

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

In the Matter of the)

State Alternative Plan Program)

) Docket No. 160706588-6588-01
)

COMMENTS OF THE COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania (“Pennsylvania”) welcomes the opportunity to participate in this proceeding that will impact the future deployment of the National Public Safety Broadband Network (“NPSBN”) when that deployment involves a State opting-out and takes on the responsibilities for its own RAN deployment rather than having its radio access network (“RAN”) built by the First Responder Network Authority (“FirstNet”). Pennsylvania submits these comments and welcomes the opportunity to respond to the National Telecommunications and Information Administration (“NTIA”), U.S. Department of Commerce’s Notice and Request for Comments (“Notice”).¹

The Notice seeks comment on NTIA’s proposed rules for how an opt-out state “shall apply to the NTIA to lease spectrum capacity from FirstNet” and how a state “may apply to the NTIA for a grant to construct the radio access network” as permitted under section 1442 the Middle Class Tax Relief and Job Creation Act of 2012 (“Act”).²

¹ See Department of Commerce, NTIA, Docket No. 160706588-99-01, *State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network*, Fed. Reg. Vol. 81, No. 138, 46907 (July 19, 2016) (*Notice*); 47 U.S.C. §1442

² Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156 (2012) (*Act*).

I. A State May Assume the Cost and Responsibility to Construct, Operate Maintain, and Improve the RAN in its State, Provided that it Successfully Undertakes Commission, NTIA and FirstNet Approval

Under section 1442 of the Act, “{T}he State shall submit an alternative plan for the construction, maintenance, operation, and improvements of the radio access network within the State to the Commission.”³ The plan must demonstrate that the State will meet the minimum technical interoperability requirements developed by the Public Safety Interoperability Board under section 1423⁴ and be interoperable with the FirstNet NPSBN. In the Act, the Federal Communications Commission (“Commission”) is granted the authority to approve or disapprove the alternative plan.⁵

Pennsylvania agrees that the Act requires the approval by the Commission of an opt-out state’s alternative plan. We, however, believe that the Commission has an obligation to establish and make public its approval criteria in a timely fashion, so that states may make an informed opt-out decision. We believe the Commission should provide its approval criteria at least three months before the FirstNet draft state plans are simultaneously distributed across the country. (*See Exhibit A for suggested timeline.*) This will allow our Governor to make an informed decision, so that we can decide how to provide the best network possible for our first responders and the citizens they protect and serve.

Likewise, the criteria for decisions by the NTIA about RAN Construction Grants must be delivered three months before the FirstNet draft state plans. (*See Exhibit A for suggested timeline.*) This will provide the states with time to develop an acceptable funding plan should they seek to build and operate their own RAN. In addition, to make an informed decision about

³ Notice at 46908; 47 U.S.C. §1442(e).

⁴ 47 U.S.C. §1423.

⁵ 47 U.S.C. §1442(e).

opting in or out, a state needs to have all the costs and operational considerations answered that only the NTIA and FirstNet can provide.

If a state's alternative plan is approved by the Commission, the state "may apply to the NTIA for a grant to construct" its own RAN.⁶ We presume that "may apply" refers to financial grant requests and not to permission to build its own RAN.

The state must demonstrate:

- (1) That it has the technical capabilities to operate and the funding to support its RAN;
- (2) that it has the ability to maintain ongoing interoperability with the NPSBN;
- (3) that it has the ability to complete the project within specified comparable timelines specific to the state;
- (4) the cost-effectiveness of the state alternative plan submitted to the FCC; and,
- (5) comparable security, coverage, and quality of service to that of the NPSBN.⁷

The NTIA determines the demonstrations needed by a state in considering whether to grant approval to that state to enter into a spectrum capacity lease with FirstNet. This decision by the NTIA can result in either approval or disapproval under the statute. The fact that it can be disapproved means: (1) A state cannot move forward with its alternative plan, as it needs spectrum to operate the RAN; and (2) The NTIA has veto power over the prior decision by the FCC, which approved the state alternative plan. This begs the question: Does the NTIA consider the FCC approval of a state alternative plan to not be a final approval, but only a partial or qualified approval?

Moreover, we have questions that are not addressed in the Notice that only the NTIA can answer:

1. Under what conditions would the NTIA deny spectrum after the Commission has approved the plan?
2. What constitutes a technical and financial "demonstration"?
3. How will a state determine the funding needed to support their RAN deployment, since it could, in part, depend on the NTIA's grant funding plans?

⁶ 47 U.S.C. 1442(C)(iii)(I).

⁷ Notice at 46908; 47 U.S.C. §1442(e)(3)(C-D).

4. Who determines a “comparable timeline” to complete a state's project?
5. What will the cost effectiveness of a state alternative plan be compared to?
6. How would the cost effectiveness, comparable security, coverage, and quality of service of the NPSBN be determined before the NPSBN is operational?
7. Will NTIA funding available to an opt-out state be comparable to that which would be available to FirstNet in an opt-in scenario?

In addition, there are a number of other issues that NTIA has not addressed in the Notice such as: Once a state successfully provides the required demonstrations to the NTIA, the state will negotiate and enter into a spectrum capacity lease with FirstNet to operate its state RAN. However, it is unclear to us what the parameters, conditions, requirements, and expectations of a spectrum capacity lease are and when and where they will be defined. Also, if a state opts out, the state becomes an additional provider along with FirstNet in the NPSBN, which FirstNet could view as a competitor. Thus, we are concerned that FirstNet would never agree to a spectrum capacity lease with a state.

We are also struck by the lack of time a state has under the Act to put out an RFP, secure a corporate partner to build the network, and submit a plan to the Commission: a state gets 180 days, yet FirstNet needed a year for this same process. (*See Exhibit A for suggested timeline.*) For these reasons, the Commission and the NTIA must provide the aforementioned criteria three months before the draft state plans are delivered by FirstNet.

II. A State’s Options on RAN Construction, Operation, Maintenance, and Improvements

Under the Act, a Governor is required to make an opt-in or opt-out decision based on a state plan presented by FirstNet, rather than on an actual RFP that would reflect the true costs of a state deployment. We believe that the Act did not contemplate the difficulties a state may have in making a complete and informed decision on the cost and coverage of building its own RAN via the statute.

According to the Act, once the Governor decides to opt out, the state then must complete a procurement process for the state RAN within 180 days. We understand Congress's concern that a completed procurement process will provide FirstNet/NTIA with confidence that the state plan can be executed. We recommend, however, that FirstNet/NTIA provide interim approval of qualified state opt-out RAN plans if the state has not completed its procurement within the 180 day plan development period, as long as the overall plan meets the delivery requirements outlined in FirstNet's state opt-in plan.

Should the FCC disapprove an alternative state plan, FirstNet will construct, maintain, operate, and improve the NPSBN within the state. In that event, what is the timeline for FirstNet construction to be completed within that state?

III. NTIA Analysis of State Demonstrations Regarding Ongoing RAN Responsibilities

We understand that the NTIA must evaluate a state's demonstrations of specific criteria set forth in the Act to grant funds for helping a state build its own RAN. We hope that the grant funding and approval process by the NTIA will be transparent. Transparency by the NTIA is crucial and will ensure a fair and impartial review of funding the state RAN construction grants. It will also ensure that the NTIA uses a single set of standards, requirements, parameters, and conditions when making decisions for every state for RAN Construction Grants.

IV. Overview of Applications for Grant of Authority To Enter Into a Spectrum Capacity Lease With FirstNet and RAN Construction Funding

The NTIA's intention to evaluate a state's request for Lease Authority, or its request for Lease Authority plus an optional RAN Construction Grant, as a single grant application requires them to release the forthcoming FFO Notice providing specific details on the application and grant program requirements simultaneously with the draft state plans. (See Exhibit A for

suggested timeline.) This will allow states time to develop a comprehensive final state plan through their negotiations with FirstNet. The criteria also must include, but not be limited to, the anticipated cost of the spectrum lease (if any) and FirstNet core costs within a State.

We agree that the Act does not spell out deadlines for the submission of grant applications to the NTIA. We are concerned that a forthcoming FFO notice will require states to submit their grant applications 60 days after the FCC has approved a state's alternative plan, as no state will be able to submit a request for NTIA funding until the completion of their RFP process. In addition, "because the Act did not establish mandatory funding levels for each eligible grantee, Lease Authority and RAN Construction Grants are considered discretionary grants."⁸ We would encourage the NTIA to use the State and Local Implementation Grant Program ("SLIGP") calculations as a basis for the RAN Construction Grants and use of the same grant funding percentages per state.

V. Grant Procedures Common to Lease Authority and a RAN Construction Grant

We appreciate that the NTIA will review and make determinations on state applications for Lease Authority or for Construction Grants on a rolling basis, but we contend that the NTIA should review applications and award grants within 60 days to further the intent of the Act to speed NPSBN deployment. Pennsylvania understands that the NTIA may review a single application for both a Lease Authority Grant and a RAN Construction Grant under the required criteria under the Act.⁹ The NTIA would then award the Lease Authority, but not the RAN Construction Grant funding until FirstNet signs a lease agreement with the state. We, however, are skeptical as to why FirstNet would agree to a spectrum capacity lease agreement without a

⁸ Notice at 46910.

⁹ 47 U.S.C. 1442(e)(3)(D).

funding grant to build the state RAN or an alternative funding plan with an opt-out partner identified in the state's alternative plan.

The NTIA should also develop a transparent process and seek state input in the development of the funding decision process for state opt-out RAN Construction Grants. Opt-out states should also be given a complete understanding of what constitutes an increased cost to FirstNet and how that could reduce a final grant award. It would seem logical, however, that a state opting out of the network should reduce FirstNet's construction and operational costs. Opt-out states also need to understand how the efficiency of FirstNet and how projected income from partnership agreements can impact a final RAN Construction Grant.

Based on the criteria for allowable costs for a RAN Construction Grant, FirstNet plans to propose a specific cost to build out in each state. This includes no additional increases beyond what is proposed in the FirstNet state plan, even though a state's alternative plan cannot anticipate the cost of the network based on a procurement process made by the state.

VI. The Technical Capabilities To Operate, and the Funding To Support, the State RAN

Under the Act, in order to receive a RAN Construction Grant "a state must demonstrate: (1) That it can operate the state RAN on a technical level; and (2) that it has the financial resources to do so."¹⁰ We agree that "all components of the NPSBN, including the core network and the RAN, must be operated under common technical network policies."¹¹ As such, we contend that the approval by the Commission of the interoperability capabilities of its alternative plan satisfies the need for the common technical network policies. There is no need for the NTIA to require a duplicative and unneeded demonstration for grant funding. If FirstNet's

¹⁰ *Id.* at 46911.

¹¹ *Id.*

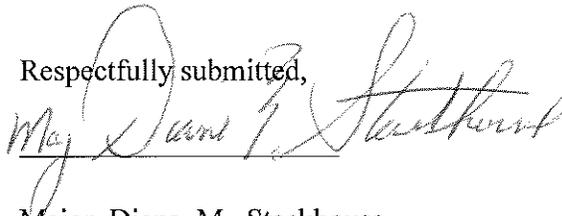
common technical network policies are deemed not to be duplicative, they must be transparent and delivered three months prior to the draft state plans.

The NTIA also seeks a required demonstration that the state's "RAN and other network attributes will be interoperable with the NPSBN on an "ongoing" basis."¹² Again we contend that this is a duplicative requirement under the Act. Even the NTIA admits that "consistent with the interoperability demonstration a state must make to the FCC in its state alternative plan."¹³ We find this requirement to be burdensome and unwarranted. Pennsylvania recommends that the NTIA streamline the process, instead of making it administratively burdensome and complicated for states.

VII. Conclusion

For the reasons set forth herein, we urge NTIA to interpret the Act consistent with our comments when considering state demonstrations of alternative grant funding plans and FirstNet spectrum leasing rights under the Act.

Respectfully submitted,



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¹² *Id.*

¹³ *Id.*

Exhibit A State Alternative Plan Timeline

