

Response to Federal Register Document “State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network”

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## Abstract

The following document outlines response questions pertaining to the SAPP; how it pertains to HR3630 “The Middle Class Tax Relief and Jobs Creation Act of 2012”; and the deployment of the Nation’s Public Safety Broadband Network.

## Summary

In summation, this document outlines the interaction needed for States that elect to “Opt-Out” from the “FirstNet” plan. This document provides a context and alignment between necessary next steps and actions that will be required by the State in providing its alternative solution for a statewide Public Safety Broadband Network (SPSBN). Overall the document is relevant with some baseline observations and recommendations.

The context of this response is to help and improve on the FCC (Federal Communications Commission), the NTIA (National Telecommunications and Information Administration), the “FirstNet” organizational development, and a State’s ability to execute a cooperative arrangement for deploying the Nationwide Public Safety Broadband Network (NPSBN).

## Responses

[Response 1](#) - Overall the context and the ambience of the message being delivered seems to be that of a “this party will do what it will do and that party will do what it wants to do”. I believe the underlying message should be one of a cooperative framework. This document reflects more of a “requirement” rather than a “entreaty”. In the end all parties, e.g. FirstNet, Opt-Out State, Opt-In State and Public Safety, are driven for the same cause of constructing the NPSBN. The only contextual difference in who builds the solution is almost moot. With that said, it is recommended that the NTIA and DOC establish FirstNet as a unifier in developing the

technical solution that can accommodate both the Opt-In and the Opt-Out solution, not an Opt-In only scenario.

## Response 2

- *Section 1, Paragraph 4 -- “This Notice provides initial guidance on NTIA's process to review a state's application for authority to enter into a spectrum capacity lease with FirstNet and for optional grant funds to assist in the construction of its RAN.”*
- *Section II, Sub C, Paragraph 1 – “Required authorization to enter into a spectrum capacity lease from FirstNet to operate its state RAN”*

There is confusion as to whether or not the term “FirstNet” applies to the original appointed 15-Member Board.

**HR3630 SEC. 6202. PUBLIC SAFETY BROADBAND NETWORK.** (a) ESTABLISHMENT.—*The First Responder Network Authority shall ensure the establishment of a nationwide, interoperable public safety broadband network.*

**HR 3630 SEC. 6203. PUBLIC SAFETY INTEROPERABILITY BOARD.** (a) ESTABLISHMENT.—*There is established within the Commission (FCC) an advisory board to be known as the “Technical Advisory Board for First Responder Interoperability”.*

**HR 3630 SEC. 6204. ESTABLISHMENT OF THE FIRST RESPONDER NETWORK AUTHORITY.** (a) ESTABLISHMENT.—*There is established as an independent authority within the NTIA the “First Responder Network Authority” or “FirstNet”.* (b) BOARD.— (1) IN GENERAL.—*The First Responder Network Authority shall be headed by a Board, which shall consist of— (A) the Secretary of Homeland Security; (B) the Attorney General of the United States; (C) the Director of the Office of Management and Budget; and (D) 12 individuals appointed by the Secretary of Commerce in accordance with paragraph (2).*

As you can tell no place in the law does it clearly state who the actionable licensee is. In one context it could be “The First Responder Network Authority”; the “Technical Advisory Board for First Responder Interoperability”; or the FCC. The actual “FirstNet” organization, made up of its CEO, President, etc., was never allocated the spectrum lease from the FCC, only the 15-Member Board, therefore any lease arrangements -- if sub-lease arrangements are allowed by the law (Telecom Act 1936). I think a little bit of clarification from the FCC should reexamine the law and apply it as necessary. The difficulty will be the negotiations between “FirstNet” and State. FirstNet would formulate a biased perception towards their own solution over any State solution, thus be in the position to deny any solution other than their own. It is recommended that

a third party, not part of the First Responder Network Authority or FirstNet, be commissioned to review all leases, plans and grant programs that pertain to the State's Opt-Out solution submitted for approval.

### Response 3

- Section II, Sub D – “FirstNet has interpreted some of the statutory provisions described above.... NTIA will utilize FirstNet's relevant interpretations of provisions of the Act in carrying out its responsibilities on these matters.
- Section III, Sub B – “The state must request Lease Authority from NTIA to obtain from FirstNet the right to operate its RAN on the Band 14 spectrum licensed to FirstNet.”
- Section III, Sub C – “State has fully executed a spectrum capacity lease agreement with FirstNet.”

As was mentioned above in the previous response, such action puts any State solution for Opt-Out at a disadvantage in that the NTIA is not taking the agnostic approach for approving any designs, plans, or grant programs for the Opt-Out State, thus could be interpreted to be in conflict with the law and open to judicial arguments in the District Court.

#### ***(h) Judicial review***

***(1) In general*** - The United States District Court for the District of Columbia shall have exclusive jurisdiction to review a decision of the Commission made under subsection (e)(3)(C)(iv).

#### ***(2) Standard of review***

*The court shall affirm the decision of the Commission unless—*

*(A) the decision was procured by corruption, fraud, or undue means;*

*(B) there was actual partiality or corruption in the Commission; or (C) the Commission was guilty of misconduct in refusing to hear evidence pertinent and material to the decision or of any other misbehavior by which the rights of any party have been prejudiced.*

For the benefit of time and cost associated with legal interpretations I would suggest a third party review process of all State Opt-Out solutions.

## Response 4

- Section IV, Sub A, Paragraph 2 – “Therefore, a state will need to be compliant with the RAN-specific network policies established by FirstNet as required by the Act in order to meet the demonstrations required in **47 U.S.C. 1442(e)(3)(D)**.”

In reviewing this statement, you will notice that there are no “RAN-specific network policies established by “FirstNet””. Therefore, this statement is moot. It is recommended that all technical “RAN-specific policies” be administered by the assigned Technical Advisory Board listed in the Act.

***HR 3630 SEC. 6203. PUBLIC SAFETY INTEROPERABILITY BOARD.** (a) ESTABLISHMENT.– There is established within the Commission (FCC) an advisory board to be known as the “Technical Advisory Board for First Responder Interoperability”.*

## Conclusion

Overall the First Responder Network Authority, and its acting agent the “FirstNet” organization, must construct templates for governance, deployment, and technical adherence so that States can have requirements laid out prior to their design considerations in any State Opt-Out solution. This will help the State, and FirstNet, in forming a baseline for requirements needed when advertising their own Design, Build, Operate and Maintain (DBOM) Request for Proposals. The State gets the specs it needs to put in its RFP; FirstNet gets to have some form of standardization across all solutions with the ability to establish a framework of requirements that all States can use, or modify, to meet their own specific solutions. Most of the differences within each State Opt-Out solution will be driven by its ownership model and revenue distribution with its “partner”. It can be assumed that the State will be satisfied if the technical requirements that FirstNet would suggest to them. Doing so will enable the State to cut-n-paste them into their own individual RFPs.

It is further recommended that FirstNet come up with a template for Governance and baseline services for revenue operations, e.g. framework for the organization of a commercial entity and the preliminary service offerings. This is not a FirstNet vs. the State effort. The State wants FirstNet to setup its basic technical and interoperable requirements so that the burden does not fall upon the State. If FirstNet does not establish a framework for such actions then the risk of divergent solutions will be high, thus risking the success of the overall and holistic goal of all parties.

Being that the established law does not clearly define “FirstNet the organization”, trying to acquire any type of lease arrangement for use of the spectrum will be a tough battle to fight. To avoid such entanglements, it is recommended that FirstNet become part of the State minority ownership team. Given that all the State Opt-Out solutions will most likely fall into a State driven “Public Private Partnership” (P3), it is recommended that FirstNet outline its role in a State’s Opt-Out Public Private Partnership by taking a minority stake in each of the State’s P3 solutions, thus insuring itself revenue for the long-term support of the overall nationwide solution. As outlined in the law, any revenue that FirstNet generates from such partnerships will be fully compliant with reinvestment necessities to fulfill self-sustainment and self-funding needs. With a FirstNet ownership stake in each State P3, FirstNet will fulfill its obligations to the law, avoid legal hurdles, and foster better relationships between the States and FirstNet. The only objections to this solution would create an unnecessary losing position forced upon Public Safety, the American Economy, and its taxpayers, thus defeating the sole purpose of building the Public Safety Broadband Network.

Signed:

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