



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

January 29, 2016

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled "Status of the Public Safety Broadband Network"

I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing on Tuesday, February 2, 2016, at 10:15 a.m. in 2322 Rayburn House Office Building entitled "Status of the Public Safety Broadband Network." The hearing continues the Committee's oversight of the First Responder Network Authority's (FirstNet) progress in the deployment of the Public Safety Broadband Network and will also examine the Federal Communications Commission's (FCC) progress in satisfying its statutory duties toward that effort. One panel of witnesses will testify:

- David Furth, Deputy Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission; and
- TJ Kennedy, President, First Responder Network Authority.

It has been almost four years since the passage of the Middle Class Tax Relief and Job Creation Act of 2012, which created FirstNet and set in motion FirstNet's effort to deploy a nationwide public safety broadband network to provide interoperable emergency communications between and among the Nation's State, local, and Federal public safety agencies.¹ The law also tasked the FCC with certain functions to facilitate the deployment of the network envisioned under the law. This hearing will examine the progress of both FirstNet and the FCC in this effort, including recent milestones and anticipated next steps.

II. BACKGROUND

A. FirstNet

Established as an "independent authority" within the NTIA,² FirstNet is tasked with building and operating the 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.³ 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.⁴

¹ Pub. L. No. 112-96.

² Pub. L. No. 112-96, §6204(a).

³ Pub. L. No. 112-96, §6202(a), §6201.

⁴ Pub. L. No. 112-96, §6413(b)(3).

Among other things, the law requires that the network be based on a “on a single, national network architecture that evolves with technical advancements”⁵ and must be based on 4G LTE.⁶ To accomplish the deployment, FirstNet can issue requests for proposals to private sector entities for the purpose of building, operations, and maintaining the network.⁷ To ensure nationwide coverage, the law requires deployment phases with “substantial rural coverage” milestones.⁸ The law also requires FirstNet to consult with State, tribal, and local jurisdictions in the development of the network⁹

FirstNet is also required to be self-funding.¹⁰ To that end, the law authorizes FirstNet to charge user fees 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. While FirstNet will initially provide broadband data services with the option for non-mission critical voice communications, it is envisioned that FirstNet will integrate mission-critical voice communications capabilities as standards for LTE voice communications evolve.¹¹

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.¹² The law provides that once FirstNet completes the Request for Proposals (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. States that “opt out” and build their own radio access networks are prohibited from offering commercial services to the public. States 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.

B. FCC

⁵ Pub. L. No. 112-96, §6202(b).

⁶ Pub. L. No. 112-96, §6203(c)(2).

⁷ Pub. L. No. 112-96, §6206(b)(1).

⁸ Pub. L. No. 112-96, §6206(b)(3).

⁹ Pub. L. No. 112-96, §6206(c)(2).

¹⁰ Pub. L. No. 112-96, §6208.

¹¹ 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.

¹² Pub. L. No. 112-96, §6302(e).

Although the law tasked FirstNet with building and operating the NPSBN, certain functions were assigned to the FCC, including some actions required to get FirstNet operational.¹³ To provision FirstNet with the spectrum necessary for the network's operation, the law reallocated 10 MHz of spectrum in the 700 MHz band from commercial use to "use by public safety entities" and directed the FCC to grant a license to FirstNet for use of this spectrum and 10 MHz of spectrum previously designated for public safety use by the FCC.¹⁴ On September 7, 2012, the FCC reallocated the D Block for public safety services.¹⁵ Soon thereafter, on November 15, 2012, the FCC granted FirstNet the spectrum license contemplated under the law.¹⁶

The law also established within the FCC a Technical Advisory Board for First Responder Interoperability (Interoperability Board), charging it with developing and submitting to the FCC recommended minimum technical requirements to ensure a nationwide level of interoperability for the NPSBN.¹⁷ The FCC was tasked with approving the recommendations "with any revisions it deemed necessary" and transmitting them to FirstNet within 30 days of the Interoperability Board's submission.¹⁸ The FCC established the Interoperability Board and ultimately transmitted the Board's recommendations to FirstNet on June 21, 2012, thereby satisfying the tight timeline mandated under the law.¹⁹

Additionally, as described above, the FCC was assigned a critical function in the State "opt out" provision of the law. Should a State decide to opt-out, the State must submit its plan to the FCC for approval before moving forward.

III. DISCUSSION

A. FirstNet

With early controversies surrounding its administration and operation behind it, it appears that FirstNet continues to make significant strides toward fulfilling its mandate. Among other things, this past December, FirstNet launched its consultation program for 2016 by sending planning packages to the single points of contact (SPOCs) in all 56 States and territories.²⁰ As a prelude, FirstNet articulated three goals that would guide these activities: (1) expanding

¹³ The law also tasked the FCC with the auction of the T-Band spectrum and review of FirstNet's spectrum license renewal applications. See §6103 and §6201(b)(2), respectively.

¹⁴ Pub. L. No. 112-96, §6101, §6201. The statute mandated a 10 year initial term subject to renewal. Pub. L. No. 112-96, §6201(b)

¹⁵ See Implementing Public Safety Provisions of the Middle Class Tax Relief and Job Creation Act of 2012; Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band; Service Rules for the 698-746,747-762 and 777-792 MHz Bands, PS Docket 12-94; PS Docket 06-229; WT Docket 06-150, *Report and Order*, DA 12-1462 (PSHCB rel. Sept. 7, 2012).

¹⁶ See Universal Licensing System, License Call Sign WQQE234 (Nov. 15, 2012).

¹⁷ Pub. L. No. 112-96, §6203(c)(1).

¹⁸ Pub. L. No. 112-96, §6203(c)(3).

¹⁹ See Recommendations of the Technical Advisory Board for First responder Interoperability, PS Docket No. 12-74, *Order of Transmittal*, FCC 12-68.

²⁰ See <http://www.firstnet.gov/newsroom/blog/video-blog-firstnets-2016-consultation-program-%E2%80%93-part-1>.

outreach and education with State/territory, tribal, local, and public safety entities, (2) obtaining State and territory input to inform State Plans and network deployment policies, processes, and procedures, and (3) preparing key decision makers for State Plan delivery and network deployment.²¹

Most recently, on January 13, 2016, FirstNet issued the RFP for the deployment of the NPSBN.²² The RFP, informed by the responses to multiple Requests for Information, public notices, and the draft RFP released by FirstNet, as well as its consultation and outreach activities, contemplates a “comprehensive network solution covering each of the 50 states and territories”²³ and FirstNet’s stated intent “to partner with a private sector entity to establish a mutually beneficial public private partnership to deploy the network.”²⁴ FirstNet is seeking to enter into an agreement with a term of 25 years.²⁵ Almost immediately after its release, FirstNet conducted a webinar on January 15 to review key elements of the RFP with interested parties.²⁶ Under the timeline announced by FirstNet, responses to the RFP are due April 29, 2016. Questions from interested parties and capability statements are due February 12 and March 17, respectively. FirstNet anticipates making an award in the fourth quarter of 2016.

As a general matter, the RFP appears to depart from more traditional government procurement contracts by acknowledging the magnitude and complexity of FirstNet’s task – a task that many have observed exceeds the challenges of the deployment of a nationwide commercial wireless network because of its unique purpose. In order to provide the “maximum opportunity and flexibility in the development of innovative solutions” the RFP reflects an “objective approach” rather than a traditional requirements-driven model.²⁷ By focusing on the achievement of objectives, some sixteen in all,²⁸ some have observed that FirstNet provides for the possibility of a broad range of participants and flexibility in how the network will be deployed. It is through this approach that FirstNet intends “to encourage innovation.”²⁹

²¹ *Id.*

²² See FirstNet Nationwide Public Safety Broadband Network (NPSBN),
Solicitation Number: D15PS00295E, available at
[https://www.fbo.gov/index?s=opportunity&mode=form&tab=core{id=7806696f4340f16474647ccc57805040&cvi=ew=0}](https://www.fbo.gov/index?s=opportunity&mode=form&tab=core{id=7806696f4340f16474647ccc57805040&cvi=ew=0).

See also <http://www.firstnet.gov/news/firstnet-issues-rfp-nationwide-public-safety-broadband-network>.

²³ See RFP, Section C Statement of Objectives, p. C-1.

²⁴ See What is the FirstNet RFP? available at <https://www.youtube.com/watch?v=E-8ZUTaG0lA&feature=youtu.be>.

²⁵ See RFP, Section F Deliverables and Performance, p. F-1.

²⁶ <http://www.firstnet.gov/content/firstnet-rfp-webinar>.

²⁷ See RFP, Section C Statement of Objectives, p. C-1.

²⁸ These include: building, deployment, operation, and maintenance of the network; financial sustainability; First Responder user adoption; device ecosystem; application ecosystem; accelerated, speed to market; user service availability; service capacity, cyber security, priority services, integration of state deployed RANs; integration of existing, commercial, federal, state, tribal, local infrastructure to support network services; life-cycle innovation; program and business management; customer care and marketing; and, facilitation of FirstNet’s compliance with the Act and other laws. *See* RFP, Section C Statement of Objectives, pp. C-3-C-6.

²⁹ See FirstNet RFP Webinar Transcript January 15, 2016 at p. 2 available at
<http://www.firstnet.gov/sites/default/files/FirstNet%20Jan%202015%202016%20RFP%20Webinar%20Transcript.pdf>.

Additionally, despite the scope of the project, the RFP does not contemplate FirstNet paying the winning contractor for the provision of services. Rather, in lieu of payment, the contractor will gain access to FirstNet's 20 MHz in the 700 MHz spectrum and the ability to lease excess network capacity to secondary commercial users. As one commenter has noted, it is the ability to monetize the 20 MHz of spectrum that is critical to the economic viability of FirstNet's proposal.³⁰ The contractor will also receive up to \$6.5 billion to support the build-out and operation of the network.³¹ In exchange, the contractor will deploy and operate the network and make annual lease payments to FirstNet of *at least* \$80 million during each of the first five years of the contract, with this threshold increased to \$130 million in year six, \$205 million in year 11, \$305 million in year 16, and then to \$430 million in year 22 through the end of the contract.³² That means that the contractor that builds and operates the NPSBN will pay FirstNet, at a minimum, \$5.625 billion over 25 years.

The RFP also includes measures that will penalize the winning contractor for failing to meet public safety adoption goals to ensure that the contractor does not use the spectrum to pursue commercial opportunities at the expense of the provision of services to public safety.³³ The RFP's "disincentive payment" mechanism employs a progressive scale to calculate the level of the financial penalty for the contractor's failure to meet targeted levels of public safety users in each State. For each percent below the adoption target, FirstNet will apply an increasingly higher penalty. The maximum penalty is assessed if 70 percent or fewer of the target users are served. Despite the novel nature of this RFP, given the nature of the procurement process, public reaction to the RFP has been so far generally muted among stakeholders.

B. FCC

In March of 2013, the FCC commenced a proceeding seeking comment on additional measures necessary to implement its statutory responsibilities under the law with the release of a Notice of Proposed Rulemaking (NPRM).³⁴ The FCC sought comment in three areas: technical service rules for the public-safety broadband network; the exercise of the FCC's statutory responsibilities as they relate to the FCC's oversight of FirstNet's operations; and, on transition matters for incumbent operations in the spectrum now licensed to FirstNet.³⁵ The FCC also sought comment "on the scope of its authority as it relates to these proposals, particularly in light

³⁰ See <http://urgentcomm.com/ntiafirstnet/firstnet-releases-rfp-responses-due-april-29>.

³¹ This funding was secured by the FCC's 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. See <http://www.fiercemobilegovernment.com/story/question-firstnet-funding-now-moot-thanks-successful-fcc-spectrum-auction/2015-02-04>.

³² See RFP, Section B Supplies or Services and Prices/Costs, pp. B-5 – B-6.

³³ See RFP, Section J, Attachment J-6, pp. J-6-5 – J-6-10. See also <http://urgentcomm.com/ntiafirstnet/firstnet-rfp-outlines-financial-penalties-contractor-if-public-safety-adoption-targets->.

³⁴ Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief & Job Creation Act of 2012, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, PS Docket Nos. 12-94, 06-229, WT Docket No. 06-150, *Notice of Proposed Rulemaking*, 28 FCC Rcd 2715 (2013) (NPRM).

³⁵ The FCC has noted that these operations primarily consist of narrowband public safety systems. See *NPRM* at 2729-33 at paras 47-59.

of the statutory delegation to FirstNet of the responsibility to develop ‘the technical and operations requirements of the network.’”³⁶ On October 23, 2013, the FCC issued an Order adopting technical rules for the FirstNet spectrum³⁷ leaving the unaddressed issues raised in the NPRM “deferred for future consideration.”³⁸

On October 20, 2015, FirstNet outlined its proposal to facilitate the relocation of incumbent operations in its spectrum to clear the NPSBN spectrum in a letter submitted to the FCC.³⁹ FirstNet plans to implement a spectrum relocation grant program to provide funding for this purpose.⁴⁰ The FCC sought comment on FirstNet’s proposal in November 2015.⁴¹

Additionally, it appears that, notwithstanding inquiries from the Committee, reaching as far back as 2013, the FCC has not taken action to fulfill its obligation to adopt a process by which it would review a State’s plan to build its own RAN as provided under the opt-out provision of the law. As FirstNet is contemplating its contract award, States will need FCC action to define the opt-out process if they are expected to make an informed decision on whether to opt-out and build their own RANs.

The hearing will present FirstNet and the FCC an opportunity to inform the Committee on these and other issues regarding the progress toward the Nationwide Public Safety Broadband Network.

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.

³⁶ *NPRM* at 2720 at para 16.

³⁷ Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief & Job Creation Act of 2012, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, PS Docket Nos. 12-94, 06-229, WT Docket No. 06-150, *Second Report and Order*, 28 FCC Rcd 15174 (2013).

³⁸ *Id.* at 15174 para 1 n.1.

³⁹ See Letter, dated October 20, 2015 from Jason Karp, Chief Counsel, First Responder Network Authority to Marlene H. Dortch, Secretary, Federal Communications Commission.

⁴⁰ See <http://www.firstnet.gov/news/firstnet-board-approves-126-million-fy16-acquisition-consultation-spectrum-relocation>.

⁴¹ See Public Safety and Homeland Security Bureau Seeks Comment on FirstNet’s Incumbent Relocation Proposal, PS Docket No. 12-94, PS Docket No. 06-229, WT Docket No. 06-150, *Public Notice*, DA-15-1253 (Nov.5, 2015).