

NTIA proposes rules to review, approve FirstNet fees each year

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December 15, 2015

Many key [FirstNet](#) fees will be reviewed by the [National Telecommunications and Information Administration](#) (NTIA) to determine whether the fees generate enough revenue to cover FirstNet's expenses but are not excessive, according to an NTIA proposal released yesterday that will be the subject of a public proceeding for the next month.

Congress passed legislation in 2012 establishing FirstNet as an independent entity within NTIA that was charged with deploying a nationwide broadband network for public safety that would be financially self-sustaining. NTIA's fee-review process is designed to help achieve that goal, according to NTIA Administrator Lawrence Strickling, who also serves as the U.S. Department of Commerce's assistant secretary for communications and information.

"To be successful, FirstNet will have to win customers through competitive pricing and services," Strickling said in a prepared statement. "The approach we outline today will give FirstNet the flexibility it needs to respond to changing market conditions and meet the demands of its customers—the public-safety community."

Under the notice of proposed rulemaking (NPRM), NTIA would review and approve FirstNet's proposed annual fees before they can be implemented in three categories:

- Network user fee—"A user or subscription fee from each entity, including any public-safety entity or secondary user, that seeks access to or use of the [Network];"
- Covered-leasing-agreement (CLA) fee—"A fee from any entity that seeks to enter into a [CLA]," which is defined by law as "a written agreement resulting from a public-private arrangement to construct, manage, and operate the nationwide public safety broadband network between the First Responder Network Authority and secondary user to 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;" and
- Fees from entities seeking access to FirstNet-owned network equipment or infrastructure—"A fee from any entity that seeks access to, or use of, any equipment or infrastructure, including [antennas](#) or towers, constructed or otherwise owned by the First

Responder Network Authority resulting from a public-private arrangement to construct, manage, and operate the [Network].”

Throughout the NPRM, NTIA states that it will review fees only to determine whether they are at a level that, “in aggregate,” lets FirstNet be financially self-sustaining without being excessive—for instance, questions of “reasonableness” will not be considered, according to the NPRM. NTIA will consider any all FirstNet revenue sources in determining whether fees in these three categories are financially appropriate, insufficient or excessive.

However, the NPRM notes that NTIA will defer to FirstNet’s judgment about how much money the organization should have in reserve.

If NTIA determines that proposed fees are either insufficient or excessive, FirstNet would have to adjust its fees and get NTIA’s approval for the new fees before they can be implemented, according to the NPRM.

Despite the detail included in the 23-page NPRM, there are some questions about which fees would be reviewed by NTIA under the proposal.

[FirstNet](#)’s board last week voted to approve the release of the organization’s final request for proposal (RFP) early next month. Although the details of the RFP are not known, there was no indication during FirstNet board or committee meetings that the business approach would differ from FirstNet’s draft RFP that was released in April.

In the draft RFP, FirstNet would not assess network user fees directly. Instead, FirstNet would provide its selected partner as much as \$6.5 billion to help finance the deployment of the nationwide broadband network, and the partner would make a quarterly payment to FirstNet that would fund FirstNet’s operations. The partner would assess and collect all network user fees from both public-safety entities and secondary commercial customers.

If this structure is maintained in the final RFP, [NTIA](#) arguably would not have authority to review network user fees under the NPRM, because the fees would be collected by the partner,

not FirstNet. When asked about the situation, NTIA provided the following response.

“This NPRM is intended to provide a 10,000-foot view of NTIA’s fee review role and is just the first step,” according to a prepared statement from an NTIA spokeswoman. “We anticipate that once FirstNet completes its RFP, we will issue a further notice to flesh out the review process in more detail.”

Public comments about the NPRM are due on Jan. 14, according to an NTIA press release. Comments can be submitted electronically through www.regulations.gov or by mail to: Office of Public Safety Communications; National Telecommunications and Information Administration; U.S. Department of Commerce; 1401 Constitution Avenue, NW; Washington, DC 20230.

FirstNet urged interested parties to submit comments to the proceeding.

“We believe this is an important next step in the process of establishing the nationwide public-safety broadband network,” FirstNet spokesman Ryan Oremland said in a prepared statement. “Consistent with FirstNet’s efforts to be open and transparent in all of our implementation efforts, we’d encourage all of our stakeholders to also participate in NTIA’s process by filing comments.”

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