in the State. Thus, these clauses similarly do not appear to be restrictive in this regard.

The Act requires that States seeking to obtain grant funds or spectrum capacity leasing rights must demonstrate “comparable . . . quality of service to that of [FirstNet].”<sup>88</sup> This provision implies that States building and operating a RAN are at least providing a “quality of service” to someone. For example, the clause could mean that because the RAN is part of the network that FirstNet is using to provide service to a public safety customer, the State must demonstrate that this ultimate level of service from FirstNet will not be diminished relative to what FirstNet would provide under its plan. Alternatively, the provision could be interpreted as contemplating a State providing a quality of service to end user customers. Again, this clause does not appear to clearly require one or the other customer-facing roles.

Another important provision relevant to this determination precludes States that assume RAN responsibility from “provide[ing] commercial service to consumers or offer[ing] wholesale leasing capacity of the network within the State except directly through public-private partnerships for construction, maintenance, operation, and improvement of the network within the State.”<sup>89</sup> This provision could imply that such States are otherwise contemplated to provide commercial services to non-consumers (*e.g.*, public safety entities) within that State. This interpretation, however, based on implication, is not required by the provision, which could merely be formulated to avoid precluding the intended use of the State RAN for service provision by FirstNet to public safety. The implication may support the flexibility discussed above, although Congress was express and overt elsewhere in the Act in authorizing a customer-facing relationship.<sup>90</sup>

<sup>87</sup> *Id.* § 1442(e)(3)(D).

<sup>88</sup> *Id.* § 1442(e)(3)(D)(iii).

<sup>89</sup> *Id.* § 1442(g)(1).

<sup>90</sup> We note that Section 6212 separately precludes FirstNet from providing services directly to consumers, and such a prohibition would presumably cover FirstNet’s offer of services in a State that has assumed responsibility for a RAN,

Section 6208 and Section 6302 expressly authorize FirstNet and a State assuming RAN responsibilities, respectively, to enter into CLAs.<sup>91</sup> Only Section 6208, however, which authorizes “[FirstNet] . . . to assess and collect . . . fees,” identifies “user or subscription fee[s] . . . including . . . from . . . any public safety entity[ies].”<sup>92</sup> That is, Congress expressly authorized both FirstNet and States to enter into CLAs, but only expressly provided for FirstNet to charge public safety entities for user or subscription fees. Because Congress took the step of expressly authorizing the State to exploit federally-licensed spectrum using one method (public private partnerships (“PPPs”)/CLAs), and, unlike FirstNet, not another (subscriber fees), a potential interpretation of the Act with respect to these provisions is that FirstNet is intended to be the customer-facing service provider for public safety entities in States that assume RAN responsibilities, or is at least the only entity permitted to assess subscription fees to public safety entities. Such an interpretation would also be supported by the existence of provisions under the Act, more fully discussed below, requiring FirstNet to reinvest subscriber fees *as well as* excess network capacity fees into the network, whereas the only reinvestment provision expressly applicable to States assuming RAN responsibilities concerns excess network capacity fees. This too could indicate that such States, as RAN providers, were not intended to assess subscription fees because if they were intended to do so, Congress would have required their reinvestment into the network (as they did with State CLA fees).<sup>93</sup>

We preliminarily conclude, however, that although the above provisions could indicate a Congressional intent to have FirstNet be the primary customer-facing entity at least with regard to the fees assessed public safety entities, a reasonable interpretation of all the

raising the question as to why the preclusion of Section 6302 is necessary unless Congress assumed such States were customer-facing to public safety entities. *See* 47 U.S.C. 1432, § 1442. Because Congress permitted such States to enter into agreements to exploit the excess network capacity in such States, the Section 6302 provision serves to limit the type of such agreements to the specified PPPs. *Id.* § 1442(g). Without this provision, States could enter into agreements to exploit excess capacity where the paying party was not aiding in the “construction, maintenance, operation, and improvement of the network.” *Id.* § 1442(g). Thus, the provision can serve a separate purpose.

<sup>91</sup> *Id.* § 1428(b), § 1442(e)(3)(c)(i)(II).

<sup>92</sup> *See id.* § 1428.

<sup>93</sup> 47 U.S.C. 1442(g)(2) (requiring revenues gained by a State from such a leasing agreement to be reinvested in the network).

<sup>85</sup> In a traditional MVNO relationship, a mobile operator supplies the RAN and some components of the core network to the MVNO.

<sup>86</sup> 47 U.S.C. 1442(f).

provisions discussed above, including both operational and fee-related, would not preclude opt-out States, as sovereign entities, from charging subscription fees to public safety entities if FirstNet and such States agreed to such an arrangement in the spectrum capacity lease with the States, and the arrangement was part of an alternative plan approved by the FCC and NTIA. We seek comments on this preliminary conclusion.

In addition to affording flexibility with respect to FirstNet's role, because of the lack of definitive language in the Act discussed above, we also preliminarily conclude that the Act does not require that such States be the customer-facing entity entering into agreements with and charging fees to public safety entities in such States. In particular, our conclusion is based on the absence of provisions in the Act requiring such a result, as discussed above, and the inclusion of provisions, such as those regarding the assessment and reinvestment of subscriber fees, that at least clearly authorize, if not contemplate the opposite result.

Accordingly, we preliminarily conclude that the Act provides sufficient flexibility, as discussed above, to allow the determination of whether FirstNet or a State plays a customer-facing role to public safety in a State assuming RAN responsibilities to be the subject of operational discussions between FirstNet and such a State in negotiating the terms of the spectrum capacity lease for such State, in addition to the approval of the State's alternative plan by the FCC and spectrum leasing rights and any grant funds by NTIA. We seek comments on these preliminary conclusions.

Our preliminary interpretations above attempt to maintain the balance between, on the one hand, construction of a nationwide architecture and interoperable operation of the network, and on the other hand, a State's opportunity to design and deploy a RAN that meets the particular coverage, capacity, and other needs of the State. Our interpretations leave room for the flexibility advocated by some States in response to our *First Notice* in order to provide the best solutions in each State while adhering to the goals of the Act.

However, under all these possible scenarios—where an opt-out State or FirstNet is playing customer-facing service provider roles to public safety entities—the splitting of responsibilities for the network at the interface between the RAN and core network will present substantial operational complexities. 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. These disparities, in addition to jeopardizing interoperability, could also reduce subscription to and use of the NPSBN by adding complexity, implementation risk, and confusion among public safety entities. Although some of these disparities could be addressed in the opt-out process and network policies implemented by FirstNet, and/or mitigated in agreements between FirstNet and opt-out States, such a structure could be inconsistent with the goals of the Act to establish “a nationwide, interoperable public safety broadband network . . . based on a single, national network architecture.”<sup>94</sup>

FirstNet's customer-facing role in providing services to public safety entities in opt-out States, although potentially mitigating many of the above difficulties, would present different issues, such as RAN coverage and capacity planning, investment, and reimbursement debates between FirstNet and such States.<sup>95</sup> Under the variety of possible scenarios enabled by commercial network standards, FirstNet and States assuming RAN responsibilities will have to work together over many years with the best interests of public safety in mind to address myriad operational issues.<sup>96</sup>

<sup>94</sup> *Id.* § 1422(b). There is also no indication in the Act that the State option to assume RAN responsibilities was enacted to promote competition between FirstNet and such States.

<sup>95</sup> We also note that States are not restricted from using their own funds to build and operate the RAN, nor are they required to apply to NTIA for funding.

<sup>96</sup> For example, if FirstNet is the public safety customer-facing provider, how will future capacity and coverage expansion of the RAN be handled between the parties given that FirstNet sales and service projections will be driving such investments? Alternatively, if the State is the public safety customer-facing provider and wants to expand the RAN or services beyond FirstNet's current core configuration, how will those arrangements be handled? How will roaming agreements between FirstNet and the State, and between either FirstNet or the State (as the service provider) and other carriers be handled? Regardless of the service provider model in States assuming RAN responsibilities, how will radio frequency planning be accomplished on State borders? We therefore also seek comments on the operational parameters implicated in the shared service provision models discussed above.

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

FirstNet has three primary sources of funding: (1) Up to \$7 billion in cash; (2) subscriber fees; and (3) fees from excess network capacity leases (known as CLAs) that allow FirstNet to sell capacity not being used by public safety to commercial entities.<sup>97</sup> Each of these funding sources is critical to offset the massive costs of the nationwide broadband wireless network envisioned in the Act and the self-sustainability required of FirstNet under the Act.

State opt-out decisions could, however, depending on the interpretations below, materially affect FirstNet's funding and thus its ability to serve public safety, particularly in rural States. If a State receives approval to opt-out it could theoretically tap into or entirely supplant each of the three primary FirstNet funding sources within the boundaries of the State. More precisely, depending on such interpretations, a State that assumes RAN responsibility could tap into or supplant these funding sources in an amount that materially exceeds the amount of resources FirstNet (or a reasonable State plan) would have allocated to serve that State.<sup>98</sup>

For example, once a State receives approval of its alternative RAN plan from the FCC, the State must apply to NTIA for a spectrum capacity lease from FirstNet.<sup>99</sup> Section 6302(g) then permits a State to enter into CLAs, using the spectrum capacity leased from FirstNet to offset the costs of the RAN. The Act does not specify the terms governing the lease nor the amount of spectrum capacity for which a State may apply, only requiring any fees gained to be reinvested into the RAN “of the State.”<sup>100</sup> Assuming for the moment that such a State receives all necessary approvals and enters into a lease with FirstNet for use of all of FirstNet's spectrum capacity in the State, and such a State is the billing service provider to public safety entities in the State, then all public safety subscriber and excess network capacity fees generated in the State would go to and remain in the

<sup>97</sup> See generally 47 U.S.C. 1428, § 1457.

<sup>98</sup> As used here, resources would be the amounts from all fees (including subscriber and excess network capacity) used to cover costs in the State. In an opt-out scenario, FirstNet would avoid the costs of the RAN, gain core network fees, but potentially lose fees that would have exceeded its costs in the State, as discussed herein. FirstNet's purchasing power with vendors would also decline to the extent of the RAN-related purchases, thereby potentially raising FirstNet's costs to the extent of such reduced purchasing power.

<sup>99</sup> 47 U.S.C. 1442(e)(3)(C).

<sup>100</sup> *Id.* § 1442(g)(2).

State other than any core network fees assessed by FirstNet.

Generally speaking, States with high-density populations may generate subscriber and/or excess network capacity fees for FirstNet that materially exceed their RAN costs to FirstNet. Thus, if such a State opts out of the FirstNet plan, and the Act is interpreted to allow such States to keep any or all of the fees from such States that exceed RAN costs within the State (assuming even an expanded RAN in the State alternative plan relative to FirstNet's plan), then funding for all other States could decline because FirstNet will not receive the funding for use outside the State.<sup>101</sup> That is, because FirstNet must aggregate fee amounts across all States for reinvestment and use by all States,<sup>102</sup> if a State is able to withhold fees materially in excess of those FirstNet was going to allocate to the State (beyond the avoided cost of the RAN and core network fees, and accounting for any plan differences between FirstNet and the State), funding for all other States would materially decline. This circumstance could have a detrimental impact on both the funds available to maintain and improve the NPSBN on an ongoing basis as well as adversely affect the cost of services to public safety users.

Thus, if a State believes it can generate and withhold such fees for its own use under the Act, it may have at least a theoretical economic incentive to opt-out. Again assuming the Act is interpreted this way, our preliminary estimates indicate that very high density States may have such an incentive, although only the request for proposal processes and actual operations will determine this for certain. Accordingly, if the Act is interpreted in this manner, it has a built in incentive structure for a few States to opt-out and retain, for reinvestment or otherwise in such States, fees that could materially reduce FirstNet coverage and services in all other States, including States with more rural areas.

We believe 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. Such an incentive structure, even if reinvestment in the State network were always required in opt-out States, could result in networks that greatly exceed public safety requirements in a few opt-out States (or funds diverted to State general funds),

<sup>101</sup> Funding for that opt-out State's core network would also decline, but FirstNet would be able to assess such a State core network fees under the Act.

<sup>102</sup> See 47 U.S.C. 1428.

and networks that do not meet public safety requirements and the goals of the Act in the vast majority of States. Nothing in the Act indicates that such a result was contemplated, particularly given FirstNet's duty to ensure the deployment of a "nationwide" network that includes "substantial rural coverage milestones as part of each phase of the construction and deployment of the network."<sup>103</sup> We do not believe this was the balance Congress intended to strike between establishing a nationwide network and providing States an opportunity, under certain conditions, to customize and operate the RAN portion of the network in their States.

Congress' intent in this regard is informed by, among others, the provision in Section 6302(e)(3)(D) that requires that a State wishing to assume RAN responsibilities demonstrate "the cost-effectiveness of the State plan" when applying to NTIA not just for grant funds, but also for spectrum capacity leasing rights from FirstNet, which are necessary for the implementation of a State RAN and could exceed the value of any grant funds over the life of the program.<sup>104</sup> Independent of NTIA's determination in assessing such an application, FirstNet, as the licensee of the spectrum and an independent entity within NTIA, must ultimately decide to enter into such a lease, and thus we analyze this provision in considering FirstNet's role and duties in relation to the State's proposed demonstration of the plan's "cost-effectiveness."<sup>105</sup>

If a State presented a plan for a RAN deployment identical to FirstNet's but costing three times as much, a reasonable interpretation of this provision would indicate that if material, the amount in question would render such a plan not cost-effective (assuming the State was not using its own funds or otherwise compensating for the cost difference). Two times the cost of the RAN would be wasted for the rest of the country. This straight-forward

<sup>103</sup> *Id.* § 1426(b)(1), (3).

<sup>104</sup> *See id.* § 1442(e)(3)(D).

<sup>105</sup> We note that FirstNet's interpretation of this provision and its determination with regard to its duties based on the State's proposed demonstration is independent of and does not limit NTIA. To the extent the "spectrum capacity lease" described in Section 6302(e)(3)(C)(iii)(II) is a lease of the spectrum itself, rather than capacity on the network, under applicable FCC rules the FCC "will allow parties to determine precise terms and provisions of their contract" consistent with FirstNet's obligations as a licensee under such rules. *See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-113, 18 FCC Rcd 20604, 20637 (2003).

analysis of cost-effectiveness implicitly takes into account funding on a national basis, beyond the border of the State in question, because the State itself would receive the same RAN and the cost-inefficiency would only affect other States through FirstNet. Thus, by including a cost-effectiveness test, a straight-forward interpretation of the provision would indicate Congress' intent that State opt-out decisions do not unreasonably affect the resources of the network as a whole, or at the very least that such decisions only allocate resources to provide different or greater RAN coverage in a reasonable manner.<sup>106</sup>

In the case of a high-density State or territory, such as the District of Columbia, the value of public safety user fees and CLAs is likely much greater than a high-quality network's costs. That is, the effective cost of the RAN once subscriber and/or excess network capacity lease fees are taken into account is zero, and surplus fees are generated. Assuming for the moment that the State could generate the same (surplus) CLA fees that FirstNet could in the State, if the State were to present a plan that withheld such surpluses in the State itself, by analogy to the previous example, the rest of the States would be denied the benefits to the NPSBN afforded by the availability of such amounts to reduce the overall cost of services. Even if such a surplus were reinvested in the State's network, spending the surplus on only the network in that State may greatly exceed the reasonable needs of public safety in the State relative to those in other States. In addition to this inefficiency, if the Act were interpreted not to require reinvestment (discussed below) then any surplus fees diverted to State general funds would be drained from the FirstNet program and public safety in all States, including the opt-out State.

Exacerbating this effect, a single State (or even a group of States) negotiating a CLA for only such a State (or group) could yield substantially lower fees overall relative to what FirstNet would have generated. In the example above, the District of Columbia alone would likely generate lower fees than FirstNet would for the spectrum in the District because FirstNet would likely enter into a CLA that spanned the entire metro area of Washington, DC, including parts of Maryland and Virginia that, from a

<sup>106</sup> The actual analysis would presumably include any added benefits provided by differences in the State RAN plan, which could justifiably cost more than the FirstNet RAN plan. But material fees captured in the State beyond the cost of even a reasonably enhanced RAN plan could result in inefficiencies.

commercial carrier's perspective, are important to the value of the spectrum in the District. Furthermore, FirstNet's request for proposal process might reveal that a regional or national CLA would generate even greater fees attributable to the District (and the District with surrounding States) because of the seamless spectrum footprint across the region or nation. Of course, the opposite could also be true, that for some reason a State or group of States may be able to generate more fees from a CLA than FirstNet which, depending on the allocation of such fees between the State and FirstNet, could benefit all other States relative to the agreement into which FirstNet would have entered. These are important considerations materially affecting the value of the assets Congress provided to fund the program.

Accordingly, as a threshold matter, with respect to FirstNet's negotiation of a spectrum capacity lease with States seeking to assume RAN responsibilities, we preliminarily conclude that Congress did not intend such leases to enable materially cost-inefficient RAN plans or, more precisely, materially inefficient use of the scarce spectrum resources provided to the program, and it would be FirstNet's duty to consider the effect of any such material inefficiencies on, among other things, more rural States and on the FirstNet program in determining whether and under what terms to enter into such a lease.

The Act directs States with approved alternative RAN plans to "apply" to "NTIA to lease spectrum capacity from [FirstNet]." <sup>107</sup> It does not guarantee that NTIA will approve spectrum capacity leasing rights for a State, but rather sets out criteria that must be demonstrated to NTIA—including the cost-effectiveness of the plan—prior to receiving approval. FirstNet, however, as an independent authority within NTIA and as the licensee of the spectrum, has a duty to preserve the meaningful right of States to opt-out under the Act, but also additional duties imposed by the Act to ensure the deployment of the network nationwide and duties imposed by FCC rules as a licensee with respect to the spectrum and any capacity subleases thereof. We preliminarily conclude that FirstNet, in the exercise of such duties, can and must take into account, among other things, the considerations discussed above in whether and under what terms to enter into a spectrum capacity lease

with a State. We seek comments on this preliminary conclusion.<sup>108</sup>

FirstNet's proposed approach, however, would not result in a binary FirstNet position. FirstNet, in remaining faithful to the balance Congress struck in the Act, would work with States desiring to assume RAN responsibilities to evaluate potential "win-win" arrangements where the assets Congress provided are used efficiently but the right of States to assume RAN responsibilities under the Act's criteria is preserved. For example, FirstNet and such a State could agree, as part of the spectrum capacity lease and ultimately as part of the State's alternative plan presented to the FCC and NTIA, to leverage a FirstNet CLA if it presents a materially better fee return to the benefit of both the State in question and all other States. Such a State could become a contracting party with the same covered leasing partner, giving the State control of and responsibility for the RAN. If, taking into account the above-discussed potential effects on the program, a State is nevertheless able to enter into a more favorable CLA with a different covered leasing partner, then FirstNet and the State could agree on how such an agreement would benefit the State and the network as a whole. A variety of approaches could achieve "win-win" solutions, and FirstNet would be committed to exploring them within the bounds of the Act. We seek comments on such approaches.

With respect to the user fees generated from public safety customers in a State, we discussed in the previous section of this *Second Notice* our preliminary conclusion that FirstNet or a State assuming RAN responsibilities may ultimately receive such fees depending on the arrangement between FirstNet and the State under the spectrum capacity lease. Here, for the reasons discussed above, we preliminarily conclude that the Act should be interpreted to require that States assuming RAN responsibilities that charge end user subscription fees to public safety entities must reinvest such fees into the network and that FirstNet has a duty to consider both the reinvestment of such fees and the cost-effectiveness considerations discussed above regarding the distribution of such fees in entering into such a spectrum capacity lease.

<sup>108</sup> We note that even if our preliminary conclusion is incorrect in terms of FirstNet's authority to consider the effects discussed above, in any event the provisions regarding cost-effectiveness of the plan, as interpreted by NTIA, would nevertheless be a required consideration in the application to NTIA for spectrum capacity leasing rights under the Act.

An alternative interpretation regarding reinvestment of subscriber fees—that Congress intended States to be able to divert such fee amounts to State general funds—would seem to have no basis in the structure and purposes of the Act, which carefully provides a reinvestment requirement for CLA fees assessed by States (and FirstNet) and when authorizing subscriber fees by FirstNet.<sup>109</sup> Subscriber fees may ultimately exceed those derived from CLAs in any one State, and it would make little sense for Congress to have intended loss of the former but retention of the latter for the network, with such losses potentially jeopardizing the interoperability and technical evolution of the network. At a minimum, the ability of States to provide end user services to public safety entities will ultimately depend on the scope of the spectrum capacity lease provided by FirstNet. Accordingly, we preliminarily conclude that, absent clear language to the contrary in the Act, FirstNet could impose such a reinvestment restriction within the terms of such a lease. We seek comments on these preliminary conclusions.

We also preliminarily conclude here that, for the reasons discussed above related to CLAs, FirstNet, in the exercise of its duties, can and must take into account, among other things, the considerations discussed above regarding the effects on other States of a State's plan to retain all subscriber fees in determining whether and under what terms to enter into a spectrum capacity lease with a State. Consistent with our proposed approach to efficiently leverage CLA fees from third parties, FirstNet would explore "win-win" solutions with States desiring to assume RAN and customer-facing obligations if subscriber fees with or without CLA fees would materially exceed RAN and related costs in a State. We seek comments on these preliminary conclusions.

We turn now to the interpretation of certain aspects of provisions addressing the reinvestment of CLA fees assuming that a State has received approval from NTIA and entered into a spectrum capacity lease with FirstNet. We note the parallels between FirstNet and the State's provisions addressing the reinvestment of fees. Subsection 6208(d) requires FirstNet to reinvest those

<sup>109</sup> This would be true even if Congress assumed that some of such subscribers could be receiving services for free because the same assumption could have been made with respect to FirstNet fees. That is, the Act does not require the imposition of fees, only authorizes such fees, and then requires that, if assessed, any such fees be reinvested.

<sup>107</sup> 47 U.S.C. 1442(e)(3)(iii)(II).

amounts received from the assessment of fees under Section 6208 in the NPSBN by using such funds only for constructing, maintaining, operating, or improving the network.<sup>110</sup> Such fees under Section 6208 include basic network user fees and fees related to any CLAs between FirstNet and a secondary user.<sup>111</sup>

Parallel to FirstNet's provision in Section 6208(d), Section 6302(g)(2) requires that any amounts gained from a CLA between a State conducting its own deployment of a RAN and a secondary user must be used only for constructing, maintaining, operating, or improving the RAN of the State.<sup>112</sup> However, the exact parallels between the reinvestment prohibitions in the Act applicable to FirstNet, and those applicable to such States, end there.

Section 6208(a)(2) authorizes FirstNet to charge lease fees related to CLAs. Other than CLAs, however, FirstNet is not expressly authorized to enter into other arrangements involving the sale or lease of network capacity. In potential contrast, Section 6302(g)(1) precludes States from providing "commercial service to consumers or offer[ing] wholesale leasing capacity of the network within the State *except directly through public-private partnerships for construction, maintenance, operation, and improvement of the network within the State.*" Section 6302(g)(2), entitled "Rule of construction," provides that "[n]othing in this subsection shall be construed to prohibit the State and a secondary user from entering into a covered leasing agreement."<sup>113</sup>

These two components of subsection 6302(g) raise questions as to whether (1) there is any type of PPP that is not a CLA, and if so, (2) whether such a PPP would permit commercial use of such capacity more flexibly or less flexibly than a CLA given the difference in their respective requirements. That is, do these provisions of the Act provide States that assume RAN responsibility more or less flexibility in wholesaling capacity than FirstNet? Moreover, if such a non-CLA PPP exists, under the second sentence of Section 6302(g)(2), amounts generated by such an arrangement, unlike those from a CLA, could under the literal terms of Section 6302(g)(2) potentially not be subject to reinvestment in the network as that provision states that it is revenues gained "from such a leasing agreement" (ostensibly referring to "covered leasing agreement" in the immediately

preceding sentence) that must be reinvested.<sup>114</sup>

These potential differences between the Act's treatment of FirstNet and States with regard to capacity leases turn on whether Congress intended a difference between the definition of CLA, explored in the *First Notice*, and a "public-private partnership for construction, maintenance, operation, and improvement of the network." There are several differences in statutory language between the two:

(1) CLAs must be a written agreement, whereas PPPs are not expressly required to be in writing;

(2) CLAs are "arrangements", whereas PPPs are "partnerships";

(3) PPPs must include "improvement" of the network in addition to the "construction" and "operation" of the network required by both CLAs and PPPs;

(4) CLAs must include the "manage[ment]" of the network whereas PPPs must include the "maintenance" of the network; and

(5) PPPs need not expressly permit (i) access to network capacity on a secondary basis for non-public safety services and (ii) the spectrum allocated to such entity to be used for commercial transmissions along the dark fiber of the long-haul network of such entity.

We believe, however, that in practical terms the differences in items (1)–(4) above are slight. For example, any significant agreement of this type is likely to be in writing, and most such agreements could include improvement, management, or maintenance of the network in some manner to qualify.

With regard to item (5) above, interpreted consistent with our preliminary conclusions in the *First Notice*, these "permit[ted]" uses could provide express flexibility to a CLA party but not a PPP. Nevertheless, Section 6302(g)(2) permits States to enter into CLAs, indicating an intent to include CLAs within the scope of PPPs.<sup>115</sup> We thus preliminarily

<sup>114</sup> We note, however, that the reinvestment requirement of Section 6302(g)(2) actually requires reinvestment in "constructing, maintaining, operating, or improving" the RAN in the State, which are the four items listed as the subject matter of the PPPs of Section 6302(g)(1), not the CLA items of Section 6208(a)(1), which are "construct[ing], manag[ing], and operat[ing]." See 47 U.S.C. 1442(g), § 1448(a)(1). If Congress had intended to require only reinvestment of CLA fees, they may have referenced only the three areas that are the subject of CLAs. An alternative interpretation could therefore be that "such a leasing agreement" of Section 6302(g)(2) refers back to the term "wholesale leasing" in Section 6302(g)(1), using the term "agreement" as a generic reference to the PPP. We seek comments on this alternative interpretation. See *id.* § 1442(g)(2), § 1442(g)(1).

<sup>115</sup> If the item (5) "permit[ted]" uses were interpreted as limitations on a CLA partner, which we preliminarily concluded in the *First Notice* was not the case, then Section 6302(g)(2) would have the strange result of requiring reinvestment of a

conclude that, in practical effect, the literal statutory differences result in little difference between the Act's treatment of FirstNet and States that assume RAN responsibility. We seek comments on this preliminary conclusion.

Given this preliminary conclusion, we do not believe Congress intended to permit such States to avoid reinvestment in the network through use of subtle differences in network capacity arrangements. Nothing in the Act indicates that such subtle differences should justify driving scarce resources away from the network and thus, effectively, public safety entities. Nor does anything in the Act indicate that Congress intended the network to be even a partial revenue generator for States. Given the provisions of and overall framework and policy goals of the Act, we preliminarily conclude that Congress intended that any revenues from PPPs, to the extent such arrangements are permitted and different than CLAs, should be reinvested into the network and that the reinvestment provision of Section 6302(g) should be read to require as such.<sup>116</sup> We seek comments on this preliminary conclusion.

Notwithstanding our preliminary legal conclusions above, however, fees—either basic user fees or those from PPPs—used for purposes other than constructing, maintaining, operating, or improving the RAN in a State could potentially severely impact the ability of a State to maintain ongoing interoperability and/or maintain comparable security, coverage, and quality of service to that of the NPSBN over time. Accordingly, we believe the potential loss to the network of either of these revenue streams, and thus State commitments to reinvest such revenue streams if the final interpretation of Section 6302(g) permits such losses, could be considered by NTIA in assessing any State alternate plans and related demonstrations by a State, and could be the subject of negotiated terms in any spectrum capacity lease between FirstNet and such a State in accordance with our preliminary conclusions regarding such leases above.

narrower class of capacity leases but not broader, more flexible leases. 47 U.S.C. 1442(g)(2). This interpretation makes little sense under the framework of the Act, would permit the draining of one of the most important sources of funding away from State RANs, and thus we preliminarily conclude that Section 6302(g)(2) and the definition of CLAs should not be interpreted in this manner. *Id.*

<sup>116</sup> *Id.* § 1442(g)(2).

<sup>110</sup> 47 U.S.C. 1428(b).

<sup>111</sup> See *id.* § 1428(a).

<sup>112</sup> *Id.* § 1442 (g)(2) (emphasis added).

<sup>113</sup> *Id.* § 1442(g)(1).

### III. Ex Parte Communications

Any non-public oral presentation to FirstNet regarding the substance of this *Second Notice* will be considered an ex parte presentation, and the substance of the meeting will be placed on the public record and become part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum to FirstNet summarizing the substance of the communication. FirstNet reserves the right to supplement the memorandum with additional information as necessary, or to request that the party making the filing do so, if FirstNet believes that important information was omitted or characterized incorrectly. Any written presentation provided in support of the oral communication or meeting will also be placed on the public record and become part of this docket. Such ex parte communications must be submitted to this docket as provided in the **ADDRESSES** section above and clearly labeled as an ex parte presentation. Federal entities are not subject to these procedures.

Dated: March 9, 2015.

**Stuart Kupinsky,**

*Chief Counsel, First Responder Network Authority.*

[FR Doc. 2015-05855 Filed 3-12-15; 8:45 am]

**BILLING CODE 3510-TL-P**

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Addition

**AGENCY:** Committee for Purchase from People Who are Blind or Severely Disabled.

**ACTION:** Addition to the Procurement List.

**SUMMARY:** This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

**DATES:** *Effective:* April 13, 2015.

**ADDRESSES:** Committee for Purchase from People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

#### SUPPLEMENTARY INFORMATION:

##### Addition

On 1/2/2015 (80 FR 34), the Committee for Purchase from People

Who are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to furnish the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the service proposed for addition to the Procurement List.

#### End of Certification

Accordingly, the following service is added to the Procurement List:

##### Service

*Service Type:* Janitorial Service.

*Service is Mandatory for:* GSA PBS Region 5, Enterprise Computing Center, 985 Michigan Avenue, Detroit, MI.

*Mandatory Source of Supply:* Jewish Vocational Service and Community Workshop, Southfield, MI.

*Contracting Activity:* General Services Administration, Public Buildings Service, Acquisition Management Division, Dearborn, MI.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2015-05783 Filed 3-12-15; 8:45 am]

**BILLING CODE 6353-01-P**

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase from People Who are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete products previously furnished by such agency.

**DATES:** Comments must be received on or before: 4/13/2015.

**ADDRESSES:** Committee for Purchase from People Who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** *For Further Information or to Submit Comments Contact:* Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

#### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

##### Product

*Product Name/NSN:* Padfolio with Pen, Department of State Logo, 8-1/2" x 11"/7510-01-NIB-1015.

*Mandatory for Purchase by:* Department of State Diplomatic Security Service Arlington, VA.

*Mandatory Source of Supply:* Industries for the Blind, Inc., West Allis, WI.

*Contracting Activity:* Department of State, DS Office of Acquisition Management Arlington, VA.

*Distribution:* C-List.

##### Services

*Service Type:* Janitorial Service.

*Service is Mandatory for:* USDA, Agricultural Research Service Grassland, Soil and Water Research Laboratory, 808 East Blackland Road, Temple, TX.

*Mandatory Source of Supply:* Rising Star Resource Development Corporation, Dallas, TX.

*Contracting Activity:* USDA ARS SPA 7MN1, East College Station, TX.

*Service Type:* Mail Service.

*Service is Mandatory for:* US Air Force, Dyess AFB, TX.

*Mandatory Source of Supply:* Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.

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

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*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 )

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**COMMENTS OF THE STATE OF FLORIDA**

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**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.<sup>1</sup> 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

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<sup>1</sup> 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.

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## **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.<sup>2</sup> 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.<sup>3</sup> 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”<sup>4</sup> 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

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<sup>2</sup> Act §6206(b)(A)

<sup>3</sup> Act §6206(b)(2)(B)(ii)

<sup>4</sup> *Id.*

public safety broadband networks,<sup>5</sup> 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.

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## **B. FirstNet Network Policies**

### **B. II. Network Policies**

Florida agrees that some “network policies”<sup>6</sup> 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”.<sup>7</sup> 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 policies<sup>8</sup> should be shaped by States, Tribes and public safety partners, and may be informed by private partners.

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<sup>5</sup> §6001(14)

<sup>6</sup> §6206(c)(1)

<sup>7</sup> *Second Notice* at 13339

<sup>8</sup> *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.<sup>9</sup> 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 policies<sup>10</sup> and many other aspects of the network as highlighted in Section 6206(c).

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## **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

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<sup>9</sup> Act §6205(a)(1)

<sup>10</sup> §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.”<sup>11</sup> 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”<sup>12</sup> 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**

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<sup>11</sup> *Second Notice* at 13342

<sup>12</sup> *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,<sup>13</sup> NTIA, and FirstNet.<sup>14</sup> 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.

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<sup>13</sup> Act §6302(e)(3)(C)(i)

<sup>14</sup> §6302(e)(3)(D)

FirstNet concludes that “sub-State jurisdictions”<sup>15</sup> 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

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<sup>15</sup> *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.<sup>16</sup>

### **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."<sup>17</sup> Florida notes that this should be done during the required State consultations.<sup>18</sup> 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.<sup>19</sup> We seek clarification on the 180-day deadline and process for the submission of a State-built RAN plan to the FCC,<sup>20</sup> NTIA, and FirstNet<sup>21</sup>. 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

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<sup>16</sup> Act §6302(e)(3)(D)

<sup>17</sup> *Second Notice* at 13344

<sup>18</sup> Act §6206(b)

<sup>19</sup> §6302(e)(3)(C)(i)

<sup>20</sup> §6302(e)(3)(C)(ii)

<sup>21</sup> §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).”<sup>22</sup> 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.

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### **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

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<sup>22</sup> *Supra* note 17

promote flexibility with such customer-facing roles.<sup>23</sup> 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”.<sup>24</sup>

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.”<sup>25</sup> Florida agrees with FirstNet that these possible disparities are to be addressed prior to the issuance of a spectrum lease by FirstNet.<sup>26</sup> 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]”.<sup>27</sup> 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”.<sup>28</sup> 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

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<sup>23</sup> *Second Notice* at 13347

<sup>24</sup> *Id.*

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

<sup>26</sup> Act §6302(e)(3)(D)

<sup>27</sup> §6302(e)(3)(D)(iii)

<sup>28</sup> *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 utilize<sup>29</sup> in addition to the \$7 billion dollars in cash, subscriber fees, and covered leasing agreements (CLAs) between FirstNet and secondary parties.<sup>30</sup> 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".<sup>31</sup> 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.

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## **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

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<sup>29</sup> Act §6206(b)(4)(C)

<sup>30</sup> §6208

<sup>31</sup> §6302(e)(3)(D)(ii)

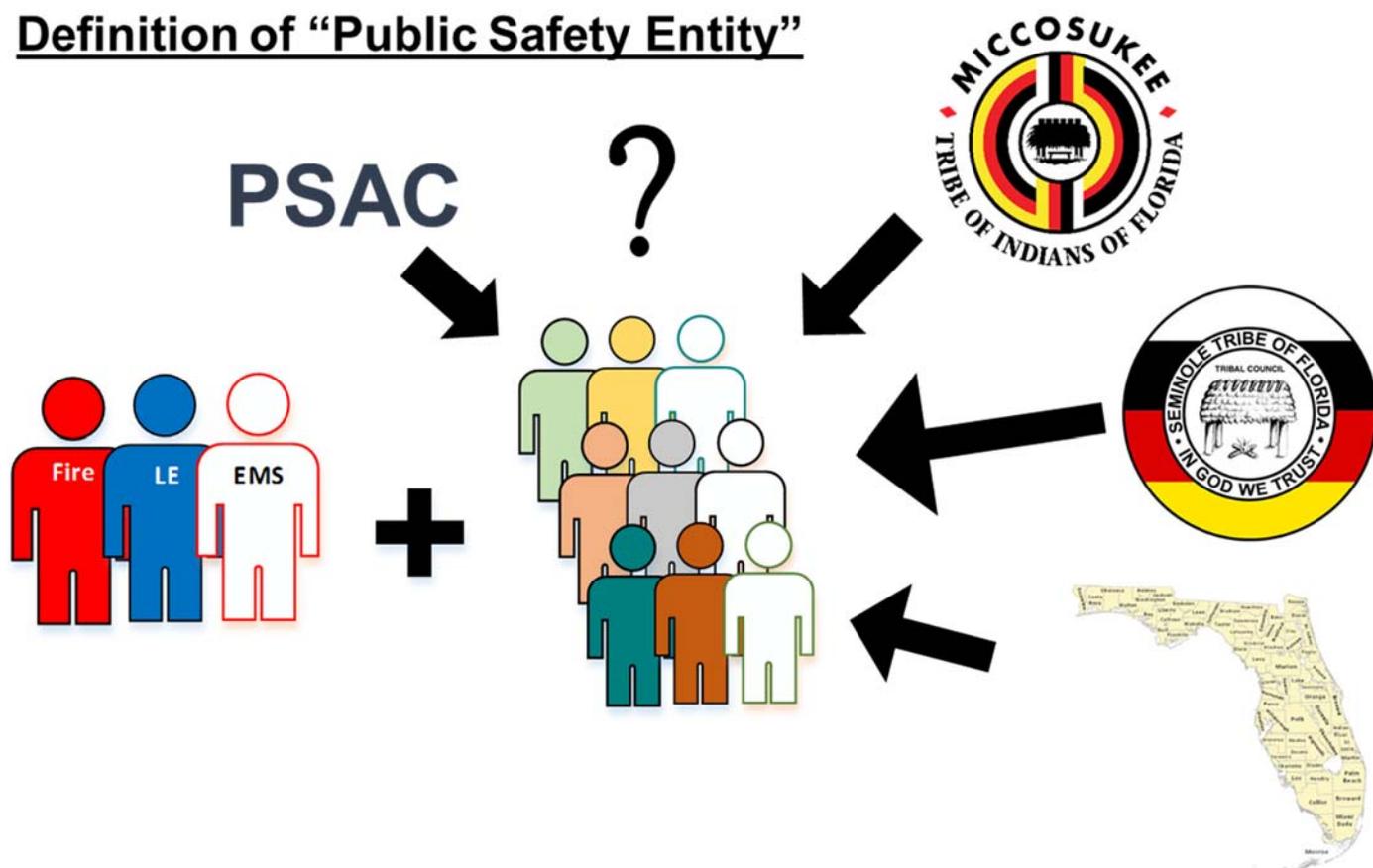
rules, and network policies. We especially look forward to the continuing consultation process in order to ensure that our public safety entities receive the features, capacity, coverage, and devices required to perform their missions. Florida is eager to deploy the network as early as possible, and 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.

# 3rd Public Notice Overview

## FirstNet's 3rd Public Notice

The Third Request for Comment sought input for the definition of a “public safety entity”. This definition will determine the primary users of the Network. In our response, we stressed that this definition should be established through the Public Safety Advisory Committee, direct State and Tribal consultations, and local public safety users. Once this definition is decided, it should be up to the individual States to assign specific “public safety entities” certain priority, preemption, and access rights to the Network. We stated that this should be done under a national architecture in order to maintain interoperability, but each State should control when and how an entity can access the Network.

### Definition of “Public Safety Entity”



Consistent with our response to the First Public Notice, Florida has maintained that a broad definition of “public safety entity” is required to fund the Network. Additionally, in times of disaster, the State requires a response from a wide array of public safety fields in order to reduce the risk of life and property loss. Through State and local control of access, priority, and preemption, mechanisms will be in place to mitigate potential Network congestion.



**FirstNet**<sup>®</sup>



## FirstNet's Third Public Notice Regarding Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012 ("*Third Notice*")

### Frequently Asked Questions (FAQs)

#### WHERE CAN I FIND THE FULL TEXT OF THE ENABLING LEGISLATION FOR FIRSTNET?

The Middle Class Tax Relief and Job Creation Act of 2012 ("Act") can be found at [47 U.S.C. 1401 et seq.](#)

#### WHAT IS THE PURPOSE OF THE ACT?

The Act requires FirstNet to ensure the establishment of a nationwide, interoperable public safety broadband network based on a single national architecture that evolves with technological advances and initially consists of a core and a radio access network.

#### WHAT IS THE PURPOSE OF THE THIRD NOTICE?

The purpose of the *Third Notice* is to respond to comments and to further clarify FirstNet's proposed interpretations related to the definition and scope of the term "public safety entity" as used in the Act. The *Third Notice* is a follow-up to a key element of the *First Notice* released in September 2014. In the *First Notice*, FirstNet provided preliminary interpretations on, among other things, which entities beyond traditional first responders would qualify as a "public safety entity" under the Act. The *Third Notice* seeks comments on a refined definition of the term, including how it applies to non-traditional first responders.

#### WHAT ARE THE KEY CONSIDERATIONS THAT LED FIRSTNET TO FOCUS THE THIRD NOTICE AROUND THE DEFINITION OF "PUBLIC SAFETY ENTITY"?

FirstNet considers all of the issues raised in the *First Notice* to be critical to the successful deployment of the nationwide public safety broadband network. The definition of "public safety entity" is particularly important with regard to (1) the acquisition planning process, as it provides key inputs into understanding the resources that will be derived from, and available to qualifying public safety entities. The definition helps define the public safety user addressable market in support of FirstNet's financial sustainability model; and (2) the successful implementation of FirstNet's mission that, among other things, will require the promotion and adoption of the network by public safety entities.

### **ARE THE INTERPRETATIONS IN THIS NOTICE FINAL? HOW LONG IS THE COMMENT PERIOD?**

No, they are not. The *Third Notice* seeks comments on preliminary interpretations of the Act. FirstNet will review and consider comments submitted in response to the *Third Notice* in making its final interpretations on the matters discussed in the *Third Notice*. FirstNet does not, however, currently anticipate issuing further notices and/or opportunities to comment on the preliminary conclusion in the *Third Notice* and, thus, encourages all stakeholders to review the *Third Notice* and provide comments within the 30 day comment period that begins after publication of the *Third Notice* in the Federal Register.

### **HOW CAN I SUBMIT COMMENTS TO THE NOTICE?**

Written comments may be submitted electronically within 30 days after publication of the *Third Notice* in the Federal Register through [www.regulations.gov](http://www.regulations.gov) or by mail to FirstNet, 12201 Sunrise Valley Drive, Reston, VA 20192, Mail Stop 243, Attention: Responses to FirstNet's Third Public Notice and Comment. Written comments will be made part of the public record without change.

### **IS THERE A MAXIMUM LENGTH FOR COMMENTS?**

There is no maximum length for comments to the *Third Notice*.

### **WILL THERE BE AN *EX PARTE* MEETING OR REPLY COMMENT PERIOD?**

In an effort to avoid any potential conflicts related to the acquisition process, FirstNet does not plan to schedule either any *ex parte* meeting or a reply comment period at this time.



practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 30, 2015.

**Glenna Mickelson,**

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015-10468 Filed 5-4-15; 8:45 am]

BILLING CODE 3510-07-P

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### First Responder Network Authority

[Docket Number: 140821696-5400-03]

RIN 0660-XC012

#### Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012

**AGENCY:** First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The First Responder Network Authority ("FirstNet") publishes this *Third Notice* to request public comment on certain proposed interpretations of its enabling legislation that will inform, among other things, consultation, forthcoming requests for proposals, interpretive rules, and network policies. This *Third Notice* responds to comments and further clarifies proposed interpretations related to the definition and scope of the term "public safety entity" as used in FirstNet's enabling legislation and as discussed in a previous FirstNet *Notice* published on September 24, 2014. With the benefit of the comments received from this *Third Notice*, FirstNet may proceed to implement these or other interpretations with or without further administrative procedure.

**DATES:** Submit comments on or before June 4, 2015.

**ADDRESSES:** The public is invited to submit written comments to this *Third Notice*. Written comments may be submitted electronically through [www.regulations.gov](http://www.regulations.gov) or by mail (to the address listed below). Comments received related to this *Notice* will be made a part of the public record and will be posted to [www.regulations.gov](http://www.regulations.gov) without change. Comments should be machine readable and should not be copy-protected. Comments should include the name of the person or organization filing the comment as well as a page number on each page of the submission. All personally identifiable information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Eli Veenendaal, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; 703-648-4167; or [elijah.veenendaal@firstnet.gov](mailto:elijah.veenendaal@firstnet.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction and Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (the "Act") established the First Responder Network Authority ("FirstNet") as an independent authority within the National Telecommunications and Information Administration ("NTIA"). The Act establishes FirstNet's duty and responsibility to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network ("NPSBN").<sup>1</sup>

As detailed in our *Notice* entitled "Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012" (79 FR 57058, September 24, 2014) (herein "the *First Notice*"),<sup>2</sup> we preliminarily concluded that key issues relating to the responsibilities and opportunities of FirstNet, other federal agencies, States and territories, and state, federal local, and tribal public safety entities, among other stakeholders, turn on interpretation of the Act's terms and provisions.

<sup>1</sup> 47 U.S.C. 1426(b).

<sup>2</sup> All responses to the *First Notice* are publically available at [www.regulations.gov](http://www.regulations.gov).

More specifically, we analyzed the complex definition of the term "public safety entity" under the Act.<sup>3</sup> The primary ramification of falling within this definition is that a public safety entity is served by FirstNet directly, rather than as a commercial customer of a secondary user of FirstNet's spectrum. In particular, under our preliminary interpretations of network elements in the *First Notice*, public safety entities would be served by the FirstNet core network, through either a FirstNet radio access network ("RAN") or the RAN of a State that has chosen to assume responsibility for RAN buildout and operation.<sup>4</sup>

Generally speaking, the Act defines public safety entities by the types of services they provide (i.e., whether they provide public safety services).<sup>5</sup> Those public safety services are further defined by, among other things, the nature of the services (such as the protection of life, health or property), but also the types of specific entities providing the services (such as emergency response providers).<sup>6</sup> The end result is a complex, multi-layered definition of public safety entity.

Our analysis in the *First Notice* included the virtually self-evident preliminary conclusion that the definition of public safety entity includes traditional first responders—police, fire, and EMS.<sup>7</sup> No commenter disagreed with this preliminary conclusion. The Act's definition of public safety entity, however, is expressly not limited to such traditional first responders. Thus, in the *First Notice*, we also analyzed the definition with regard to which entities beyond traditional first responders would qualify as public safety entities.<sup>8</sup>

The Act's public safety entity definition raises three primary interpretive questions regarding non-traditional first responders:

1. Whether an "entity" should be defined as a group or authority of a certain minimum size or nature (such as an entire government agency or department) or can an "entity" include a sub-group or an individual;

2. Whether and to what extent an "entity" that provides public safety services some, but not all the time, can qualify as a public safety entity; and

3. Whether and to what extent an "entity" that provides services close or related to, but not identical to

<sup>3</sup> 79 FR 57060 (September 24, 2014).

<sup>4</sup> 79 FR 57059.

<sup>5</sup> See 47 U.S.C. 1401(26).

<sup>6</sup> See *id.* § 1401(27).

<sup>7</sup> 79 FR 57061 (September 24, 2014).

<sup>8</sup> 79 FR at 57060-2.

traditional public safety services can qualify as a public safety entity. These questions are not entirely severable from each other given the structure of the public safety entity definition in the Act.

In general, our preliminary interpretations in the *First Notice* permitted a wide variety of entities to qualify as public safety entities.<sup>9</sup> Although our interpretations were met with strong support by the majority of respondents,<sup>10</sup> some comments reflected a concern that we had expanded beyond the appropriate interpretation of the Act to include entities—such as utilities—that should not be given direct access to the network as public safety entities.<sup>11</sup> While we continue to preliminarily conclude that the Act grants FirstNet discretion to consider a broad range of users consistent with FirstNet’s mission, given the complexity of the Act’s public safety entity definition and its importance to the functioning of the network and FirstNet’s financial sustainability under the Act, we, in this *Third Notice*, propose a refined preliminary interpretation and seek additional comments regarding the definition.<sup>12</sup>

## II. Statutory Definition of Public Safety Entity

A “public safety entity” is defined in section 6001(26) of the Act as an “entity

<sup>9</sup> See 79 FR at 57060–2.

<sup>10</sup> We note FirstNet’s preliminary interpretation that it has statutory discretion to consider a broad range of users including those that offer public safety services that satisfy the Communication Act or Homeland Security Act was strongly supported in responses to the *First Notice*. See e.g., National Public Safety Telecommunications Council (“NPSTC”) Comments at 6 available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0026>; see also e.g., National Association of State Chief Information Officers (“NASCIO”) Comments at 1 available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0066>; see also e.g., Comments of the State of Florida at 5 available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0013>; see also e.g., Comments of the State of California at 2 available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0037>.

<sup>11</sup> See AT&T Service, Inc. (“AT&T”), Comments, at 20, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0034>; See also Association of Public Safety Communications Officials International (“APCO”) Comments, at 4–6 available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0029>.

<sup>12</sup> We also note the definition of public safety entity is a critical component of both (1) the acquisition planning process as it provides key inputs into understanding the resources that will be derived from and available to qualifying public safety entities and (2) the successful implementation of our mission that, among other things, will require the promotion and adoption of the NPSBN by public safety entities.

that provides public safety services.”<sup>13</sup> Further, under the Act, the term “public safety services”:

(A) *Has the meaning* given the term in section 337(f) [of the Communications Act of 1934<sup>14</sup> (“Communications Act”)]; and (B) *includes* services provided by emergency response providers, as that term is defined in [section 2 of the Homeland Security Act of 2002<sup>15</sup> (“HSA”)].<sup>16</sup>

Section 337(f) of the Communications Act defines “public safety services” to mean services:

(A) The sole or principal purpose of which is to protect the safety of life, health or property;

(B) that are provided by (i) State or local government entities, or (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.<sup>17</sup>

Under the HSA, “emergency response providers” include “Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.”<sup>18</sup>

## III. Legal Scope Versus Discretion in Implementing the Definition of Public Safety Entity

In the *First Notice*, we noted that, if we determine it is reasonable and appropriate to do so in support of our mission, we may as a policy matter decide to narrow the scope of users we actually serve relative to those we can legally serve under the definition of public safety entity.<sup>19</sup> Some commenters were troubled by this concept, indicating concern that FirstNet might elevate policy goals above the text and purpose of the Act and that FirstNet must implement the Act as written.<sup>20</sup>

We believe, however, that FirstNet’s discretion as to which entities to allow onto the network is contemplated by and important under the framework of the Act. For example, given the finite nature of spectrum resources, the exercise of such discretion is necessary

to ensure the proper functioning of the network, in addition to FirstNet’s economic self-sustainability for the benefit of public safety. Moreover, such discretion is necessary to give meaning to, among other things, FirstNet’s obligation to consult with regional, State, tribal, and local jurisdictions regarding the “assignment of priority and selection of entities seeking access to or use of the [network].”<sup>21</sup> If FirstNet did not possess this discretion, the stated consultation would be meaningless as FirstNet would simply be required to provide access to and use of the network to any entity that met the public safety entity definition regardless of the views of the consulted-with parties.<sup>22</sup>

Similarly, given the Act’s express consultation obligations with respect to FirstNet’s assignment of priority to entities using the network—which could effectively give FirstNet the ability to deprioritize entities even if they qualified under the definition—it would appear to make little sense for Congress to have intended a purely mechanical application of the public safety entity definition.<sup>23</sup> Nor does the wording of the Act appear to suggest that FirstNet’s consultation obligations are solely with respect to its legal interpretation of the term public safety entity. For example, FirstNet is required to establish wide-ranging network policies, including regarding the “practices and procedures of the entities operating on and the personnel using” the network.<sup>24</sup>

Finally, although we preliminarily conclude that FirstNet may have discretion within the bounds of the public safety entity definition, we did not mean to imply in the *First Notice* any intent or legal authority to expand beyond the definition of public safety entity. We merely stated that FirstNet may “decide to narrow the scope of users it actually serves relative to those

<sup>21</sup> 47 U.S.C. 1426(c)(2)(A)(vi) (emphasis added).

<sup>22</sup> We note that, as is discussed *infra*, the Communications Act prong of the public safety entity definition does provide for governmental entities to designate nongovernmental entities as public safety entities under certain criteria. The consultation obligation of 47 U.S.C. 1426(c)(2)(A)(vi) is not, however, limited to consultations on the selection of “nongovernmental” entities, but rather entities in general. Thus, we believe the consultation obligation must apply to all entities and that FirstNet must therefore have discretion with regard to all such entities.

<sup>23</sup> See 47 U.S.C. 1426(b)(1); see also *id.* § 1426(c)(2) (describing FirstNet’s consultation requirements under the Act).

<sup>24</sup> *Id.* § 1426(c)(1)(E)(ii).

<sup>13</sup> 47 U.S.C. 1401(26).

<sup>14</sup> *Id.* § 337(f).

<sup>15</sup> 6 U.S.C. 101(6).

<sup>16</sup> 47 U.S.C. 1401(27) (emphasis added).

<sup>17</sup> *Id.* § 337(f)(1).

<sup>18</sup> 6 U.S.C. 101(6).

<sup>19</sup> 79 FR 57060 (September 24, 2014).

<sup>20</sup> See AT&T Comments, at 12, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0034>.

it can legally serve.”<sup>25</sup> We seek comments on the above interpretations.

#### IV. Public Safety Entity Definition Overview

The public safety entity definition is dependent on the definition of public safety services, which is in turn dependent on two separate definitions from statutes outside the Act. Before trying to draw precise boundaries around any of these terms it is helpful to look at the overall definitional structure, particularly how the two extra-Act definitions interact within the definition of public safety services.

The term “public safety services”:

(A) *Has the meaning* given the term in section 337(f); *and*

(B) *includes* services provided by emergency response providers, as that term is defined in the HSA.<sup>26</sup> In the *First Notice*, we ultimately interpreted the language of the Act as creating an either-or test. That is, the two prongs (“(A)” and “(B)” above) of the definition create a combined list of services, and a service that appears on list “(B)” is a “public safety service” independent of those on list “(A).”<sup>27</sup> We continue to believe that the “and (B) includes” language in the Act necessitates this result. Regardless of whether the word between the two prongs is “and” or “or,” the preamble combined with the second prong reads: “The term ‘public safety services’ . . . includes services provided by emergency response providers. . . .”

Some commenters objected to this formulation, essentially arguing that the addition of the second prong “(B)” was merely to clarify the scope of prong “(A)” and did not expand it.<sup>28</sup> Other commenters thought that, although prong “(B)” did expand “(A)”, those services included in prong “(B)” were of a lesser, more supplementary nature than those in “(A)” as a result of the “has the meaning” language in “(A)” in contrast to the “includes” language in “(B).”<sup>29</sup>

We continue to preliminarily conclude, however, that the more natural reading of the definition is as we concluded in the *First Notice*. Among other reasons, there are services expressly included in the second prong of the definition that are not included in

the first. The HSA definition of public safety services (prong “(B)”) includes “Federal . . . personnel, agencies, and authorities.”<sup>30</sup> The section 337(f) definition of public safety services (prong “(A)”) includes only “State or local” governmental entities.<sup>31</sup> Thus, the HSA definition adds an element—Federal personnel, agencies, and authorities—that is not contained within the section 337(f) definition.

There are other similar additions to the section 337(f) definition provided by the HSA prong, such as “nongovernmental” entities that do not require separate authorization and hospital emergency facilities, which would not satisfy the section 337(f) requirement that public safety services “are not made commercially available to the public by the provider.”<sup>32</sup> In addition, the “sole and principle purpose” requirement of section 337(f), as discussed below, is not included in the HSA prong. Accordingly, if Congress were merely clarifying the definition in the section 337(f) prong, it would not have included an HSA prong that clearly expanded the definition beyond the boundary of the section 337(f) prong.

With regard to supplementing the section 337(f) definition, Congress did not qualitatively characterize services in the second prong other than to say that the definition “includes” services in that prong, and thus we cannot find justification for treating them differently or as lesser-included services.<sup>33</sup> That Congress used the phrase “has the meaning” with regard to section 337(f) and not with the HSA prong does not sufficiently justify or guide us to such disparate treatment of the services under the HSA prong.

As a result, we preliminarily conclude that the two prongs form a combined list, as discussed above, and seek further comments on this preliminary conclusion.

#### V. Requirement To Provide Public Safety Services

A public safety entity is defined in section 6001(26) of the Act as an “entity that provides public safety services.”<sup>34</sup> In the *First Notice*, we preliminarily concluded that the Act does not include any express language requiring a minimum amount or frequency of providing such services, but merely

requires that an entity provide such services.<sup>35</sup>

An example of where Congress required such a minimum amount of services is contained in the Communications Act prong of the definition of public safety services, where Congress used the phraseology “a governmental entity whose primary mission is the provision of such services.”<sup>36</sup> If Congress had used this phraseology in the Act—for example, “public safety entity means an entity whose primary mission is the provision of public safety services”—it would have been clear that the provision of a minimum amount of such services were necessary for an entity to qualify.<sup>37</sup>

This contrast is actually evident entirely within the Communications Act definition of public safety services itself. In describing the entities under section 337(f) of the Communications Act that must be providing a service for it to constitute a public safety service, Congress uses the phrase “that are provided by . . . State or local government entities.” In describing the entities that are permitted to authorize a nongovernmental entity to provide such services, however, Congress used the phrase “a governmental entity whose primary mission is the provision of such services.”<sup>38</sup> Thus, Congress used the “primary mission” limitation to impose a higher standard to qualify those entities allowed to authorize nongovernmental entities, but imposed no such standard on the governmental entities that could provide public safety services.<sup>39</sup> No such higher standard was used in the Act with regard to public safety entities.

Some commenters, however, advocated that the public safety entity definition should be read more holistically under the Act, rather than treating each portion of the definition—such as each services prong—as a separate interpretation that flowed up to the next stage.<sup>40</sup> These comments reflect

<sup>25</sup> See 79 FR 57060 (September 24, 2014).

<sup>26</sup> 47 U.S.C. 337(f)(1).

<sup>27</sup> It is generally implicit that if an organization’s primary mission is the provision of such services then the organization likely provides a great amount of such services.

<sup>28</sup> 47 U.S.C. 337(f)(1) (emphasis added).

<sup>29</sup> One commenter appears to mistakenly cite the “primary mission” limitation as applying to the nongovernmental organizations, rather than the governmental entities that are permitted to authorize nongovernmental organizations as described in 47 U.S.C. 337(f)(1). See AT&T Comments, at 16, available at <http://www.regulations.gov/#/documentDetail;D=NTIA-2014-0001-0034>.

<sup>40</sup> We note that this does not have to be the case. For example, one entity could provide a service part time that another provides full time. In other words,

<sup>25</sup> 79 FR 57060 (September 24, 2014) (emphasis added).

<sup>26</sup> 47 U.S.C. 1401(27) (emphasis added).

<sup>27</sup> 79 FR 57060 (September 24, 2014).

<sup>28</sup> See AT&T Comments, at 16–7, available at <http://www.regulations.gov/#/documentDetail;D=NTIA-2014-0001-0034>.

<sup>29</sup> See APCO Comments, at 6, available at <http://www.regulations.gov/#/documentDetail;D=NTIA-2014-0001-0029>.

<sup>30</sup> 6 U.S.C. 101(6).

<sup>31</sup> 47 U.S.C. 337(f)(1).

<sup>32</sup> See 6 U.S.C. 101(6); 47 U.S.C. 337(f)(1).

<sup>33</sup> 47 U.S.C. 1401(27).

<sup>34</sup> *Id.* § 1401(26).

the difficulty in interpreting the public safety entity definition where the entity in question may not provide public safety services all the time or through all its personnel.

For example, in the context of the Communications Act definition of public safety services, we noted in the *First Notice* that the FCC interpreted the provision to qualify services provided by governmental entities, such as city planning or transportation departments, so long as the services being provided had as their sole or principal purpose the protection of life, safety, or property.<sup>41</sup> That is, under the FCC's interpretation of section 337(f), with which we agree, an *entity* that does not always or even most of the time provide services whose sole or principal purpose is the protection of life, safety, or property, may nevertheless provide qualifying "public safety services" when such an entity provides services that meet the sole or principal purpose test.<sup>42</sup> However, unlike the context of the Communications Act definition of public safety services—where services can vary day-to-day or employee-to-employee—FirstNet is faced with the question under the Act as to whether an entity ever qualifies as a public safety entity by virtue of providing a public safety service *in only some instances*. Further, FirstNet must then address the question of whether such entity should always have primary access to or use of the FirstNet network as a result. This question applies regardless of whether the entity in question is an organization or an individual.

In the context of an organization, FirstNet must also determine whether the organization qualifies as a public

even if section 337(f) of the Communications Act imposed a primary mission requirement on the entity providing a service (which it does not), it is merely defining a service, and some other entity may only provide such a service part time.

<sup>41</sup> See Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, Fourth Report and Order, 26 FCC Rcd. 10799 (F.C.C. July 21, 2011) (*Fourth Report and Order*).

<sup>42</sup> 79 FR 57061 (September 24, 2014) (stating "FirstNet gives deference to the conclusions reached by the Commission in its interpretation of section 337(f)(1) and as independent entity owes no such deference" (emphasis added)). In response to this preliminary interpretation, one commenter stated that "FirstNet's reliance on an FCC Order interpreting section 337 is misplaced, and FirstNet certainly need not afford the FCC 'deference' in its interpretation. As an 'independent authority,' FirstNet owes no such deference." See APCO Comments, at 5, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0029>. However, as an independent authority, we simply agree with FCC interpretation. The FCC interpretation predated the Act and thus Congress is assumed to have been aware of the interpretation and could have limited the Act accordingly if it did not agree with the FCC interpretation.

safety entity *as a whole* where in some or all instances the provision of public safety services is by only some employees or members of the organization. In other words, FirstNet must determine whether public safety entity status should apply to all employees or members of an organization if only some such employees or members provide public safety services.

In the *First Notice*, we preliminarily concluded that as long as an entity provided a non-*de minimis* amount of public safety services, even if it provides other services, it will qualify as a public safety entity under the Act.<sup>43</sup> We also preliminarily concluded that this interpretation resulted in the entity as a whole qualifying as a public safety entity even if only some employees of the entity provided such services.<sup>44</sup> After review of the responses to the *First Notice*, we clarify below our preliminary interpretation of the Act in this regard, and seek further comments.

### 1. Whether an Individual or Subgroup of an Organization Ever Qualifies as a Public Safety Entity

As an initial matter, we restate our preliminary conclusion from the *First Notice* here, for the reasons stated therein and below, that individuals such as volunteer firemen or employees of an organization (in addition to or rather than an organization as a whole) may qualify as public safety entities if they provide or are reasonably likely to provide public safety services. This preliminary interpretation applies whether the individual performs services that qualify under the section 337(f) or the HSA prong of the definition of public safety services.

Under the HSA prong of the definition, "personnel" (as contrasted with "agencies . . . and authorities") are expressly included as service providers, and thus we believe it is reasonable to conclude that an "entity" under the Act performing such services should be interpreted to include individual "personnel."<sup>45</sup> Although an organization could theoretically perform the same services as individual personnel, we believe it is reasonable under the structure and purposes of the Act to include individual personnel such as volunteer firefighters within the term "entity." This interpretation is also supported by the Act's inclusion, via the HSA prong, of "hospital emergency facilities" but not hospitals in their

entirety as emergency response providers. Congress contemplated that a group of employees smaller than a larger organization can provide public safety services, and thus in the context of the Act constitute public safety entities.

The section 337(f) prong of the public safety services definition speaks only in terms of "State or local government entities" or "non-governmental organizations." This raises the question as to whether an individual or group smaller than the whole "entity" or "organization" can provide qualifying services and thus constitute public safety entities under the Act via the section 337(f) prong. In section 337(f), however, Congress included services provided by entities or organizations whose mission was not "primar[ily]" the provision of services the sole or principle purposes of which is the protection of life, health, or property. That is, these entities or organizations by definition may sometimes have other primary missions, but occasionally as a whole or through only some employees provide qualifying services. As a result, we preliminarily conclude that under the section 337(f) prong a public safety entity under the Act can include at least a group of employees smaller than a larger organization.<sup>46</sup> We seek comments on the above interpretations and their collective effect on the definition of public safety entity.

### 2. Overall Framework for Determining Public Safety Entities

As an overall framework for qualifying public safety entities, we first preliminarily conclude that where an organization *as a whole* is charged with providing, and does provide public safety services, the organization qualifies as a public safety entity and all members of the organization can (following consultation and within the discretion discussed in part III of this *Third Notice*) be given access to or use of the network under the Act. This preliminary conclusion is fairly clear under the Act and would apply to traditional first responder organizations, among others.

Next, with respect to organizations that do not meet the above criteria, we preliminarily conclude that those *members* of such an organization that provide or are reasonably likely to provide public safety services for a non-*de minimis* amount of time, qualify as public safety entities under the Act and can (following consultation and within the discretion discussed in part III of

<sup>43</sup> 79 FR 57060 (September 24, 2014).

<sup>44</sup> 79 FR at 57062.

<sup>45</sup> 6 U.S.C. 101(13) (stating the term means officers and employees).

<sup>46</sup> See Fourth Report and Order (discussing parts of organizations using services under the section 337(f) prong).

this *Third Notice*) be given access to or use of the network under the Act. For purposes of this interpretation, we preliminarily conclude that those members of such an organization that materially contribute to or help enable or support the provision of such public safety services—including, for example, dispatchers, technicians, and supervisors—by other members of the organization would also qualify as public safety entities. Interoperable communications with these enabling or support personnel could be critically important to the provision of public safety services by the primary providers in the organization, and thus we believe it is reasonable to include the enabling and support personnel within the definition.

We note that our preliminary interpretations are by necessity made based on the specific language, context and purpose of the Act. We must therefore interpret the definition of public safety entity by reference to the aggregation of services defined both by the section 337 and HSA prongs of the public safety services definition under the Act, rather than just either prong on a stand-alone basis, as may be required by other agencies in different contexts. In this regard, our interpretation as set forth above would apply regardless of whether the services provided qualified as public safety services under the section 337(f) prong or the HSA prong of the definition in the Act. For example, under the section 337(f) prong, those field and operations personnel of a governmental or authorized nongovernmental entity that provide emergency services the sole or principal purpose of which is to protect the safety of life, health or property would qualify as public safety entities, along with any necessary dispatchers etc.<sup>47</sup> Additionally, those same field and operations personnel would also qualify as a public safety entity under the HSA prong because the nature of services being provided in response to such an incident would typically be the type of services performed directly by an emergency response provider or, at minimum, related personnel supporting such a response provider. For example, utility personnel removing dangerous downed electrical wires to permit firefighters to access victims in a car would be deemed public safety entities.

Under this refined preliminary interpretation, however, where an organization *as a whole*, such as a private utility, is not charged with providing public safety services, the

entire organization would not necessarily qualify as a public safety entity. The extent to which the individuals or subgroups within the organization providing public safety services would qualify, or whether such individuals or subgroups are always permitted on the network, would be determined within FirstNet policies based on, among other factors, the advantages to the public and public safety of having such individuals always supported by and accessible on the network, the impact on FirstNet's financial sustainability as required by the Act and our consultations under the Act with the FirstNet Public Safety Advisory Committee, local first responders, and local jurisdictions.<sup>48</sup>

We recognize that implementation of the above framework may require certifications or other evidence of eligibility of certain customers or groups within organizations. Customer eligibility requirements for specialized services, including communications services, exist and are managed today in the industry. Nevertheless, in addition to comments regarding the above refined preliminary interpretation itself, we seek comments on the appropriate mechanisms for implementing this interpretation assuming it is ultimately adopted.

#### VI. Non-Traditional First Responders as Public Safety Entities

In the *First Notice*, we preliminarily concluded that many types of non-traditional first responders could qualify as public safety entities because they provided public safety services.<sup>49</sup> For example, we generally agreed with the examples of public safety services cited by the FCC in its interpretation of section 337(f) and thus the entities providing those services would, under our preliminary interpretation, qualify

<sup>48</sup> Some commenters expressed concern that the spectrum and network capacity allocated to public safety under the Act could be diluted in some way because of the inclusion of non-traditional first responders. See e.g., FirstNet Colorado Response to the Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, at 9, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0062>; State of Florida Comments, at 9, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0013>. However, we believe the priority and preemption features of the network will ensure that traditional first responders will always have primary use of the network.

<sup>49</sup> We recognize that separate priority and preemption parameters must be established even among the various entities, including traditional and non-traditional entities, which may qualify as a public safety entity under the Act and be allowed to use the NPSBN. We intend, as discussed in the *First Notice*, in the future and following appropriate consultations, to fully address the priority and preemptive use of and access to the NPSBN among the various user groups.

as public safety entities.<sup>50</sup> These examples included a range of services, provided by governmental entities, “the sole or principal purpose of which is to protect the safety of life, health or property,” including:

1. Entities supporting airport operations when “ensuring the routine safety of airline passengers, crews, and airport personnel and property in a complex air transportation environment.”<sup>51</sup>

2. Transportation departments in the design and maintenance of roadways, the installation and maintenance of traffic signals and signs, and other activities that affect the safety of motorists and passengers.<sup>52</sup>

3. Entities protecting the safety of animals, homes, and city infrastructure, particularly in crisis situations.<sup>53</sup>

The FCC's interpretation of section 337(f) predated passage of the Act, and thus Congress is presumed to have knowledge of the interpretation and could have taken steps to modify the definition in the Act in light of the FCC's interpretation, but did not.<sup>54</sup> In the *First Notice*, we sought comment on other entities providing services that would qualify as public safety services under the section 337(f) prong, and received examples such as:

1. Public Transit Agencies and Departments
2. Public Work Departments
3. Public electric and water utilities
4. Health Departments
5. Parks and Recreation Departments<sup>55</sup>

Because both the section 337(f) and HSA prong of the public safety services definition include non-governmental entities in addition to governmental

<sup>50</sup> 79 FR 57061 (2014).

<sup>51</sup> Fourth Order and Report at 10808.

<sup>52</sup> *Id.* at 10808.

<sup>53</sup> *Id.* at 10809.

<sup>54</sup> See *Lorillard, Div. of Loew's Theatres, Inc. v. Pons*, 434 U.S. 575, 580–581 (U.S. 1978) (explaining that “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. So too, where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute”); see also *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414 n. 8 (1975); *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951); *National Lead Co. v. United States*, 252 U.S. 140, 147 (1920).

<sup>55</sup> See, e.g., Illinois Public Safety Broadband Working Group Comments, at 6–9, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0004>; see also State of Idaho Comments, at 1–2, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0063>; see also Vermont State Wireless Commission Comments, at 1, available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0061>.

<sup>47</sup> For a discussion of utilities as public safety entities under the Act, see part VI *infra*.

entities, we also sought comment on such non-governmental entities that would qualify and received similar examples such as:

1. Transportation Authorities
2. Electric and Water Utilities
3. Non-governmental and private, and non-profit and for-profit organizations (e.g., health care institutions, ambulance companies, independent firefighting corporations)
4. Non-government disaster relief and aid organizations (e.g., American Red Cross, Salvation Army)
5. Education Institutions<sup>56</sup>

In all cases, however, as discussed above, FirstNet is obligated to consult with regional, State, tribal, and local jurisdictions regarding the “selection of entities seeking access to or use of the [network].”<sup>57</sup> Although the *First Notice* (and this *Third Notice*) contributes to such consultations, FirstNet intends to conduct additional, direct consultations with State points of contact (“SPOCs”) regarding the selection of entities permitted on the network. FirstNet can then exercise the discretion discussed in Part III of this *Notice* in light of such consultations within the outer legal boundaries FirstNet draws around the definition of public safety entity.

We preliminarily conclude, however, that subject to such consultation and in accordance with our above analyses in this *Third Notice*, the personnel or subgroups within a non-governmental organization qualify as public safety entities under the Act to the extent such personnel or subgroups provide public safety services as defined under either the section 337(f) prong or the HSA prong of the public safety services definition. This is merely stating the statutory framework under the Act with the addition of our conclusions above regarding whether personnel or subgroups can qualify as “entities” under the Act.

Regarding the section 337(f) prong, personnel, or subgroups of non-governmental organizations, if authorized under the terms of that section, provide qualifying public safety

services under the Act if they provide services “the sole or principal purpose of which is to protect the safety of life, health or property” and those services are not “made commercially available to the public.” We preliminarily conclude, for example, that private utility workers that remove a live electrical wire touching a car at an accident scene is performing a service the principal purpose of which is to protect the safety of life.<sup>58</sup> We also preliminarily conclude that such a service is not one that is typically “commercially available,” albeit incident to or as a result of a commercially available service of providing electricity. In the context of the Act, then, these services would qualify as public safety services, and therefor the workers providing such services would qualify as public safety entities as defined in the Act.<sup>59</sup> We seek comments on these preliminary conclusions.

As mentioned, however, under the section 337(f) prong, such a private entity would have to be “authorized by a governmental entity whose primary mission is the provision of such services” to qualify as providing public safety services. We preliminarily conclude that in our State and local consultations under the Act regarding the “entities seeking access to or use of the [network],” traditional governmental fire, police, and EMS entities, as examples, may authorize non-governmental entity personnel and subgroups, and thus if such personnel or subgroups also meet the criteria described in part V. of this *Third Notice*, they would be public safety entities under the Act.<sup>60</sup> We seek comments on this preliminary conclusion and the appropriate method and duration of such authorizations.

<sup>58</sup> We note that most utilities are non-governmental entities. As such, we anticipate relying heavily on the authorization of personnel from such entities by “primary mission” first responders under the section 337(f) prong in determining which personnel should gain access to the network as public safety entities.

<sup>59</sup> We note that the FCC has not independently determined whether utilities provide “public safety services” under section 337(f) for purposes of eligibility for direct licensing of spectrum in the 700 MHz public safety band, including the portion of that spectrum designated for public safety narrowband use. FirstNet’s interpretation of section 337(f) and its determination with regard to “public safety entities” eligible as end users of the network, including utilities, is based on the specific requirements of the Act in their totality and is not intended to modify any interpretation or suggest any future treatment of section 337(f) by the FCC.

<sup>60</sup> See also First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd. 152,187–188.

Under the HSA prong, no such authorizations of non-governmental entities are necessary. Thus, if personnel or subgroups of non-governmental organizations qualify under the HSA prong as “emergency response . . . personnel” or personnel “related” to such emergency response personnel, they would also qualify as public safety entities under the Act. We thus preliminarily conclude, for example, that a private utility worker that removes a live electrical wire touching a car at an accident scene is performing a service typically provided by an emergency response provider, or, at a minimum, by related personnel supporting such a response provider. We also preliminarily conclude that, subject to further consultations mentioned above regarding entities seeking access to the network, non-governmental personnel involved in or supporting such emergency response activities, such as the utility worker described above removing an electrical wire, can legally qualify under the Act as public safety entities. We seek comments on these preliminary conclusions.

## VII. Ex Parte Communications

Any non-public oral presentation to FirstNet regarding the substance of this *Second Notice* will be considered an ex parte presentation, and the substance of the meeting will be placed on the public record and become part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum with additional information as necessary, or to request that the party making the filing do so, if FirstNet believes that important information was omitted or characterized incorrectly. Any written presentation provided in support of the oral communication or meeting will also be placed on the public record and become part of this docket. Such ex parte communications must be submitted to this docket as provided in the **ADDRESSES** section above and clearly labeled as an ex parte presentation. Federal entities are not subject to these procedures.

Dated: April 27, 2015.

**Jason Karp,**

*Acting Chief Counsel, First Responder Network Authority.*

[FR Doc. 2015–10140 Filed 5–4–15; 8:45 am]

**BILLING CODE 3510-TL-P**

<sup>56</sup> See, e.g., State of Washington Interoperability Executive Committee Comments, at 1–2, available at <http://www.regulations.gov/> #!documentDetail;D=NTIA-2014-0001-0055; see also State of Maine ConnectME Authority Comments, at 2, available at <http://www.regulations.gov/> #!documentDetail;D=NTIA-2014-0001-0017; see also e.g., State of Oregon Comments, at 2–3, available at <http://www.regulations.gov/> #!documentDetail;D=NTIA-2014-0001-0065.

<sup>57</sup> 47 U.S.C. 1426(c)(2)(A)(vi).

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

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*In the Matter of the* )  
 )  
First Responder Network Authority ) Docket No. 140821696–5400–03  
Further Proposed Interpretations of Parts of )  
The Middle Class Tax Relief and Job )  
Creation Act of 2012 )  

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**COMMENTS OF THE STATE OF FLORIDA**

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**Introduction**

Florida welcomes the third 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 (“Third Notice”). The Third 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.<sup>1</sup> We believe this Third Notice is a significant step towards establishing the primary user base of 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

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<sup>1</sup> 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. 140821696–5400–03, 0660–XC012, *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. 86, 25663 (May 5, 2015)(*Third Notice*)

population is spread throughout the State, with four metropolitan areas comprised of over one million Floridians. 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 FirstNet should establish the definition of “public safety entity” through a direct consultation with each State, Tribe, the “Public Safety Advisory Committee”, and various public safety associations. This holistic representation will be especially beneficial in a large and diverse State, such as Florida, that has a robust public safety mission. Such a direct avenue of information sharing will help both the State and FirstNet. FirstNet will understand what features, coverage, capacity, and devices are required by public safety entities, while States will gain insight on the elements that will make up the FirstNet State Plan. This reciprocal partnership will ensure that “public safety entities” will obtain a NPSBN that benefits their missions in both their daily activities, and in disaster situations.

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### **III. Legal Scope Versus Discretion in Implementing the Definition of Public Safety Entity**

Florida agrees that the NPSBN contains a finite amount of spectrum resources.<sup>2</sup> Florida also agrees that the access of different “public safety entities” on the NPSBN must be informed through direct consultations by States and Tribes.<sup>3</sup> We also believe that the “Public Safety Advisory Committee” should be consulted as well.<sup>4</sup>

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<sup>2</sup> *Third Notice* at 25664

<sup>3</sup> Act §6206(c)(2)(A)(vi)

<sup>4</sup> Act §6205(a)(1) “The First Responder Network Authority--(1) shall establish a standing public safety advisory committee to assist [FirstNet] in carrying out its duties and responsibilities...”

In this Third Notice, FirstNet addresses (and emphasizes) Section 6206(c)(2)(A)(iv) of the Act, “assignment of priority and *selection of* entities seeking access to or use of the [network]”<sup>5</sup> as it relates to the required State consultations. Florida suggests that FirstNet emphasize both the “*selection of*” and “*assignment of priority*” clauses of this Section. We believe States, Tribes, and the “Public Safety Advisory Committee” should inform, through direct consultation, the default priority value of any determined “public safety entity”. Florida, however, encourages State control over a dynamic priority value modification.<sup>6</sup>

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## **V. Requirement to Provide Public Safety Services**

### **2. Overall Framework for Determining Public Safety Entities**

Florida agrees that “public safety entities” should be determined through the required consultations between FirstNet, States, Tribes, and the “Public Safety Advisory Committee”.<sup>7</sup> Florida also agrees that if “public safety entity” is defined beyond traditional first responders, a certification or other evidence of eligibility should be developed.<sup>8</sup>

We suggest that, if “public safety entity” is defined broader than the traditional scope, FirstNet should implement a methodology to establish different “types” of “public safety entities”. For example, a three category system could be created: 1). Traditional Public Safety; 2). Public Health; and 3). Public Infrastructure. Such a methodology would allow a defined

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<sup>5</sup> *Supra* note 2

<sup>6</sup> See p. 76 of *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the National Public Safety Broadband Network, Final Report*. Technical Advisory Board for First Responder Interoperability. (May 22, 2012)

<sup>7</sup> *Supra* note 4

<sup>8</sup> *Third Notice* at 25667

“public safety entity” to be categorized into their routine function, which would establish their access, priority, and preemption at the local level.

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## **VI. Non-Traditional First Responders as Public Safety Entities**

Florida agrees with FirstNet’s conclusion, “that separate priority and preemption parameters must be established even among the various entities, including traditional and non-traditional entities, which may qualify as a public safety entity under the Act and be allowed to use the NPSBN.”<sup>9</sup> Florida believes that FirstNet should determine the technical Allocation and Retention Priority (ARP) architecture, while States and Tribes determine which defined “public safety entities” are assigned to each. Such an arrangement would allow a State, or Tribe, to determine which “public safety entity” requires priority and preemption as it relates to the local public safety objective. Florida seeks consultation regarding the priority and preemption requirements of Federal “public safety entities” operating in a State.

Florida welcomes and eagerly anticipates not only FirstNet’s “additional, direct consultations with State points of contact regarding the selection of entities permitted on the network”<sup>10</sup>, but any additional required direct consultations regarding the formation of network policies as discussed in the Second Notice.<sup>11</sup>

Florida believes that it is in the best interest of public safety for FirstNet to develop a definition of “public safety entity” through States, Tribes, the “Public Safety Advisory Committee”, and professional associations such as The Association of Public-Safety

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<sup>9</sup> *Supra* note 8 at Footnote 49

<sup>10</sup> *Third Notice* at 25668

<sup>11</sup> *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)

Communications Officials (APCO) and The National Public Safety Telecommunications Council (NPSTC). Once a holistically representative definition is established, local jurisdictions should determine the methods and durations of a “public safety entity’s” access to the network as it relates to emerging public safety situations.<sup>12</sup>

We believe that it was the intent of Congress to allow States, or Tribes, to decide such access, priority, and preemption determinations because a majority of emergency situations are local in nature.<sup>13</sup> Therefore, the States, or Tribes, should determine which “public safety entities” are prioritized in relation to others. Such an arrangement will allow a State, or Tribe, to implement policies that are most appropriate for the public safety mission of each State or Tribe.

The interoperability goals of the Act will not be diminished through this local control, as the National Incident Management System provides guidance for multi-agency and/or State response. Temporary priority and preemption ARP assignments can be established through the Incident Command or Unified Command Systems, thus ensuring that any defined “public safety entity” from any State, Tribe, or territory can access the NPSBN.

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## **Closing Remarks**

For the foregoing reasons, Florida urges FirstNet to interpret the Act consistent with comments provided herein that will reflect upon future proposals, interpretative rules, and network policies. Specifically, FirstNet should determine the definition of a “public safety entity” through the required State, Tribal and “Public Safety Advisory Committee” consultations.

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<sup>12</sup> *Supra* note 10

<sup>13</sup> See Session No. 18. Course Title: National Incident Management Systems. Session Title: NIMS Policy and Practical Implications at 14-16 available at <https://training.fema.gov/hiedu/docs/nimsc2/nims%20-%20session%2018%20-%20nims%20policy%20and%20practical%20implications%20-%20final.doc>.

Once a definition has been determined, all States and Tribes, regardless of their radio access network (RAN) deployment option, must adhere to such a definition. This means that each State and Tribe will be required to give access to all determined “public safety entities”. States should then, on the local level, decide which defined “public safety entities” are assigned priority and preemption under the national ARP architecture, thus maintaining the interoperability goals of the Act.

# Draft RFP Overview

## FirstNet's Draft Request For Proposals

### Overview

The Draft RFP includes many technical and operational elements, including Baseline Coverage Objective Maps for each State.

FirstNet seeks feedback on five high-level items:

- FirstNet's acquisition approach
- Deployment and operation of the Network
- Proposed financial sustainability model
- Operational architecture
- Other Draft RFP documents

FirstNet's proposed acquisition approach falls into two categories:

1. Nationwide Approach where the winning bidder would be responsible for all high level functions, including, but not limited to, satellites, the nationwide core, the radio access network, and deployables.
2. Regional Approach where the smallest region would be a single State or Territory. The winning bidders must ensure that the radio access network is interoperable with the nationwide core, which will be builtout by a nationwide bidder.

### Nationwide Approach

Nationwide Core Network								
Covered Leasing Agreements (CLA)								
Radio Access Network (RAN)								
State	State	State	State	State	State	State	State	Territory

### Regional Approach

CLA	CLA	CLA				CLA	
RAN	RAN	RAN				RAN	
State	Territory						

FirstNet's proposed financial sustainability model is as follows:

- \$ 7 billion from Congress
- Public safety user fees
- Utilizing existing public and private infrastructure
- Fixed payments for use of the excess capacity
- Less the costs associated with administration, operation, maintenance, construction, and improvement of the Network

### Pricing Concepts





# FirstNet®



## FirstNet's Special Notice with Draft RFP Documents

### Frequently Asked Questions (FAQs)

#### WHY IS FIRSTNET INITIATING AN ACQUISITION PROCESS?

The Middle Class Tax Relief and Job Creation Act of 2012 (Act) requires FirstNet to issue open, transparent, and competitive requests for proposals (RFP) to build, operate, and maintain the nationwide public safety broadband network (NPSBN). To implement this mandate, FirstNet is initiating an acquisition process to promote innovation; allow for flexibility; encourage competition; and create opportunities for feedback from interested parties, including states and territories, local jurisdictions, tribal nations, federal agencies, public safety stakeholders, and market participants early in the process.

#### WHAT IS FIRSTNET SEEKING TO ACQUIRE?

Through the RFP, FirstNet will seek to work with potential offerors to acquire services and/or potentially equipment to provide Band 14 Long Term Evolution (LTE) services to public safety entities nationwide. FirstNet has identified several high-level functions it has determined necessary to provide a solution that meets FirstNet's stated mission and objectives around deploying a world class network for public safety. FirstNet is asking market participants to address the following high-level functions through the Special Notice:

- Core
- Applications ecosystem
- Radio Access Network (RAN)
- Covered Leasing Agreement (CLA)
- Deployables
- Satellite
- Devices
- Subscriber adoption
- Customer lifecycle management

#### HOW DOES THE SPECIAL NOTICE ALLOW FOR INPUT FROM THE PUBLIC AND STAKEHOLDERS?

On April 24, the FirstNet Board adopted a resolution to authorize the release of a Special Notice seeking feedback on draft RFP documents. The Special Notice provides instructions for interested parties on how to ask questions of and provide comments to FirstNet on the draft RFP documents, and requests the submission of capabilities statements from the vendor community.

FirstNet seeks feedback from all interested parties on:

- FirstNet's approach to serving public safety
- Deployment and operation of the Network
- Proposed financial sustainability model
- Operational architecture
- Other draft RFP documents

This approach is consistent with FirstNet's consultation obligations under its enabling legislation and responds to stakeholder requests for opportunities to provide feedback and engage in a dialogue with FirstNet early in the process. The stakeholder feedback will help FirstNet produce the best possible RFP for deploying and operating the network.

### **IS FIRSTNET CONSIDERING AN APPROACH THAT CONTEMPLATES REGIONAL RAN PROPOSALS, IN ADDITION TO, OR IN COMBINATION WITH, A COMPREHENSIVE NATIONAL APPROACH?**

Yes. FirstNet is considering whether allowing a variety of potential approaches will promote innovation, flexibility, competition, and ultimately deliver the best value for public safety entities. FirstNet is considering this approach based in part on feedback to the Request for Information (RFI) and Draft Statement of Objectives (SOO) released last fall and as part of its efforts to encourage a fully competitive process aimed at maximizing innovative solutions. The RFI and the accompanying draft SOO sought feedback on multiple acquisition approaches, but there was no clear consensus on the best approach. Therefore, FirstNet is seeking feedback on the feasibility of proposals based on (i.) a nationwide RAN (to be integrated with a nationwide core), or (ii.) regional RAN(s) (to be integrated into a comprehensive nationwide network consisting of both core and RANs). In all cases, FirstNet anticipates a nationwide network of RANs integrated with a single nationwide core network. However, the best approach and/or strategy have not yet been determined. Feedback from the Special Notice will assist FirstNet in determining the best possible approach to deploy and operate the network.

### **IS THIS APPROACH CONSIDERED FINAL?**

FirstNet's proposed acquisition approach is not final. FirstNet's approach is part of an iterative process. As it evolves, FirstNet will continue to refine the RFP -- including applicable terms, conditions, evaluation criteria, and instructions to potential offerors -- with input from public safety entities, market participants, and other stakeholders. FirstNet anticipates there will be opportunities to interact with FirstNet through formalized Industry Days and potential subsequent meetings ultimately resulting in a "full" RFP. The Special Notice process, including the iterative steps described, supports FirstNet's consultation requirements under the Act and is designed to facilitate input from state, territory, local, tribal, federal, and other jurisdictions, and potential industry offerors, among others.

### **WHO SHOULD I CONTACT FOR MORE INFORMATION ABOUT INDUSTRY DAY?**

The first Industry Day event is schedule for May 14, 2015. At this event, FirstNet will provide an overview of the Special Notice and draft RFP documents, and there will be opportunities for participants to ask questions. Please contact [FirstNetIndustryDay@firstnet.gov](mailto:FirstNetIndustryDay@firstnet.gov) for questions about the Industry Day and to register for in-person attendance at the event. No registration is required for the webcast. Information about how to access the webcast will be available on [FirstNet.gov](http://FirstNet.gov) prior to the event.

## **HOW DOES FIRSTNET PLAN TO ENGAGE WITH THE STATES AND LOCAL JURISDICTIONS AND THE PUBLIC SAFETY COMMUNITY ABOUT THE SPECIAL NOTICE AND DRAFT RFP DOCUMENTS?**

The public safety community's feedback is vital to the acquisition approach, and FirstNet will seek to encourage and maximize public safety involvement in the process. In addition to the state consultation process, FirstNet plans to conduct outreach – including webinars – to collect feedback from public safety on the Special Notice and draft RFP documents. FirstNet encourages stakeholders to provide written feedback on the Special Notice and draft RFP documents.

## **WILL FIRSTNET RELEASE ANY ADDITIONAL INFORMATION ABOUT ITS PROPOSED ACQUISITION APPROACH?**

FirstNet may release additional information about its acquisition approach, as necessary.

## **WHO IS THE CONTRACTING OFFICER FOR THE ACQUISITION OF THE NPSBN?**

The Department of Interior, Interior Business Center, Acquisition Services Directorate, in consultation with FirstNet, will conduct the acquisition and administer any resulting contract(s). The Contracting Officer for the NPSBN acquisition process is Terrie Callahan. Please direct all questions related to the acquisition to Ms. Callahan at [Terrie\\_Callahan@ibc.doi.gov](mailto:Terrie_Callahan@ibc.doi.gov), as instructed in the Special Notice posted on the Federal Business Opportunity (FBO) site ([www.fbo.gov](http://www.fbo.gov)).

## **WHO CAN COMMENT OR ASK QUESTIONS ABOUT THE SPECIAL NOTICE AND HOW LONG WILL FIRSTNET ACCEPT COMMENTS?**

FirstNet welcomes comments and questions from all interested parties. Interested parties will have 30 days to submit questions and 90 days to respond to the Special Notice with either comments or capabilities statements. Specific due dates for any submission regarding the Special Notice or the process for submitting questions, comments, and/or capabilities statements should be in accordance with the instructions contained in the Special Notice posted on FBO ([www.fbo.gov](http://www.fbo.gov)). (Reference Number: D15PS00295).



**First Responder Network Authority (FirstNet)**  
**Nationwide Public Safety Broadband Network (NPSBN)**  
**Special Notice - D15PS00295**

## **1 Background**

This notice builds on previous Requests for Information (RFI) from the First Responder Network Authority (FirstNet) and incorporates feedback received from prior communications. To date, FirstNet has published thirteen (13) RFIs as well as held multiple vendor meetings and state consultations. Responses to the RFIs and vendor meetings have been used, by FirstNet, in order to better understand industry's capabilities, analyze the recommendations and alternatives approaches, and determine how to best leverage existing capabilities and best practices in order to meet public safety needs. The feedback received included responses to the following:

- May 2013 RFI on devices;
- July 2013 RFIs on network partners, radio access network, the core network, and seven other items;
- November 2013 RFI on applications platforms and;
- A September 2014 RFI on approaches to and objectives for establishing the NPSBN, including a draft Statement of Objectives (SOO).

FirstNet has engaged in extensive efforts to gather information through a significant ongoing outreach and consultation process, which has included a series of regional workshops, state single point of contact (SPOC)<sup>1</sup> calls, in person national SPOC two day meeting, onsite public safety interactions, Public Safety Advisory Committee (PSAC)<sup>2</sup> meetings, and notice and comment processes. From the previous RFIs, vendor engagements, ongoing outreach, and specific consultations, FirstNet has and will continue to obtain critical information regarding public safety needs and vendor capabilities in order to better define its strategy.

## **2 Introduction**

This special notice (herein after referred to as notice) is being issued by the Department of the Interior (DOI), Interior Business Center (IBC), Acquisition Services Directorate (AQD) on behalf of the U.S. Department of Commerce (DOC), FirstNet, as an additional market research tool.

Those interested parties qualified as a small business should demonstrate their qualification under the North American Industry Classification System Code (NAICS) 517919, "All Other Telecommunications," in

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<sup>1</sup> 47 U.S.C. 1426(c)(2)(B).

<sup>2</sup> 47 U.S.C. 1425(a)(1).

their capabilities statement submission. In addition, this notice provides an opportunity to submit comments and/or questions pertaining to the draft RFP documents attached.

Please note this notice is being issued subject to the availability of funds. FirstNet will not accept unsolicited proposals related to this notice. This notice is for information purposes only and shall not be construed as a Request for Proposal (RFP) or as an obligation on the part of FirstNet. FirstNet does not intend to make an award based on this notice nor does FirstNet intend to pay for the preparation of any information submitted in response to this notice.

***Interested parties are instructed to contact only the Contracting Officer, as stated herein, for information about any aspect of this notice and any subsequent information in this acquisition process for this project, to include any subsequent RFP. Interested parties and/or prospective offerors are cautioned against contacting any Government personnel, or any other personnel supporting this acquisition process, in regard to the FirstNet NPSBN acquisition, prior to any subsequent award(s) for this project. If such a contact occurs and is found to be prejudicial to competing offerors, the party making such a contact may be excluded from further consideration and/or subsequent award consideration. Accordingly, all communications prior to any subsequent award(s) must be direct to the point of contact identified herein. Where possible, inquires must be submitted in writing and sent via e-mail. Questions should be worded so as to avoid disclosing any proposed and/or considered strategies or proprietary information and/or solutions.***

### 3 Purpose

This notice provides draft sections that may be included in a subsequent RFP used to competitively procure a comprehensive technical and business solutions meeting FirstNet's stated mission and objectives. This notice affords interested parties, including states, tribes, territories, public safety stakeholders, and market participants, an opportunity to understand and provide input regarding FirstNet's proposed acquisition strategy/approaches as identified as Category One and Category Two. The acquisition strategy/approaches and draft RFP documents for the NPSBN are included in this notice and as attachments. Input from interested parties may include written comments and/or questions, capabilities statement(s), and other ongoing consultation interactions in accordance with the statutory authority.

In addition to comments and/or questions, FirstNet is requesting interested parties to submit capabilities statements demonstrating they are capable of performing the work pertaining to either Category One or Two, or a combination thereof. The feedback from interested parties, including states, tribes, territories, public safety stakeholders, and market participants, will assist in making the determination of the approach that is in the best interest of FirstNet's NPSBN mission and objectives as well as ensuring competition. This includes feedback with regard to the pricing model and acquisition strategy/approaches as well as operational architecture principles as it pertains to FirstNet's requirement for financial sustainability and broad subscriber participation. Instructions regarding submission of the capabilities statement are contained herein.

### 4 Instructions

FirstNet's most recent RFI, released on September 17<sup>th</sup>, 2014, included a draft statement of objectives (SOO) and questions in order to solicit feedback on the optimum approach that adheres to FirstNet's

authorizing statute, mission, and objectives. After reviewing and analyzing the responses, FirstNet proposes critical tenets of an approach that will provide for either: (1) a single entity responsible for providing all functions on a nationwide level (the nationwide entity), or (2) a regional entity providing radio access network (RAN), and Covered Leasing Agreement (CLA) applicable functions for a state or region. In the case of the latter approach identified in (2), the region size may be no smaller than a single state or territory, but may span more than one such state or territory. FirstNet's approaches above anticipate including equipment and services as part of the resulting comprehensive RFP for the NPSBN. The above approaches will be discussed in more detail in section 4.3 below.

FirstNet is requesting feedback from stakeholders including states, tribes, territories, public safety stakeholders, and market participants that will support additional detail on these options.

## 4.1 General Instructions

### 4.1.1 Submission of Comments

FirstNet seeks comments on all aspects of the acquisition strategy/approaches described in this notice, including feedback concerning FirstNet's proposed pricing concepts and operational architecture principles. Comments shall be submitted via email on or before, but no later than 12:00 p.m. Eastern Time on Monday July 27, 2015, utilizing the attached form. Please include with your comments your full name, reference number D15PS00295 and title "COMMENTS on the NPSBN Approach," your organization's name, complete address, phone number and email address. Comments marked confidential or proprietary will be protected by FirstNet accordingly. Any comments regarding this notice shall be submitted via email to [terrie\\_callahan@ibc.doi.gov](mailto:terrie_callahan@ibc.doi.gov).

### 4.1.2 Submission of Questions

Any questions regarding this notice shall be submitted via email to [terrie\\_callahan@ibc.doi.gov](mailto:terrie_callahan@ibc.doi.gov) or before, but no later than 12:00 p.m. Eastern Time on Wednesday, May 27, 2015, utilizing the attached form. Please include with your questions your full name, reference number D15PS00295 and title "QUESTIONS regarding the NSPBN Approach," your organization's name, complete address, phone number and email address. FirstNet anticipates conducting an Industry Day after release of this notice. Therefore, FirstNet encourages early submission of questions to allow for potential responses to be addressed early within the process. Should any question(s) be received after the date stated herein, FirstNet reserves the right not to provide an answer. If, however, in FirstNet's opinion, the question(s) cites an issue of significant importance, FirstNet may provide written responses. Please note questions will not be protected by FirstNet as proprietary. All questions and answers will be posted via the Federal Business Opportunity (FedBizOpps) site, [www.FBO.gov](http://www.FBO.gov).

### 4.1.3 Submission of Capabilities Statements

In addition to comments and/or questions, interested parties may submit a capabilities statement to the Contracting Officer, via email at [terrie\\_callahan@ibc.doi.gov](mailto:terrie_callahan@ibc.doi.gov), based on the approaches as noted in Category One or Category Two identified herein. Interested parties should respond noting their capabilities as it pertains to either category. In addition, the capabilities statements should include, but not necessarily be limited to, these items, where appropriate. The capabilities statement should provide information pertaining to coverage, capacity, hardening, as well as potential methods to leverage existing and new third-party roaming, infrastructure and other arrangements.

Additionally, the capabilities statements should demonstrate ability to provide system availability, site and system hardening, cyber security protection, and network redundancies. This should include information pertaining to coverage relating to urban and rural areas including the capability to integrate deployable and/or satellite solutions. The capabilities statement should also include information as it pertains to technology readiness and maturity levels.

#### **4.1.3.1 End-User Packages**

As part of the overall solution, FirstNet anticipates that potential offerors will provide public safety subscribers with a broad variety of different mobile broadband price plans including unlimited plans, pooled plans, and metered plans, as well as multiple billing options. Therefore, FirstNet seeks feedback on the types of price plans and billing options being considered by potential offerors that will meet public safety's needs. In addition to any feedback, the capabilities statement should demonstrate the potential offeror's capability to provide a variety of plans.

#### **4.1.3.2 End-User Band 14 Enabled Devices**

As part of the overall solution, FirstNet anticipates that potential offerors will have the ability to provide public safety subscribers with a broad variety of Band 14 enabled devices including smart phones, WiFi enabled portable "hot spots," USB devices, embedded modules, and other devices that support public safety's mission. Therefore, FirstNet seeks feedback and information, as well as demonstration of capabilities, on the types of Band 14 enabled devices, pertaining to end-user price points, payment options, and specific device functionality that will meet public safety's requirements.

#### **4.1.4 Capabilities Statements Response Due Date**

FirstNet requests the submission of capabilities statements on or before, but no later than 12:00 p.m. Eastern Time on Monday July 27, 2015. Please send a signed original and two hard copies, and one CD, to DOI-IBC-AQD, 381 Elden Street, 4<sup>th</sup> Floor, Herndon, VA 20170-4817, Attn: Terrie L. Callahan, Contracting Officer. The electronic copy shall be sent via email to [Terrie\\_Callahan@ibc.doi.gov](mailto:Terrie_Callahan@ibc.doi.gov).

Your capabilities statement submission shall become the property of FirstNet and will not be returned. If your submission contains information that you do not wish disclosed to the public or used by FirstNet for any purpose other than review of your submission as it relates this notice, you must clearly indicate these restrictions on each sheet containing such information.

***The capabilities statement shall not exceed fifty (50) pages (on 8.5 X 11 inch size paper, single sided print in MS Word, with a font of 10 points or higher), any pages in excess of fifty (50) will not be reviewed.***

***Please note timeliness of receipt of any submission will be determined by the date and time the capabilities statement is received via email submission to the point of contact for AQD identified herein.***

## 4.2 Definition of the High Level Functions

Based on previous RFIs and the review and analyses conducted, FirstNet has identified several high-level functions it has determined necessary to provide a solution that meets FirstNet's stated mission and objectives. Definitions of these high-level functions are contained in Draft RFP Section J, Terms of Reference.

The high level functions are:

- Core
- Applications ecosystem
- RAN
- Covered Leasing Agreement (CLA)
- Deployables
- Satellite
- Devices
- Subscriber adoption
- Customer lifecycle management

Based on market research, FirstNet has identified that significant synergies may exist from a fully or mostly integrated approach that could maximize value to Public Safety Entities and meaningfully contribute to financial sustainability. That approach is described in section 4.3, FirstNet's Proposed Approaches – Prior to State RAN Decision Process. FirstNet seeks feedback on this approach and whether more effective approaches exist that would achieve these synergies, maximize value to Public Safety Entities and reach financial sustainability.

## 4.3 FirstNet's Proposed Approaches – Prior to State RAN Decision Process

FirstNet's proposed approaches, as reflected in Figure 1 Proposed Acquisition Approach, anticipates allowing for flexibility in a draft acquisition approach in order to promote innovation, flexibility, competition and ultimately best value to the public safety communities.

### 1. **NATIONWIDE CORE RADIO ACCESS NETWORK AND SUBSCRIBER ADOPTION FOR ALL STATES (Category One):**

Category One encompasses a single nationwide approach whereby an offeror would be responsible for the provision of all necessary high-level functions needed to deploy and operate a nationwide solution in accordance with FirstNet's objectives. This category would allow potential offerors to submit a comprehensive offer for all in-scope functions for all 56 states and territories.

The scope of this single nationwide approach would include all high-level functions as identified in Section 4.2, Definition of the High Level Functions, of the notice. High level functions are:

- Core
- Applications ecosystem
- RAN
- CLA

- Deployables
- Satellite
- Devices
- Subscriber adoption
- Customer lifecycle management

**2. REGIONAL RAN AND CLA (Category Two):**

This category would allow potential offerors to submit an offer for one or more State RAN(s) and CLA(s), which would be integrated with a nationwide core network and other RAN(s) to create a comprehensive nationwide solution. Offerors may aggregate states to form regions as appropriate and as defined herein. Category Two encompasses the RAN(s) and CLA(s) applicable functions for a State or region, and does not necessarily include all other functions identified in Section 4.2, Definition of High Level Functions, of this notice, Definition of Functions. The high level functions included in Category Two are:

- RAN
- CLA

FirstNet requests feedback as to whether satellites and deployables should also be included as an applicable function in Category Two.

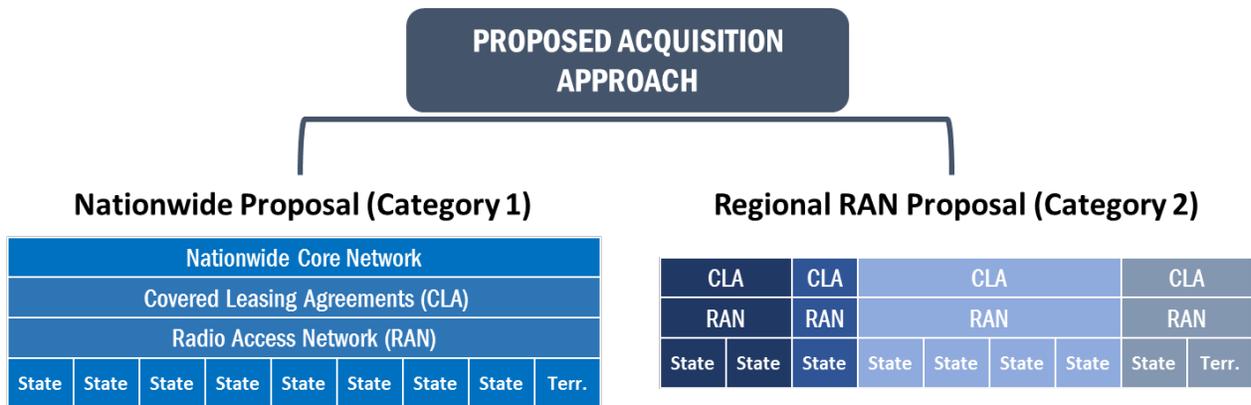


Figure 1 Proposed Acquisition Approach

**4.4 Information Pertaining to Potential Integration**

For Category Two, those interested parties should ensure familiarity with the information contained in the draft RFP documents, specifically, Section C (SOO), Appendix C-4 System View and Standard Views (SV-1 and StdV-1), and Appendix C-5 Standard View at FOC (StdV-2). These documents provide details of the system and services interfaces that may be required throughout the NPSBN.

Please be advised for those parties interested in Category Two above, potential offerors may be required to provide technical details of particular interfaces to ensure adequate and seamless integration between and among states/regions, and/or between the state/regions and nationwide approach. Respondents to the special notice shall consider overall integration cost and complexity pertaining to this approach in their capabilities statements.

## 4.5 Proposed Pricing Methodology

FirstNet has proposed an approach to pricing that is based on the aggregation of value resulting from assets available from FirstNet, and which would consist of two main elements:

- 1. Level of Government Funding:** Potential offerors may be required to propose how much of the \$6.5 billion in Government funding that FirstNet will make available is needed to deploy, operate and maintain the NPSBN, based on their proposed solution given the level of value available as described in (2) below. Potential offerors would be required to propose the timing of when the funding is required to achieve the initial operating capability milestones that are detailed in the draft RFP documents.
- 2. Level of Fixed Payments to FirstNet:** Potential offerors may be required to propose the level of fixed payments payable to FirstNet in exchange for use of the band 14 Excess Network Capacity and the value of Public Safety Revenues.

In sum, in addition to the available FirstNet funding, potential offerors may utilize band 14 Excess Network Capacity and revenues derived from Public Safety Entities to support the operations of the NPSBN, in accordance with the structure identified herein and in the attached appendix entitled “Pricing Concepts”.

Under this structure, FirstNet anticipates that potential offerors will be afforded the flexibility to establish reasonable pricing of end-user services, subject to the annual review process by the National Telecommunications and Information Administration that is required by FirstNet’s authorizing statute to ensure FirstNet’s sustainability. It is further anticipated that FirstNet will establish subscriber targets that must be met by a potential offeror, which may help serve as the basis of proposed pricing solutions.

### 4.5.1 Most Favored Customer Pricing Consideration for Public Safety Subscribers

To help ensure favorable price points for Public Safety subscribers, FirstNet expects potential offerors to agree to a most favored customer pricing arrangement to ensure public safety subscribers to the NPSBN pay no more than the lowest price available for any type of customer receiving broadband LTE services on band 14 or other bands, and request that potential offerors proffer up suggested terms and governance structure to ensure compliance with this objective.

## 4.6 Proposed Quality Assurance Surveillance Plan

FirstNet’s proposed Quality Assurance Surveillance Plan (QASP) for the NPSBN is shown in Appendix C-6. This document is a proposed plan for monitoring and evaluating performance throughout the life of a subsequent award. The draft QASP provides the anticipated process for a continuous oversight process which includes the following:

- What will be monitored?
- How monitoring will take place?
- Who will conduct the monitoring?
- How monitoring efforts and results will be documented?

Also, the anticipated surveillance metrics identified in the QASP correlates to functions and architectural relationships contained in Appendix C-7, Operational Architecture Functional Descriptions. Flexibility in the QASP is essential in order to allow for an increase or decrease in the level of surveillance necessary

based on contractor performance and situational needs. The draft QASP is being included as part of this notice in order to obtain feedback from interested parties, including states, tribes, territories, public safety stakeholders, and market participants, as to the validity of the anticipated quality controls and overall surveillance as it pertains to performance metrics/standards. Therefore, FirstNet requests potential offerors to respond to the metrics with feedback, for those performance metrics/standards identified and any additional ones that should be considered, keeping in mind FirstNet’s identified objectives of (i) maximizing public safety subscribership and utilization; (ii) financial self-sustainability, and (iii) overall performance.

### 4.7 Proposed Operational Architecture

The operational architecture for the NPSBN is shown in Appendix C-7, Operation Architecture Functional Descriptions. This document identifies required detailed functions and architectural relationships and identifies primary responsibilities for each. These relationships are outlined in a word document, a visio diagram, and in an excel spreadsheet. Additionally, where a specific function is to be validated by testing, or other means, the related performance objective from Appendix C-6 Quality Assurance Surveillance Plan is also noted. FirstNet has categorized each function in the operational architecture into one of the categories noted below in Table 1 Operational Architecture Ownership.

**Table 1 Operational Architecture Ownership**

FirstNet ownership and responsibility	
Public safety ownership and responsibility	
Functions not categorized for which comments are solicited herein	

FirstNet seeks comment on the overall approach regarding ownership of the functions identified in Appendix C-7, Operational Architecture Functional Descriptions. Interested parties should note their recommended approach and should identify which functions should be contractor owned (label as yellow), FirstNet owned (label as green), shared functions (label as orange), as well as those that are to be the responsibility of a public safety entity (label as blue) and out of scope functions (label as gray.).

FirstNet seeks feedback on the overall proposed approach regarding ownership of the functions identified in Appendix C-7, Operational Architecture Functional Description. Interested parties should note their recommended changes, or alternatives, to the approach and should identify which functions should be contractor owned (label as yellow), FirstNet owned (label as green), shared functions (labeled as orange), as well as those that are to be the responsibility of a public safety entity.

## 5 Other Critical Tenets

### 5.1 Proposed Period of Performance

FirstNet has preliminarily determined that the overall period of performance should run up to 2032 (base and all option periods if exercised). FirstNet anticipates a base period of performance of award through 2022, with an option to extend through 2027 and a subsequent option to extend through 2032<sup>3</sup>.

This longer period of performance would allow for the ability to maximize value to FirstNet and its public safety subscribers. This is based on the determination that a longer period of performance would allow potential offerors to recoup, over a longer period of time, the significant investments needed to deploy and operate the NPSBN. In particular, FirstNet intends to utilize excess network capacity to at least partially offset the costs of the NPSBN, which may require a longer period of time in order to monetize and thus provide value to FirstNet.

### 5.2 Commerciality Determination Information

FirstNet anticipates conducting this acquisition in accordance with FAR Part 15, Contracting by Negotiation, and potentially FAR Part 12, Acquisition of Commercial Items. The Contracting Officer is responsible for making the commerciality determination. However, in order to assist FirstNet in making this determination regarding commerciality for this acquisition, please provide information in accordance with the definition per the Federal Acquisition Regulation (FAR) Part 2.101.

FAR 2.101 defines an item (to include services) as commercial if it is used by the general public for non-governmental purposes and has been sold or offered to the general public. The following items may also meet the commercial items definition:

- Items that have evolved from commercial or general public use through advances in technology that may not yet be available for commercial use but are necessary to meet a government solicitation in a timely manner;
- Modifications of items that are customarily available to the general public;
- Minor modifications that are necessary to meet government requirements;
- Items combined and sold together to the general public;
- Items that may transfer through subsidiaries and divisions of a company;
- Items developed exclusively at the contractor's private expense and sold in substantial quantities on a competitive basis to multiple state and local governments; and
- Services of a type offered and sold competitively in substantial quantities in the commercial market place based on established catalog or market prices. This includes installation, maintenance, repairs, training, and other services if such services are procured for support of a commercial item and the source of such services provides similar services contemporaneously

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<sup>3</sup> FirstNet is schedule for reauthorization by February 21, 2027. Subsequent option periods are subject to Congressional reauthorization.

to the general public under terms and conditions similar to those offered to the Federal Government.

Therefore, FirstNet is requesting input with regard to the potential products and/or services that will be included in a proposed solution as it relates to the definition of commerciality as identified above.

### **5.3 Partnering/Teaming List**

As a courtesy, FirstNet will compile a list of those offerors that wish to be incorporated on a list that are interested in subcontracting and partnering opportunities with other potential offerors. Therefore, if interested, please submit the business name and size, point of contact (name, e-mail address, phone number, etc.) to the Contracting Officer via email at [Terrie\\_Callahan@ibc.doi.gov](mailto:Terrie_Callahan@ibc.doi.gov). All e-mail inquiries shall have “Teaming List – Reference # D15PS00295” included in the subject line. This information will be made available to all potential offerors via posting through the FirstNet website at [www.firstnet.gov](http://www.firstnet.gov). It is not required to be listed on the source list in order to submit a proposal to any resultant RFP. This is optional and solely intended to be an avenue to facilitate potential subcontracting and partnering opportunities and FirstNet accepts no liability for any resultant outcomes.

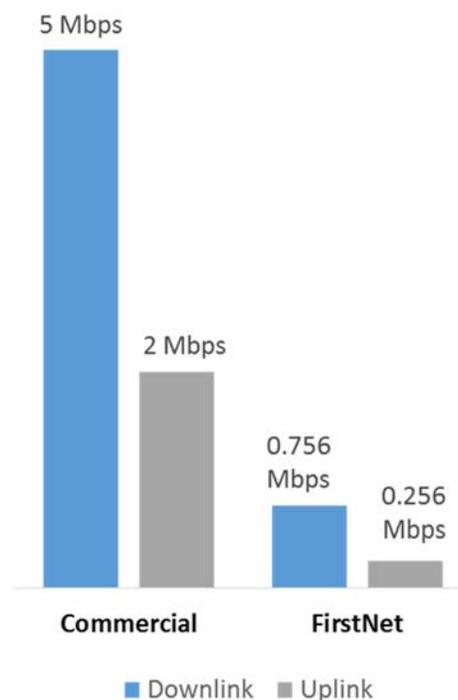
# Draft RFP Questions Overview

## FirstNet's Draft RFP—Florida's Questions

Many of our questions focused upon how an offeror would be incentivized to increase offered throughput and coverage, and penalized for not meeting certain milestones.

We also questioned how FirstNet determined the definition of coverage: "Coverage is defined as having a minimum of 786Kbps downlink and 256Kbps uplink at the cell edge with 50% loading." This question was based on the fact that a current conservative commercial offering is almost 250% faster than this amount.

### Coverage



### Throughput Values

Grid Color	Coverage Defined at the following Average Downlink Throughput per Square Mile
RED GRID	3.0 Mbps
BLUE GRID	0.5 Mbps
GREEN GRID	0.1 Mbps

We then went on to question how FirstNet determined throughput values of 3 Mbps, 0.5 Mbps, and 0.1 Mbps for high, medium, and low concentrations. As with Coverage, we questioned how these figures will improve as the technology behind LTE improves.

The final set of questions looked at "local control as a service".

- How is it defined?
- What is the difference between local control and "local control as a service"?
- Who will be billed in a multi-jurisdictional response, where multiple jurisdictions are subscribed to this service?

## Questions of the State of Florida

Item	Page No.	Document/ Paragraph Ref/Sentence	Question/Comment	Government Response	RFP Change
1		Statement of Objectives (SOO) / C.2 3/ "This SOO lists high level objectives, with minimum requirements, allowing latitude for contractors to define implementation details."	How will you score each high level objective as it relates to contract award?		
2	6	Statement of Objectives (SOO) / C.9/ "As the feature set of future 3GPP release is formalized, contractor and FirstNet will agree on the features required for the NPSBN and the associated delivery date for each."	Why are States, and/or Public Safety at a minimum, not involved with the determination of the features required for the NPSBN?		
3	1	SOO Appendix C-1 / 1 / "Coverage is defined as having a minimum of 786Kpbs downlink and 256Kbps uplink at the cell edge with 50% loading."	How did you determine these figures and are they negotiable?		
4	1	SOO Appendix C-1 / 1 / "Coverage is defined as having a minimum of 786Kpbs downlink and 256Kbps uplink at the cell edge with 50% loading."	How does this value compare to current 3GPP standards?		

Item	Page No.	Document/ Paragraph Ref/Sentence	Question/Comment	Government Response	RFP Change
5	1	S00 Appendix C-1 / 1 / "Coverage is defined as having a minimum of 786Kbps downlink and 256Kbps uplink at the cell edge with 50% loading."	How does this value compare to current commercially available 4G LTE and why were these parameters chosen?		
6	1	S00 Appendix C-1 / 1 / "Coverage is defined as having a minimum of 786Kbps downlink and 256Kbps uplink at the cell edge with 50% loading."	How will this definition evolve as LTE becomes more efficient?		
7	1	S00 Appendix C-1 / 1 / "Coverage is defined as having a minimum of 786Kbps downlink and 256Kbps uplink at the cell edge with 50% loading."	How will FirstNet incentivize a contractor/offeror to offer true, and sustainable, speeds greater than this?		
8	1	S00 Appendix C-1 / 1 / "Coverage is defined as having a minimum of 786Kbps downlink and 256Kbps uplink at the cell edge with 50% loading."	Is FirstNet looking for speeds greater than this?		
9	1	S00 Appendix C-1 / 1 / "Only those grid blocks that have more than 50% coverage will be considered acceptable."	What if a Public Safety Entity needs to operate in the 49% area of no coverage?		
10	1	S00 Appendix C-1 / 1 / "Only those grid blocks that have more than 50%	How will FirstNet ensure that, while each grid block has more than 50% coverage, a "dead spot" does not develop in adjacent grid blocks?		



Item	Page No.	Document/ Paragraph Ref/Sentence	Question/Comment	Government Response	RFP Change
11	1	coverage will be considered acceptable.” SOO Appendix C-1 / 1 / “Table 1 Coverage Throughput Per Sq Mi Definition”	How will FirstNet incentivize a contractor/offoror to provide greater throughput per Grid Color?		
12	1	SOO Appendix C-6 / 1.1 / “The government reserves the right to perform quality assurance and surveillance in order to verify contract performance standards are achieved and maintained throughout the life of the contract.”	What happens if the contractor fails to meet performance standards?		
13	1	SOO Appendix C-1 / 1 / “Table 1 Coverage Throughput Per Sq Mi Definition”	What is the process of increasing these throughput values as LTE evolves and becomes more efficient?		
14	1	SOO Appendix C-1 / 1 / “Table 1 Coverage Throughput Per Sq Mi Definition”	How will these throughput values increase without renegotiating the contract and is FirstNet seeking to increase it?		
15	6	SOO Appendix C-8 / 4.2 / “This phase is targeted to begin one (1) year after the completion of IOC-1.”	What are corrective actions will be implemented if a contractor/offoror does not meet “targeted” timelines?		
16	7	SOO Appendix C-8 / 4.3 / “This phase is targeted to begin two (2) year after the completion of IOC-2.”	What is the process, in detail, of this stop-go phased roll-out?		
17	7	SOO Appendix C-8 / 4.3 / “This phase is targeted to	How will the nationwide roll-out of each phase be affected if a problem arises in a single State,		

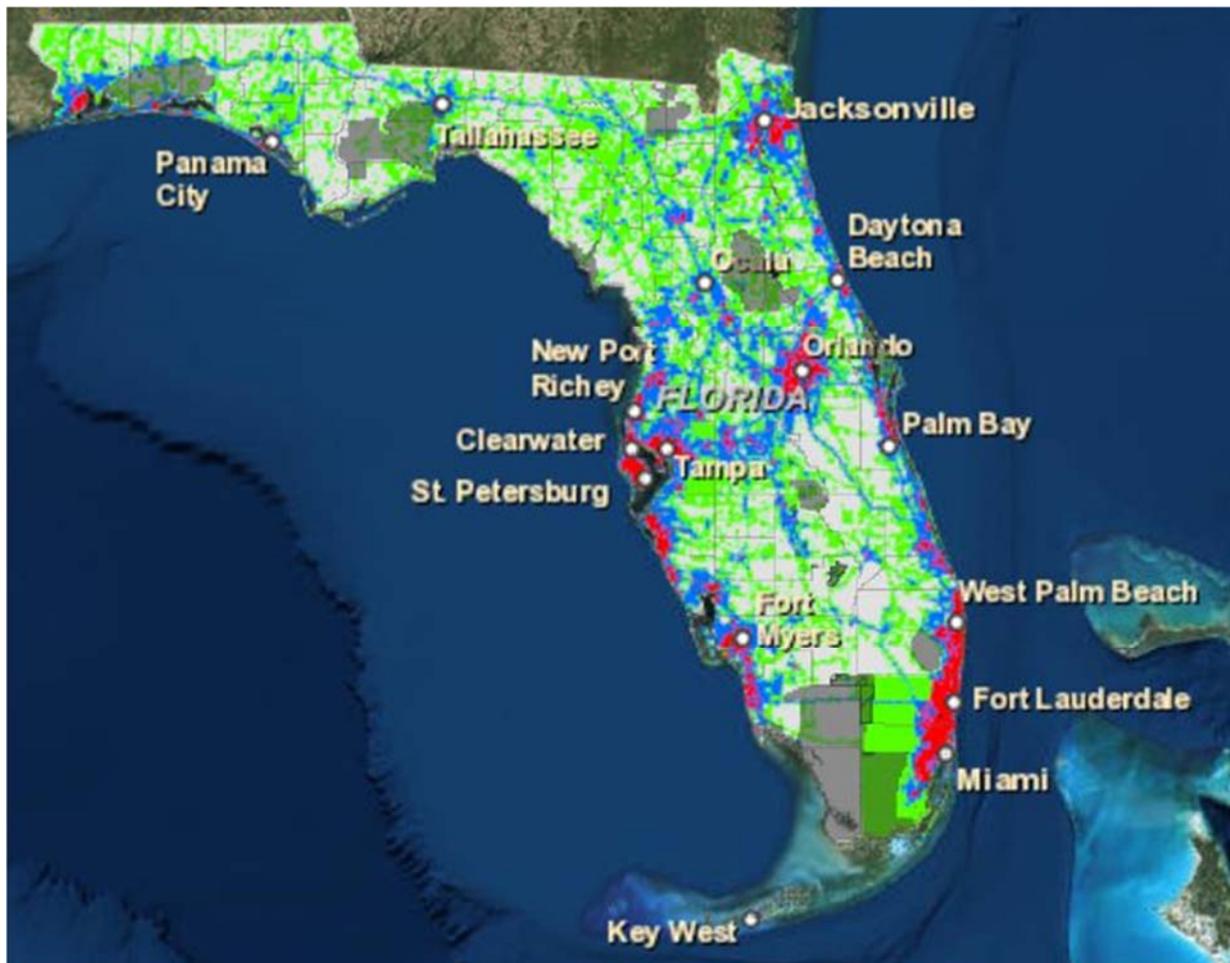


Item	Page No.	Document/ Paragraph Ref/Sentence	Question/Comment	Government Response	RFP Change
18	14	begin two (2) year after the completion of IOC-2.” S00 Appendix C-9 / 14. B) / “Allow FirstNet to charge its end users for local control as a service.”	but goes to plan in the rest of the States and Territories? What is the definition of “local control as a service”?		
19	14	S00 Appendix C-9 / 14. B) / “Allow FirstNet to charge its end users for local control as a service.”	What is the difference between local control and “local control as a service”?		
20	14	S00 Appendix C-9 / 14. B) / “Allow FirstNet to charge its end users for local control as a service.”	Will a local Public Safety Entity be required to purchase the local control functionality or is it State based?		
21	14	S00 Appendix C-9 / 14. B) / “Allow FirstNet to charge its end users for local control as a service.”	What is the billing process for a Public Safety Entity to utilize the local control functionality and who will be paid?		
22	14	S00 Appendix C-9 / 14. B) / “Allow FirstNet to charge its end users for local control as a service.”	How will FirstNet determine which Public Safety Entity to bill in a multi-agency response with regards to local control as a service?		

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 Email: [LarryGowen@flhsmv.gov](mailto:LarryGowen@flhsmv.gov)

# Data Collection

This is Florida's Baseline Coverage Objective Map, as provided in FirstNet's Draft RFP. The red indicates high concentrations, blue indicates moderate, and the green represents low. The areas not colored in were determined to be out of the scope of terrestrial based coverage. To provide Network access in the non-colored areas, a deployable solution is to be implemented.



To help identify coverage gaps, or insufficient speeds, found on FirstNet's Baseline Coverage Objective Map, a data collection survey has been implemented. Once Phase II of the SLIGP grant is awarded, data will be collected from around the State using a secure file sharing solution.

Examples of possible data:

- Response areas
- Data usage
- Crash data
- Applications
- Providers
- Computer Aided Dispatch (CAD)

We are still moving forward to supply data to FirstNet through CASM NextGen to ensure the data collected survives the end of the grant.



## FirstNet Recommended Data Collection

### WHAT IS FIRSTNET'S APPROACH TO THE DATA COLLECTION AND HOW DOES IT RELATE TO OTHER FIRSTNET ACTIVITIES, INCLUDING RFP AND STATE PLAN PROCESSES?

The law that established the First Responder Network Authority (FirstNet) requires it to consult with local, state/territory, tribal, and federal public safety entities<sup>1</sup> to ensure that the nationwide public safety broadband network (network) is designed to meet the needs of public safety across the country. FirstNet is working through the State and Territory Single Points of Contact (SPOCs) to gather inputs from key stakeholders for developing its deployment plan, one method of which is data collection. The law requires FirstNet to deliver a state plan to each governor regarding FirstNet's plan to deploy the Radio Access Network (RAN) within the state or territory.

FirstNet is in the process of developing a Request for Proposals (RFP) toward a Comprehensive Network Solution(s). FirstNet's current approach is based upon the premise that FirstNet will seek proposals for a network solution or solutions allowing it to control and operate a nationwide Core network, RANs in Opt-in States, as well as for devices, deployable capabilities, applications, integration, and maintenance and operational services required to fully function as an operational wireless standards-based long term evolution (LTE) network nationwide. FirstNet will solicit feedback on the RFP prior to its release through a series of engagements with industry, public safety, and various stakeholders at the local, state, tribal and federal levels.

### WHAT IS THE ROLE OF THE SPOC IN THE DATA COLLECTION PROCESS? WHICH AREAS SHOULD THE SPOC FOCUS ON?

FirstNet is requesting the assistance of SPOCs to collect data from the public safety community inclusive of local, state/territory, and tribal governments, to inform FirstNet's acquisition toward a Comprehensive Network Solution(s) and state plans. Participation from the broad public safety community is critical to ensure the network meets the needs of public safety.

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<sup>1</sup>Refer to FirstNet's preliminary definition of "public safety entity" [A Public Safety Entity is an entity that provides public safety services as defined in the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 et seq.)) (the "Act") and further discussed in FirstNet's first public notice and request for comments to better understand who may be considered a potential user of the network. First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 79 Fed. Reg. 57058, 57060 (September 24, 2014) available at <http://www.gpo.gov/fdsys/pkg/FR-2014-09-24/pdf/2014-22536.pdf>

FirstNet seeks information on the following topics:

1. **Coverage:** Identify desired coverage within the state or territory and proposed build out phases.
2. **Users and Operational Areas:** Gather information on the eligible user base and their respective operational areas.
3. **Capacity Planning:** Estimate current data usage today from typical users with indicators of potential growth.
4. **Current Providers/Procurement:** Identify current service providers and plans, procurement vehicles, and barriers to adoption.
5. **State Plan Decision Process:** Document the final state plan review process prior to submission to the Governor and any potential barriers/issues FirstNet should be aware of.

#### WHEN IS THIS INFORMATION DUE TO FIRSTNET?

FirstNet requests an initial response to topics 1-4 by September 30, 2015 to inform FirstNet's acquisition and a written narrative response to topic 5 by December 31, 2015. Beyond the initial September 30, 2015 deadline for topics 1-4, FirstNet will accept the SPOC and Agency POC collected data on an ongoing basis and will establish a second deadline in the future for final information to inform the state plans.

#### CAN STATES AND TERRITORIES USE SLIGP FUNDS FOR THIS DATA COLLECTION?

States and territories may leverage State and Local Implementation Grant Program (SLIGP) funding to complete these data collection activities. Additional information regarding SLIGP and the use of funds is available at [http://www.ntia.doc.gov/slignp/program\\_information](http://www.ntia.doc.gov/slignp/program_information). Please reach out to your SPOC for additional information regarding the specific data collection within your State, Territory, or Tribal Nation. General questions may be directed to [datacollection@firstnet.gov](mailto:datacollection@firstnet.gov).



# Technical Committee Activities

## New Members

### Region 1

George Hawkins, Santa Rosa County, Communications Coordinator

### Region 3

Alphonso Gordon, Marion County Public Safety Communications, Radio Systems Manager

## Contact Information/Contract Vehicle Survey Status

Following the February Committee meetings, contact lists for each of the regions were generated. The lists were based on contact lists extracted from CASM NextGen. We enlisted the assistance of the Regional Domestic Security Task Force (RDSTF) to help distribute and update the lists. The survey was launched in all regions, except for Region 7, on 6/4/15, with a due date of 7/4/15. The survey for Region 7 was launched on 6/15/15, with a due date of 7/15/15.

Region	Sent	Bounced	Surveys Started	Surveys Completed	Partials
1	52	7	9	3 (6.7%)	6
2	90	14	16	11 (14.5%)	5
3	76	10	21	15 (22.7%)	6
4	117	10	29	14 (13.1%)	15
5	203	-	105	65 (32.0%)	40
6	79	4	28	16 (21.3%)	12
7	96	4	9	6 (6.5%)	3

## Public Safety Communications Research (PSCR) Conference



(L-R)

**Greg Holcomb**

Lake County Public Safety

**Larry Gowen**

FloridaNet

**Alex Perry**

FloridaNet

**Greg Rubin**

Miami-Dade Fire Rescue

**Bob Finney**

Collier County Sheriff's Office

**Terry Nehring**

City of Tampa

# Upcoming Events

- 07/15: Draft RFP Working Meetings
- 07/04/15: Contract Vehicle Survey Due Date
- 07/07-08/15: Region 4 RECCWG Plenary Session (Atlanta, GA)
- 07/08/15: EMS Meeting (Orlando, FL)
- 07/14-16/15: CJIS Symposium (Ponte Vedra Beach, FL)
- 07/27/15: Draft RFP Comments Due
- 07/31/15: Data Submittal to FirstNet (Original Date)
- 08/15: White Paper Produced
- 08/16-19/15: APCO Conference (Washington, D.C.)
- 08/28/15: 3rd Quarter Executive Committee Meeting (*tentative*)
- 09/30/15: Data Submittal to FirstNet (Revised Date)

*If there are any events in your area that you would like us to attend or present, please let us know!*



## FloridaNet Executive Committee Meeting

2/24/15

The FloridaNet Executive Committee had a meeting on February 24, 2015 online. The following members and guests participated:

Name	Affiliation
<b>EXECUTIVE COMMITTEE</b>	
Terry L. Rhodes, Chair	FL Department of Highway Safety & Motor Vehicles
Eric Larson (for Jason Allison)	Florida Agency for State Technology
Josh Mindick (for Daniel Alexander)	Florida Police Chiefs Association/Boca Raton PD
Greg Rubin	Miami-Dade Fire Rescue
Donna Uzzell, Homeland Security Advisor	Florida Department of Law Enforcement
Bobby Brown, Tribal Representative	Seminole Tribe of Florida
Steve Casey	Florida Sheriffs Association
Mike McHargue	Florida Department of Health
Greg Holcomb, Technical Committee Chair	Lake County Public Safety
Sherri Martin	Florida Department of Economic Opportunity
Mike Sole, Private Sector	Florida Power & Light
Phil Royce (for Charles Hagan)	Florida Department of Emergency Management
Joe Nelson, Ex Officio	Florida EMS Advisor
Dr. Peter Pappas, Ex Officio	Health-First, Holmes Regional Medical Center
John Wilgis, Ex Officio	Florida Hospital Association
<b>OTHERS</b>	
Larry Gowen, FloridaNet Director	FL Department of Highway Safety & Motor Vehicles
Ryan Burchnell, Major	FL Department of Highway Safety & Motor Vehicles
Carl R. Fortner, Technical Committee	Bay County Sheriff's Office
Richard Steiner, Technical Committee	Orange County
Paul Steinman	Florida Department of Transportation
Amy Serles	FL Department of Highway Safety & Motor Vehicles

Called to order at 10:37am.

The following topics were discussed:

1. Executive Committee Replacements
2. Contract Vehicle Data Collection Pilot Update
3. Status update on mapping tool
4. Spring Workshops
5. Around the table
6. Action Items



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## 1. Executive Committee Replacements

Stacy Arias, who previously worked for Florida Department of Management Services (DMS), now works for Florida Department of Corrections (DOC) so she will no longer serve on the Executive Committee (EC). John Ford, DMS, has been nominated and was voted unanimously in as her replacement.

Charles Hagan, Florida Division of Emergency Management (DEM), has nominated Phil Royce to replace him on the EC. The EC voted unanimously to approve.

## 2. Contract Vehicle Data Collection Pilot Update

Key Findings and Lessons Learned:

- Over 200 sent, 98 started, 62 completed. We found that we got ahead of ourselves. We confused responders by asking for contacts and then sending the survey on the heels of that. There were a lot of incompletes. *Recommended: Communicate requirements early. Send an email prior to releasing survey letting them know a survey is forthcoming, and what will be requested, so they can find the information.*
- Sending dedicated email link to do survey and to gauge results was not as good as the web link from the FloridaNet.gov website. *Recommended: Use the web link only.*
- Concerning the email contact lists, thanks goes to Deshawn McCall and Amy Serles for their work to update the lists
- *Recommended: Regional review of the data to eliminate any duplicate data or false data.*
- Results of survey:
  - o Most were from local government and fire service
  - o Most use 2 carriers or more, top reasons: coverage/reliability
  - o Most use 2 or more devices, top 3 reasons – texting, Computer Aided Dispatch (CAD), Automatic Vehicle Location (AVL)

Results will be posted online and sent to the EC.

Next steps:

- Get approval from the EC to move ahead with survey
- Outline to the EC what we want to do
- Meet with state Interoperability (I/O) chairs to get regional Single Point of Contacts (SPOC) briefed
  - o Vic Thomas, Florida Highway Patrol (FHP), could possibly set up briefing meetings
- Release survey to entire state for a month or two
- 15-day follow up
- Review data with regions
- Schedule follow up meeting with the EC to review findings
  - o Latter part of 2<sup>nd</sup> quarter, late May or June



- 
- Review findings with Domestic Security Oversight Council (DSOC)
    - o June
  - Release to FirstNet

In addition, Greg Holcomb will brief the State Working Groups (SWG) in April. Larry Gowen added as Ex Officio of SWG. Donna Uzzell will tell Joyce to put a placeholder on the agenda of the DSOC/SWG meeting.

The EC voted unanimously to go statewide with survey.

### **3. Status update on mapping tool**

CASM NextGen (Communications Asset Survey and Mapping Next Generation) is owned and operated by the Office of Emergency Communications (OEC) under Department of Homeland Security (DHS), currently used as a Land Mobile Radio (LMR) tool and available to public safety organizations. There is a lot of overlap of data and a lot of potential for Long Term Evolution (LTE) data but the data needs to be refreshed. It is up to local entities to keep it up to date, but there are usual concerns over why responders do not currently use the tool. It is either “I don’t update it because I don’t have the resources, or “I don’t use it because there’s no up to date data.” We believe there is an opportunity to refresh this tool that already exists rather than build it from scratch. We would work with OEC to suggest layers to add and use this tool as part of our spring workshops. Our biggest challenge was to either find a tool which has finite finds or saddle public safety with the cost later on down the road. Another asset of this tool is since it is under OEC/DHS, there is protection of public safety sensitive data.

Essentially, CASM NextGen is the visualization of a collection of communication assets across the state for public safety. Currently, there is a lot of data missing from the map. There is a lot of potential with this tool and since it is already stood up, then all we have to do is enter data.

Originally, Tampa Bay Regional Planning Council was going to help build our GIS mapping tool, but rather than use our grant dollars to build something from scratch we would use this. Then just add to it the FirstNet and FloridaNet layers. It secures data to Federal Freedom of Information Act (FOIA) laws. We will basically be leveraging something that is already there.

Does the framework support that which FirstNet needs? Firstnet has not defined that yet and we are probably ahead of the game. We asked during consultation what tool was recommended and they did not say. Florida wants to be the leader by using CASM NextGen and create the standard.

Is FirstNet comfortable populating the tool with private infrastructure? We are not sure, but will bring up on Friday’s meeting, since it is not clear on private-public side. If Florida chooses not to go down the path of the Federal plan and build our own, are we hamstrung by using a federal tool? It would be beneficial to try and look as many steps ahead.



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CASM been around since approximately 2004 and has gone through several evolutions. It is an LMR system and the challenge has been keeping data current. NextGen is the newest release of CASM and it is set up to add to different layers. DHS has been promoting it so why wouldn't we use it? It could be a value. Originally, it was created as an I/O tool with contact lists, but it has a lot of ancillary advantages. If DHS and FirstNet decide to use this tool, then we will be ahead of the game.

If necessary, we could extract the data after the plan goes to the governor, and use the data to create our own tool, since it is still our data. For now, OEC acts as the host and offers protection and we decide who to share our data with.

Can a private sector utility provider be granted access to CASM NextGen? Participants will have to go through DEM to get access. It is governed by public safety and admin can see everything.

CASM NextGen is not going to meet all of our needs but could get us there sooner rather than later. It probably does not have all fields that we want, but maybe we can get them added. Director Rhodes reached out to Director Hewitt (OEC) and we have a commitment from OEC to build layers but we are waiting on FirstNet for data collection requirements.

Using CASM might be better to use rather than something built with the State and Local Implementation Grant Program (SLIGP) funds. If it seems like SLIGP funding is being used for opt out option then it will get shut down. SLIGP funds are being used for data collection and not tool. Legislation basically says that if we use SLIGP funds and do not choose the Opt-In Option, then they will take away the money.

The EC voted unanimously to move forward with using the CASM NextGen tool.

#### **4. Spring Workshops**

Content/scope will be data collection workshops. We will be working with the Technical Committee (TC) moving forward. Last year, the workshops were one-way workshops, just informational. This time they will be more interactive, talk about CASM, its use and where the needs are. It might be beneficial to hire a contractor to do the data collection for Phase 2. We will be looking for passionate communications gurus to assist us moving forward. This should be coordinated with SWG meetings. It was recommended that we reach out to I/O and locals rather businesses to assist with data collection since they understand and are within the public safety community.

#### **5. Around the table**

Phil Royce – If anyone needs a CASM refresher, then you can give him a call.

Mike Sole – Would prefer to be better informed before voting. CASM NextGen is probably the right call but he is a little hesitant moving forward. *Recommended: Give more information to the EC to make better informed vote.*



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Bobby Brown – Does he need to go through his local I/O chair to get access to CASM? Phil Royce– fill out form on CASM online. *Recommended: Tribes need there their own regional chair, their own access.*

## 6. Action Items

- **Contract Vehicle Survey**
  - Get approval from the EC to move ahead with survey
  - Outline to the EC what we want to do
  - Meet with state I/O chairs to get regional SPOC briefed
    - Vic Thomas, FHP, could possibly set up briefing meetings
    - Greg Holcomb, brief SWG (April)
    - Donna Uzzell, ask Joyce to put placeholder for DSOC/SWG meeting
  - Communicate requirements early. Send an email prior to releasing survey letting them know a survey is forthcoming, and what will be requested, so they can find the information. Use the web link only
  - Release survey to entire state for a month or two
  - 15-day follow up
  - Regional review of the data to eliminate any duplicate data or false data
  - Schedule follow up meeting with the EC to review findings (Latter part of 2<sup>nd</sup> quarter, late May or June)
  - Review findings with DSOC (June)
  - Release to FirstNet
  
- **CASM NextGen**
  - Larry Gowen, Find out if CASM can be populated with private infrastructure
  - Set up Tribal Regional Chair for representation, for access
  
- **Spring Workshops**
  - Work with the TC to set up
  - Coordinate with SWG meetings

Meeting adjourned 11:37 am.