



U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE

June 12, 2015

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing on “Progress Toward a Nationwide Public Safety Broadband Network.”

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## I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing on Tuesday, June 16, 2015, at 2:00 p.m. in 2322 Rayburn House Office Building entitled “Progress Toward a Nationwide Public Safety Broadband Network.” The hearing will focus on oversight of the First Responder Network Authority (FirstNet). One panel of witnesses will testify:

1. T.J. Kennedy, Acting Executive Director, First Responder Network Authority;
2. Stu Davis, State Chief Information Officer, Assistant Director, Ohio Department of Administrative Services.<sup>1</sup>

This hearing will examine progress and challenges 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.<sup>2</sup>

## II. BACKGROUND

The passage of the Middle Class Tax Relief and Job Creation Act of 2012 created FirstNet. Established as an “independent authority” within the NTIA, FirstNet is tasked with building and operating a nationwide public safety broadband network (NPSBN) using 20 MHz of spectrum in the 700 MHz band under a license with a 10 year term subject to renewal.<sup>3</sup> FirstNet is intended to address the challenge of interoperable emergency communications between and among the Nation’s State, local, and Federal public safety agencies.

The law established the framework for this endeavor and made available up to \$7 billion from spectrum auction proceeds for FirstNet to use toward the construction of the NPSBN.<sup>4</sup> This funding was recently secured by the Federal Communications Commission’s (FCC) successful auction of the H Block spectrum in February 2014 and AWS-3 spectrum in January 2015, which raised a combined \$46.4 billion in proceeds.<sup>5</sup>

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<sup>1</sup> Additional witnesses are possible.

<sup>2</sup> Pub. L. No. 112-96, §6204(a), §6202(a).

<sup>3</sup> Pub. L. No. 112-96, §6206(b).

<sup>4</sup> Pub. L. No. 112-96, §6413(b)(3).

<sup>5</sup> See <http://www.fiercemobilegovernment.com/story/question-firstnet-funding-now-moot-thanks-successful-fcc-spectrum-auction/2015-02-04>.

FirstNet is governed by a 15-member Board of Directors.<sup>6</sup> The Board consists of three permanent board members, including the Attorney General of the United States, the Secretary of Homeland Security, and the Director of the Office of Management and Budget and 12 non-permanent members, selected by the Secretary of Commerce, from Federal, State, and local government, public safety, and the wireless industry.

FirstNet will build and operate the networks that comprise the nationwide system. The law requires that the network be based on a “on a single, national network architecture that evolves with technical advancements”<sup>7</sup> and must be based on 4G LTE.<sup>8</sup> To accomplish the deployment, FirstNet is required to leverage existing infrastructure by entering into agreements to use commercial or Federal, State, tribal, or local assets “to the maximum extent economically desirable”.<sup>9</sup> To ensure nationwide coverage, the law requires deployment phases with “substantial rural coverage” milestones.<sup>10</sup>

FirstNet will initially provide broadband data services with the option for non-mission critical voice communications. Public safety will continue to rely on traditional narrowband land mobile radio (LMR) systems for mission-critical voice communications. It is envisioned that FirstNet will integrate mission-critical voice communications capabilities as standards for LTE voice communications evolve.<sup>11</sup>

In recognition of the critical role of State, tribal, and local jurisdictions to FirstNet’s success, the law requires FirstNet to consult with them in the development of the nationwide network.<sup>12</sup> The law created the State and Local Implementation Grant Program (SLIGP) to assist those jurisdictions in planning for FirstNet.<sup>13</sup>

States are permitted to “opt out” of the FirstNet network deployment and build their own radio access networks (RANs) – the towers and base stations that provide wireless connectivity.<sup>14</sup> The law provides that once FirstNet completes the RFP process for the construction, operation, maintenance, and improvement of the nationwide network, it is required to provide the governor of each State a buildout plan for the State’s portion of the nationwide network. The State then has 90 days to determine whether it will participate in FirstNet or build its own RAN. Should the State decide to opt-out, the State must submit its plan to the FCC for approval within 180 days, and must demonstrate that the plan will be in compliance with the interoperability requirements developed by the FCC.

Finally, the law requires FirstNet to be self-funding after the \$7 billion made available for the construction of the network is exhausted.<sup>15</sup> To that end, the law authorizes FirstNet to charge user fees

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<sup>6</sup> Pub. L. No. 112-96, §6204(b).

<sup>7</sup> Pub. L. No. 112-96, §6202(b).

<sup>8</sup> Pub. L. No. 112-96, §6203(c)(2).

<sup>9</sup> Pub. L. No. 112-96, §6206(c)(3).

<sup>10</sup> Pub. L. No. 112-96, §6206(b)(3).

<sup>11</sup> The law requires National Institute of Standards and Technology (NIST), in consultation with the Federal Communications Commission, 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. Pub. L. 112-96, §6303. The law provides \$100 million in funding from net spectrum auction proceeds to carry out these directives. Pub. L. No. 112-96, §6413(b)4.

<sup>12</sup> Pub. L. No. 112-96, §6206(c)(2)(B).

<sup>13</sup> NTIA was directed to establish requirements for this program and did so on August 21, 2012. Pub. L. No. 112-96, §6302(a). The law provides \$135 million to fund the grant program intended for this purpose. Pub. L. No. 112-96, §6301.

<sup>14</sup> Pub. L. No. 112-96, §6302(e)(3).

<sup>15</sup> Pub. L. No. 112-96, §6208.

for access to the core network, as well as leasing fees for access to the 700 MHz public safety spectrum. Although FirstNet is prohibited from offering commercial services to the public, it is permitted to offer wholesale access to wireless providers. States that “opt out” and build their own radio access networks are similarly prohibited from offering commercial services to the public. Unlike FirstNet, they are also prohibited from offering wholesale services unless they do so as part of a public-private partnership for the construction, maintenance, and operation of the State’s RAN.

Although FirstNet has not yet deployed network assets, as of August 2014, it had entered into spectrum management lease agreements with four jurisdictions that received Federal funding through the Broadband Technology Opportunities Program<sup>16</sup> and the State of Texas.<sup>17</sup> The four jurisdictions include the State of New Jersey, Adams County, Colorado, the State of New Mexico, and the Los Angeles Regional Interoperable Communications System Authority (LA-RICS). As a result, these jurisdictions were able to move forward with plans to deploy wireless broadband public safety networks that preceded the establishment of FirstNet. FirstNet views these “Early Builder Projects” as testbeds “to gather lessons that will help drive efficiencies and better understanding of key factors important to the design and development of the network.”<sup>18</sup>

### **III. DISCUSSION**

#### **A. Early Controversy**

It has been over three years since FirstNet was established. Officially launched on August 20, 2012, FirstNet’s early history is one of starts and stops, intermittent silence, confused messaging, and failures in outreach and consultation with public safety and other stakeholders. These missteps fueled frustration and a lack of confidence among stakeholders, many of whom harbored concerns regarding FirstNet’s administration and lack of openness and transparency in the Board’s decision-making.

These concerns were aired in public when a FirstNet board member offered 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 at the Board’s April 23, 2013, meeting.<sup>19</sup> In response, the Board established a Special Review Committee to examine the concerns. The Special Review Committee issued a report exonerating the Board with regard to certain allegations finding that the Board had engaged in open and transparent decision-making; FirstNet did not withhold information from Board members as alleged; and, FirstNet was still developing its network plan with full consultation and outreach. The Committee also indicated that it would continue its review of the additional concerns relating to ethics and procurement issues and would present those findings in a

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<sup>16</sup> The Broadband Technology Opportunities Program was part of the stimulus program administered by NTIA under the American Recovery and Reinvestment Act of 2009. Pub. L. No. 111-5 (2009).

<sup>17</sup> Harris County, Texas obtained a grant for its public safety network project from the Federal Emergency Management Agency.

<sup>18</sup> See Testimony of Sue Swenson, Chairwoman, First Responder Network Authority, Before the U.S. Senate Committee on Commerce, Science and Transportation, March 11, 2015 at p. 8, *available at* [http://www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=09a790e0-469a-4bda-a6e3-a110433926f5](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=09a790e0-469a-4bda-a6e3-a110433926f5).

<sup>19</sup> See <http://urgentcomm.com/ntiafirstnet/sheriff-paul-fitzgerald-s-statement-april-23-2013-meeting-firstnet-board>.

separate report.<sup>20</sup> However, that approach was abandoned when the Chairman of FirstNet requested the Commerce Department's Office of the Inspector General (OIG) take over the review.<sup>21</sup>

On December 5, 2014, OIG issued its final report validating many of the concerns raised.<sup>22</sup> The OIG Report concluded that the Commerce Department's confidential and public disclosure monitoring procedures were inadequate; Board members did not file timely public financial disclosure reports;<sup>23</sup> the Board's operational procedures for monitoring potential conflicts of interest needed improvement; and, FirstNet's contracting practices lacked transparent award competition, sufficient oversight of hiring, adequate monitoring, and procedures to prevent payment of erroneous costs.<sup>24</sup>

In the months leading up to the release of the OIG Report, FirstNet saw the departure of Board Chair Sam Ginn at the end of his term in August of 2014 and the resignations of the General Manager, Bill D'Agostino, and Board Member Craig Farrill. These departures, the appointment of Sue Swenson as Chair, and the release of the OIG Report appear to have brought to a close the controversy. However, OIG's oversight of FirstNet continues as it recently initiated an audit of FirstNet's efforts to include Federal government needs and requirements in NPSBN planning.<sup>25</sup>

## B. Progress

Notwithstanding, the controversy that surrounded its administration and operation, FirstNet has taken critical steps toward fulfilling its mandate. For example, in March 2014, the Board adopted a "Roadmap" focusing on milestones needed to develop a definitive business plan and complete State-based plans. In September 2014, FirstNet released a Request for Information that sought comment from stakeholders about approaches to establishing the network.<sup>26</sup> FirstNet also released a Public Notice that sought comment on preliminary interpretations of FirstNet's enabling legislation, including interpretations of various terms in the statute.<sup>27</sup>

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<sup>20</sup> See First Responder Network Authority Special Review Committee, Report on Openness and Transparency, Access to Information and Network Planning, September 20, 2013, available at [http://www.ntia.doc.gov/files/ntia/publications/firstnet\\_src\\_report\\_09202013.pdf](http://www.ntia.doc.gov/files/ntia/publications/firstnet_src_report_09202013.pdf).

<sup>21</sup> See <http://www.fiercewireless.com/tech/story/firstnet-wants-inspector-general-finish-ethics-investigation/2013-10-27>.

<sup>22</sup> Office of Inspector General, U.S. Department of Commerce, *FirstNet Must Strengthen Management of Financial Disclosures and Monitoring of Contracts*, Final Report No. OIG-15-013-A (Dec. 5, 2014) ("OIG Report"), available at <http://www.oig.doc.gov/OIGPublications/OIG-15-013-A.pdf>.

<sup>23</sup> The OIG Report notes that one Board member did not initially file a required public disclosure and failed to disclose an interest in a conflicting company when finally doing so. OIG Report at p. 7. Another submitted the required disclosure form five months late. *Id.* Two submitted inaccurate time-and-attendance records, in one case to avoid filing the required disclosure. *Id.* Notwithstanding these compliance failures, 4 Board members continued to engage in decision-making. *Id.* at p. 8.

<sup>24</sup> The OIG Report also concluded 2 contracts were not properly awarded. OIG Report at p. 11.

<sup>25</sup> See Letter from Carol N. Rice, Assistant Inspector General for Economic and Statistical program Assessment, Office of Inspector General, United States Department of Commerce to Uzoma Onyeije, Board Secretary, First Responder Network Authority (Dated June 5, 2015), available at <http://www.oig.doc.gov/Pages/Announcement-of-Audit-of-First-Responder-Network-Authority's-Efforts-to-Address-Federal-Agency-Challenges.aspx>.

<sup>26</sup> FirstNet, "Request for Information for Comprehensive Network Solution(s)," (Sept. 17, 2014), available at <https://www.fbo.gov/utills/view?id=1ef697f901b1c4b347bb17ae77c5a485>.

<sup>27</sup> FirstNet, "First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012," Public Notice, (Sept. 24, 2014), available at [http://www.firstnet.gov/sites/default/files/fr\\_firstnet\\_rfc\\_09242014.pdf](http://www.firstnet.gov/sites/default/files/fr_firstnet_rfc_09242014.pdf).

In March 2015, FirstNet released a Second Public Notice focusing on the State “opt out” option.<sup>28</sup> The Second Public Notice sought comment on interpretations of FirstNet’s enabling legislation including funding considerations related to States or territories “opting out” and how FirstNet and the States and territories could balance the opportunity States and territories have to deploy the RAN with the preservation of a sustainable operational and economic model for the NPSBN.

In April, FirstNet released a Third Public Notice seeking further comment on the definition and scope of the term “public safety entity” as used in FirstNet’s enabling legislation.<sup>29</sup> More importantly, FirstNet accomplished perhaps the most significant of milestones to date with the release of a draft RFP for the construction, operation, maintenance, and improvement of the NPSBN.<sup>30</sup> The significance of the draft RFP lies in the revelation of FirstNet’s vision for the deployment of the NPSBN. Comments received to the draft RFP will inform the final RFP for the NPSBN, which FirstNet projects will be released by early 2016.

Importantly, these requests for information have been augmented by stakeholder outreach, an area of substantial criticism in FirstNet’s early days. FirstNet began its formal State consultation process in April 2014. As of April 16, 2015, FirstNet had conducted initial consultations with 18 States, Puerto Rico, and the District of Columbia. FirstNet has also relied on other means of outreach, including participation in public safety and industry events.

### C. Uncertainty Remains

While it appears that FirstNet has successfully implemented corrections and is on track, its success is in no way guaranteed. On April 15, 2015, the U.S. Government Accountability Office (GAO) released a report examining FirstNet’s progress in establishing the NPSBN.<sup>31</sup> GAO found that FirstNet is making progress in establishing an organizational structure, planning for the network, and consulting with stakeholders, but lacks elements of effective internal controls – which could threaten FirstNet’s success.<sup>32</sup> GAO also found that although the Early Builder Projects are providing lessons about such things as governance, financing the network, outreach, and planning for network development, FirstNet has not developed a plan to evaluate the projects.<sup>33</sup> GAO made recommendations to address these weaknesses and improve the accountability and transparency of FirstNet’s operations and to ensure that FirstNet capitalizes on the experiences of the Early Builder Projects.<sup>34</sup> Finally, GAO found that FirstNet faces difficult decisions in determining how to pay for the NPSBN.<sup>35</sup>

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<sup>28</sup> FirstNet, “First Responder Network Authority Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012,” Public Notice, (March 9, 2015), *available at* [http://www.firstnet.gov/sites/default/files/FirstNet\\_Second\\_Public\\_Notice\\_0.pdf](http://www.firstnet.gov/sites/default/files/FirstNet_Second_Public_Notice_0.pdf).

<sup>29</sup> FirstNet, “First Responder Network Authority Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012,” Public Notice, (April 27, 2015), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-05-05/pdf/2015-10140.pdf>.

<sup>30</sup> See <http://www.firstnet.gov/news/firstnet-board-approves-draft-rfp-documents-third-public-notice-emphasis-continued-public>.

<sup>31</sup> United States Government Accountability Office, Public Safety Broadband Network: *FirstNet Should Strengthen Internal Controls and Evaluate Lessons Learned*, GAO-15-407 (April 15, 2015) (GAO Report).

<sup>32</sup> *Id.* at pp. 16-30.

<sup>33</sup> *Id.* at pp. 44-46.

<sup>34</sup> *Id.* at pp. 47-48.

<sup>35</sup> *Id.* at pp. 30-40.

The GAO Report succinctly captures the road ahead for FirstNet noting that “FirstNet faces a multitude of risks, significant challenges, and difficult decisions in meeting its statutory responsibilities including determining how to become a self-funding entity.”<sup>36</sup> The difficulty of these decisions is already on display. FirstNet’s release of the Third Public Notice seeking further comment on the definition and scope of the term “public safety entity” reflects discordance among key stakeholders on the definition, which will have a significant impact on the underlying economics of the NPSBN.<sup>37</sup> Similarly, statements by FirstNet officials that States that “opt out” of the NPSBN will not be able to keep excess revenue provide clarity, but have raised debate.<sup>38</sup>

#### **IV. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact David Redl or Gene Fullano of the Committee staff at (202) 225-2927.

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<sup>36</sup> *Id.* at 46.

<sup>37</sup> <http://urgentcomm.com/ntiafirstnet/public-safety-groups-disagree-public-safety-entity-definition-including-utility-usage-f>

<sup>38</sup> *See* <http://urgentcomm.com/ntiafirstnet/firstnet-officials-say-deployment-speed-cost-effectiveness-key-criteria-opt-out-states->