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May 2, 2013

Mr. Chris McIntosh
Statewide Interoperability Coordinator
Office of Veterans Affairs and Homeland Security
Office of the Governor
Commonwealth of Virginia
1111 E. Broad Street
Richmond, VA 23219

Dear Mr. McIntosh:

Thank you for appearing before the Subcommittee on Communications and Technology on Thursday, March 14, 2013, to testify at the hearing entitled "Oversight of FirstNet and Emergency Communications."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Thursday, May 16, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Charlotte.Savercool@mail.house.gov and mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman

Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Additional Questions for the Record

The Honorable Greg Walden

1. If FirstNet requires states to surrender state assets in order to participate in FirstNet, would Virginia be willing to do so?

2. States that opt-out will be subjected to spectrum lease fees and network user fees set by FirstNet. Given that FirstNet has unilateral authority to determine those fees, is there any set of circumstances that would lead you to recommend to your governor that you opt-out?

The Honorable Mike Rogers

1. Mr. McIntosh, in response to questions from Mr. Walden and Mr. Welch on the challenges facing FirstNet, Mr. Ginn stated that the federal acquisition rule should be changed for FirstNet because it can take 18 months to get a contract in place. You stated in your testimony that states must be allowed to follow their codified procurement procedures that are designed to maximize competition. Apart from respecting existing state laws as opposed to changing federal laws, in your view, could most FirstNet-related procurements be done more efficiently and expeditiously at the state level? Don't states have pre-negotiated and cooperative purchasing vehicles that could be leveraged to meet FirstNet's implementation objectives?

The Honorable Greg Walden

1. The willingness of the Commonwealth to surrender state assets in order to participate would depend entirely on the nature of the partnership formed between Virginia and FirstNet, and the definition of the term “surrender”. This issue will be one of many specifics that will need to be negotiated and agreed upon between the Commonwealth and FirstNet prior to any decision regarding Virginia’s participation in this project.
2. Exercising prudence and due process, Virginia will continuously evaluate any and all options regarding the nature of its participation with FirstNet, evaluating the FirstNet program based on two very simple criteria; (a) Does this improve the capabilities of our public safety enterprise, and if so by how much? And (b) is the program fiscally responsible and financially worthwhile? In the context of that evaluation, Virginia will examine the costs/benefits of opting out, as well as retaining the option of not participating at all and pursuing the commercial solutions that becoming increasingly available. The proposed business model, subscription fees, spectrum use fees, network use fees, and device costs will all be important data points to be considered. As stated in the submitted testimony, public safety budgets are already heavily encumbered by existing costs, we must ensure that we do not stretch those budgets beyond their capacity, affecting other core services.

The Honorable Mike Rogers

1. The states do already have pre-negotiated and cooperative purchasing agreements that could be leveraged to meet FirstNet’s implementation objectives. The States must always have the right to negotiate and pursue their own contracts, as often they can, whether it’s through leveraging existing contracts, circumstances unique to the state, or simply the acumen of the negotiator, achieve significant cost savings over federal contracts. Additionally, many times the states must, in accordance with their state code, provide for open competition and implement more stringent terms and conditions than federal law requires, making existing federal contracts unusable. For example, in Virginia, contracts must state that Virginia law takes precedence over any other jurisdiction. It will be challenging for any federal entity to negotiate a contract that satisfies all of the varied conditions required by individual states, making it far more feasible for FirstNet to simply pass through technical and programmatic standards, and allow the states and their partners to implement those standards contractually.