

## **FirstNet says opt-out states must share revenues, meet nationwide network policies**

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A state or territory that chooses the [FirstNet](#) opt-out alternative—thereby agreeing to build out the [LTE](#) radio access network (RAN) in its jurisdiction—will have to comply with all of FirstNet’s nationwide network policies and will not be able to keep all revenues generated within its boundaries, according to final legal interpretations approved by the FirstNet board.

During a FirstNet board meeting last Friday, members voted unanimously to support 64 final legal interpretations that have been debated in three public-notice proceedings during the past year. These interpretations include rules associated a provision in the law that lets the governor of each state and territory decide whether that jurisdiction will accept the FirstNet deployment plan for the state or “opt out.”

Despite the “opt out” name for the alternative, a state choosing this route would be in the FirstNet system, but the state would deploy the RAN, instead of FirstNet.

FirstNet officials have indicated that there are a handful of states and territories that are so densely populated that they are expected to generate more revenue than is needed to deploy an LTE network within their borders—the District of Columbia is a prime example.

Some state officials have been intrigued by the opt-out alternative almost from the moment that FirstNet was established, with a few initially expressing a desire to have revenue generated from the network help address general state-budget shortfalls. FirstNet officials quickly noted that the law requires all revenues must be reinvested into the FirstNet system, but a legal question remained: Could an opt-out state keep all revenues generated by the RAN it built within the state to deploy a network with greater performance or reduce the subscription costs to public safety?

The answer is “No,” according to the resolution approved by the FirstNet board last Friday. FirstNet Acting Chief Counsel Jason Karp noted that opt-out states will benefit from the use of

20 MHz of 700 MHz broadband spectrum that is licensed to FirstNet, which is mandated to build out a nationwide broadband network for public safety.

“We need to ensure that any revenue that’s generated—particularly in highly dense, populated areas that will generate significant value for the excess capacity available—that that money is appropriately reinvested back into the network in a way ... that benefits the entire nation,” Karp said during the meeting. “We don’t want the national deployment to, in any way, suffer because a particularly rich state that is able to generate significant revenue because of that population density retains that revenue to create essentially a higher-quality radio access network in their state than we have in other localities around the country.

“It’s critical that we are leveraging the high-density, high-revenue-generating areas in order to pay for the deployment nationally. We think that’s absolutely what Congress intended. We think that’s the intent of the act and what the act says, and we reiterate that conclusion [in the final legal interpretations].”

[FirstNet](#) Vice Chairman Jeff Johnson echoed this sentiment.

“We are building this nationwide network for public safety, and that doesn’t mean seven of 56 states, territories and commonwealths—it means all 56,” Johnson said. “That means we’re going to have to take resources from areas that produce more, and share them in the places don’t produce enough.

“That’s not a point that should be lost on anybody. Congress has plenty of opportunities to say, ‘This is for this state, and this is for that state,’ but they didn’t. This is a nationwide network, and that’s our charge.”

In a related legal interpretation, opt-out states will have to adhere to all FirstNet network policies. Conceptually, this was expected, but Karp noted that the FirstNet network policies would not be static.

“Our network policies are something that are going to be deployed on an ongoing basis—they’re

going to change, they're going to be variable for a long period of time, and they're critical," Karp said. "We preliminarily concluded in the original notice and confirm that our network policies have to apply across the board, whether a state assumes that responsibility or whether it's FirstNet responsibility. And that's key.

"That's key for [interoperability](#) , to ensure that we have one nationwide network, no matter who is responsible for the deployment of pieces of it. [It's key to ensure] that public safety, when they cross state boundaries, are getting the exact same user experience in State A as they are in State B, because we know public-safety incidents don't stop at the state border."

Other final legal interpretations approved by the board include rules regarding the role of governors in the opt-out procedure and the nature of FirstNet's state-plan proposal, based on a presentation made by FirstNet staff members during the meeting. Complete text of the 64 legal interpretations is expected to be released later this week, according to FirstNet spokesman Ryan Oremland.

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