



The Committee on Energy and Commerce

Memorandum

November 19, 2013

To: Members and Staff, Subcommittee on Communications and Technology

From: Majority Committee Staff

Re: Hearing on “Oversight of FirstNet and the Advancement of Public Safety Wireless Communications.”

The Subcommittee on Communications and Technology will hold a hearing on Thursday, November 21, 2013, at 10:30 a.m. in 2123 Rayburn House Office Building entitled “Oversight of FirstNet and the Advancement of Public Safety Wireless Communications.” The hearing will focus on oversight of the First Responder Network Authority (FirstNet) and the advancement of wireless public safety communications. One panel of witnesses will testify:

1. Sam Ginn, Chairman, First Responder Network Authority
2. David Turetsky, Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission
3. Stu Davis, State Chief Information Officer, Assistant Director, Ohio Department of Administrative Services
4. Dennis M. Martinez, Chief Technology Officer, RF Communications Division, Harris Corporation
5. Darryl Ackley, Cabinet Secretary, New Mexico Department of Information Technology
6. Dereck Orr, Program Manager, Public Safety Communications Research, Office of Law Enforcement Standards, National Institute of Standards and Technology

This hearing will examine progress in the implementation of provisions in the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96), which established FirstNet, an independent entity within the National Telecommunications and Information Administration (NTIA) intended to help build a nationwide, interoperable broadband public safety network and which provides funding and direction to the National Institute of Standards and Technology (NIST) to research and assist with the development of standards, technologies, and applications to advance public safety communications.

I. Background

The Middle Class Tax Relief and Job Creation Act of 2012, created FirstNet, an “independent authority” within the NTIA to oversee construction of a national public safety broadband network. The law makes up to \$7 billion from spectrum auction proceeds available for FirstNet to use toward the construction of the network. FirstNet is allowed to borrow up to \$2 billion of those proceeds up front, but does not have access to the additional funding unless and until raised by future auctions. FirstNet will build and operate the core and radio access networks that comprise the national system using 20 MHz of 700 MHz broadband spectrum under a license with a 10 year term subject to renewal.

The law requires FirstNet to consult with regional, State, tribal and local jurisdictions in the development of the nationwide network. The law created the State and Local Implementation Program to make grants to States to assist regional, State, tribal and local jurisdictions to identify, plan, and

implement the most efficient and effective way for the jurisdiction to utilize and integrate the nationwide network to satisfy the needs of that jurisdiction. NTIA was directed to establish requirements for this program and did so on August 21, 2012.

States are permitted to “opt out” of the FirstNet network and build their own radio access networks (RANs) – the towers and base stations that provide wireless connectivity. The law provides that once FirstNet completes the RFP process for the construction, operation, maintenance, and improvement of the nationwide network, FirstNet is required to provide the governor of each State a plan for the buildout of the State’s portion of the nationwide network. The State then has 90 days to determine whether it will participate in the deployment of the nationwide network in the State or conduct its own deployment of a RAN in the State. Should the State decide to opt-out, within 180 days, the State must submit its plan to the FCC for approval, demonstrating that the plan will be in compliance with the minimal technical requirements for interoperability developed under the law and that it will be interoperable with FirstNet’s core network.

Finally, the law recognizes that initially, the broadband network deployed by FirstNet will only provide broadband and data services. Public safety will continue to rely on traditional narrowband land mobile radio systems for voice communications. The law requires NIST, in consultation with the FCC, the Secretary of the Department of Homeland Security, and the National Institute of Justice of the Department of Justice, as appropriate, to conduct research and assist with the development of standards, technologies, and applications to advance wireless public safety communications. The law provides \$100 million in funding from net spectrum auction proceeds to carry out these directives.

Prior to passage of the law, the 2008 broadband stimulus program attempted to start the process of creating interoperable public safety broadband networks. Under the Broadband Technology Opportunities Program (BTOP), NTIA made available \$382.5 million for 7 of these projects. The accepted projects are in the Los Angeles area; the San Francisco Bay Area; Adams County, Colorado; Charlotte, North Carolina; Mississippi; northern New Jersey; and Albuquerque-Santa Fe, New Mexico. NTIA suspended those grants in May 2012, alleging it had the authority to do so because the networks might not be compatible with the ultimate network designed by FirstNet. FirstNet adopted a process at its February 2013 board meeting under which these suspensions could be lifted if the projects comply with certain conditions and demonstrate how they will coordinate their networks with FirstNet.

II. Discussion

A. FirstNet’s Progress

The creation of FirstNet was a response to the lack of interoperable communications among first responders as tragically demonstrated on September 11th. Since its launch on August 20, 2012, FirstNet has taken the first significant steps to build the organization: it has hired 20 employees to manage day-to-day operations, and in August, the Board adopted a \$194 million budget and released its business plan for fiscal year 2014.

FirstNet also has made progress in efforts to engage in outreach and consultation with stakeholders, and, it appears, to develop a network plan. The progress of its efforts in this area has accelerated since the Subcommittee’s first oversight hearing in March 2013. Among other steps, FirstNet has completed 55 State and territorial regional workshops as part of the consultation process prescribed by the law; FirstNet recently announced an outreach model that aligns with 10 Federal

Emergency Management Agency regions; and, in July, FirstNet released 10 requests for information seeking input from vendors and stakeholders regarding deployment options for the RAN and core network as part of its efforts to determine the most appropriate design for the nationwide network.

FirstNet also entered into spectrum lease agreements with the Los Angeles Regional Interoperable Communications System Authority (LA-RICS) and the State of New Mexico, 2 of the 7 jurisdictions that had received broadband stimulus funding for public safety network deployment. As a result of the lease agreement, NTIA has lifted the suspension on LA-RICS funding, permitting the project to proceed. According to FirstNet, the deployment of these networks will provide information and experience that will inform the development of the nationwide network. On October 25, 2013, FirstNet extended spectrum lease negotiations with Adams County Communications Center, Inc. in Adams County, Colo.; the Bay Area Regional Interoperable Communications System Authority/Motorola Solutions; the State of Mississippi; and, the New Jersey Department of the Treasury until November 15, 2013. The outcome of those negotiations has not been made public. FirstNet and the City of Charlotte, N.C. were unable to reach agreement. FirstNet remains in discussions with the State of Texas for a spectrum lease agreement necessary to permit continued operations of a public safety broadband network initially authorized by the FCC.

B. Controversy Remains

Notwithstanding these developments, considerable uncertainty exists among stakeholders with respect to the cost, coverage, design, and the timing of the network deployment. FirstNet has acknowledged that it “fell short on answers to timing and business model questions” in its outreach. While FirstNet continues to work to improve its communication, the lack of such fundamental information, if unresolved, could undermine the ability of a State to make an informed decision to opt-out of the FirstNet RAN plan, or worse, compromise public safety’s confidence in the ability of FirstNet to deliver and sustain a truly nationwide public safety broadband network.

Moreover, confidence in FirstNet also has been shaken by several controversies surrounding its implementation of the law. In its earliest stage, stakeholders raised concerns about FirstNet’s administration and the lack of transparency into its decision-making process. These concerns came to a head at the April 23, 2013, Board meeting when Board member Sheriff Paul Fitzgerald of Story County, Iowa, presented a resolution raising concerns regarding the openness and transparency of the Board’s decision-making, conflicts of interest, and compliance with Federal hiring and procurement rules. Among other things, Sheriff Fitzgerald was concerned that the plan for the network had been developed without review by the Board; that it did not benefit from consultation with state, public safety, and the Public Safety Advisory Committee established under the law; that it reflected such an advanced state of development that meaningful State stakeholder impact on FirstNet’s operations was effectively precluded. On May 8th, the Board convened a special meeting and voted unanimously to establish a Special Review Committee made up of 4 members of the Board and 3 Federal officials representing the permanent Federal board members to examine Sheriff Fitzgerald’s concerns.

The Special Review Committee issued its report on September 20th, finding that: the Board has engaged in open and transparent decision-making; FirstNet did not withhold information from Board members as alleged; and, FirstNet is still developing its network plan with full consultation and outreach. The Committee indicated that it was continuing its review of the additional concerns relating to ethics and procurement issues and would present those findings in a separate report. Soon thereafter, the Chairman of FirstNet announced a reversal in course, and, on October 25th, announced

publicly that he was requesting the Commerce Department's Office of the Inspector General take over the review. In explaining this shift, Mr. Ginn noted that "[t]he outstanding procurement issues are complicated."

If you need more information, please call David Redl or Gene Fullano at (202) 225-2927.