



August 10, 2016

U.S. Department of Commerce  
National Telecommunications and Information Administration  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

**RE: NOTICE AND REQUEST FOR COMMENTS**

*In the Matter of "State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network," Docket: 160706588-6588-01*

The State of California offers the following select responses to the National Telecommunications and Information Administration (NTIA) Notice requesting comment on its preliminary guidance for a State Alternative Plan Program (SAPP). The guidance explains how an opt-out state may apply to NTIA for authority to obtain a spectrum capacity lease from First Responder Network Authority (FirstNet) as well as receive a grant to construct its own Radio Access Network (RAN) as part of the Nationwide Public Safety Broadband Network (NPSBN).

**Summary**

Upon receiving its State Plan from FirstNet, a state may opt into FirstNet building its RAN by

- Providing notice in writing within the 90-day decision period
- Providing no notice within the 90-day period; i.e., "do nothing"

In contrast, to opt out of FirstNet's plan and construct its own RAN, a state must successfully complete three steps:

1. Submit to the Federal Communications Commission (FCC) an alternative plan to construct, maintain, operate, and improve its own RAN while meeting FCC's interoperability criteria.
2. Upon FCC approval, the state must next show NTIA it meets five additional criteria by demonstrating it:
  1. Possesses sufficient technical and funding capabilities
  2. Maintains interoperability with the NPSBN
  3. Will complete the project in a comparable timeframe
  4. Offers a cost-effective plan
  5. Has comparable security, coverage, and quality of service
3. Once receiving NTIA's approval (i.e., "Lease Authority"), the state must finally negotiate a spectrum capacity lease with FirstNet.

Major themes in the Notice include:

- NTIA takes an expansive view of how an opt-out state network may affect the overall NPSBN, and plans to take into account cross-border impacts, interconnection difficulties, and loss of economies of scale when evaluating an application. Network aspects under review are extensive, including not only the RAN but also the deployables, devices, applications, and services proposed by the opt-out state.
- NTIA recognizes the need for speed in deploying the NPSBN, and so promises to evaluate applications “as expeditiously as possible” using a rolling review process.
- As with the nationwide network, “significant rural milestones” during deployment phases are also required in the state’s alternative plan.
- Environmental compliance is taken seriously by NTIA and so the Federal Funding Opportunity (FFO) will require state network construction complies with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

### **Analysis**

Over time, federal interpretations and instructions regarding the Act appear to make it increasingly difficult for states to justify opting out of having FirstNet construct and operate a state’s RAN.<sup>1</sup> This notice is no exception. For example:

1. Since no mandatory funding levels were established by the Act, NTIA considers the Lease Authority and RAN Construction Grants discretionary grants, meaning it is authorized to reject applications as well as determine award amounts.
2. In determining a state’s RAN Construction Grant funding, NTIA may reduce the award based on cost increases due to FirstNet extra efforts required to mitigate interconnecting the RAN to the NPSBN, potential interference with cross-border operations of other states, and loss of cost

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<sup>1</sup> “...very few states are in a position to consider taking on the unknowable and likely significant financial liabilities associated with building, operating, maintaining and upgrading a full radio access network (RAN) in their states if they opt out.” - Jeffrey McLeod, director of National Governors Association (NGA) Homeland Security and Public Safety Division Center for Best Practices. <http://www.radioresourcemag.com/News/NewsDetails/NewsID/14402>

efficiencies and revenues. For example, a state proposing a “greenfield” build is unlikely to be seen as cost effective by NTIA.

3. Only costs related to construction are allowable for the RAN Construction Grant. Specifically, it can only be used for equipment, construction, installation, contractual and other construction-associated costs. All ongoing maintenance and operations costs as well as unanticipated costs beyond the RAN Construction Grant award are the responsibility of the state, i.e., all risk is borne by the state.
4. NTIA will review an alternative plan’s ability to maintain ongoing interoperability for the duration, a tougher standard than simply demonstrating the capability of interoperability with the NPSBN. Further, it takes the broad view, including assessing the ongoing interoperability of deployables, related applications, staffing and resources, technical attributes, governance models and Standard Operating Procedures (SOPs), training and exercises, evidence of funding improvements over the duration, and usage.
5. A state cannot apply for a RAN Construction Grant without also applying for a spectrum lease, effectively discounting non-Band 14 solutions for grant funds.
6. NTIA may require a surety bond so that the RAN can still be completed despite a default by the state’s partner. This represents cost to a state regardless of the party putting up the bond as the contractor will include the cost of the bond in the proposal to the state. The typical cost for large dollar value surety bonds ranges from 0.5 to 1% of the bond value based on perceived risk, further increasing the cost of opting out when compared to FirstNet constructing the RAN.
7. Most significant, NTIA will evaluate the cost-effectiveness of the state’s alternative plan not as a standalone proposal, but in the context of the nationwide build-out, with consideration of proposed federal and state partner share of the RAN cost, value and revenue return of the spectrum, and economies of scale with cross-state border RAN deployment. Under these criteria, it is hard to imagine that any state proposal would be considered cost effective given an opt-out decision would inherently affect the overall NPSBN deployment plan.

Other specifics called out in the Notice include:

- Governors must notify all three federal entities when opting out – FirstNet, NTIA, and the FCC.
- NTIA is proposing to evaluate a single application from an opt-out state for eligibility for both Lease Authority and optional RAN Construction Grant. It anticipates the deadline for filing the application will be **60 days** after FCC approval.
- A state proposing a more costly plan than FirstNet's will not receive additional funds.
- States must disclose the value of any partnering agreements entered into to support construction and/or operations of the state RAN and demonstrate that revenues from this agreement will only be used for construction, maintenance, operations, and improvements of the RAN.

#### **Comments to NTIA**

The State of California submits the following comments in response to Docket: 160706588–6588–01 filed July 18, 2016, NTIA's State Alternative Plan Program Notice of preliminary guidance.

1. Section II.C.1 states that NTIA will not award a RAN Construction Grant until a state has fully executed a spectrum capacity lease agreement with FirstNet. We recommend that NTIA provide the value of the construction award to the state at the same time it completes its evaluation so that a state relying on grant funds can decide whether the amount is sufficient to pursue negotiating for a spectrum capacity lease.
2. Once NTIA approves Lease Authority for a state, the Notice mentions several times that the state must next "negotiate and enter into a spectrum capacity lease with FirstNet." Just as NTIA and FCC will be issuing detailed instructions for their portions of the process, we highly recommend FirstNet issue a companion document containing instructions for negotiating the spectrum capacity lease. This should be issued prior to delivering state plans and contain standard lease terms and conditions which the state can review for acceptability in advance of negotiations.

William D. Anderson

August 10, 2016

Page 5

3. Given the importance of speed in deployment, the criteria for determining a state's deployment priority should include how quickly it provides opt-in notice to FirstNet. States providing notice sooner should be prioritized for earlier deployment.
4. The Notice is silent regarding the process for a regional opt-out approach. A regional opt-out mitigates many of NTIA's concerns, such as loss of economies of scale and cross-border operations. Just as nationwide network activities, from education and outreach onward, leverage a regional approach, the FFO should also acknowledge a regional approach as being substantially different than state-by-state opt-out and provide appropriate and separate instructions for this case.
5. The cost-effectiveness review of the state alternative plan described Section IV is very comprehensive, covering "every aspect of that plan as itemized in the Act" and so is extremely important. As such, the "specific, quantifiable, and finalized criteria" for the review should be made available for comment in advance by means of a separate Notice, rather than coincident with the forthcoming FFO and so precluding any feedback.

Sincerely,



William D. Anderson  
Acting Assistant Director