



October 30, 2017

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled “Oversight of FirstNet – States Perspectives”

I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing on Wednesday, November 1, 2017, at 10:15 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Oversight of FirstNet – State Perspectives.”

II. WITNESSES

- Michael Poth, CEO, First Responder Network Authority
- Christopher Sambar, Senior Vice President, AT&T
- John Stevens, New Hampshire Statewide Interoperability Coordinator
- Robert LeGrande, II, Founder, The Digital Decision, LLC
- Brian Moran, Virginia Secretary of Public Safety and Homeland Security

III. BACKGROUND

This hearing continues the Subcommittee’s oversight of the nationwide, interoperable broadband public safety network established as part of the Middle-Class Tax Relief and Job Creation Act of 2012. The creation of such a network was a key recommendation from the National Commission on Terrorist Attacks Upon the United States (9/11 Commission). The 9/11 Commission found firefighters, police, and other first responders suffered communications failures that undermined their ability to coordinate and respond to the attacks. The challenges regarding a lack of interoperable communications among first responders were highlighted in subsequent emergency situations around the country.

The First Responder Network Authority (FirstNet), an independent authority within the Department of Commerce, is tasked with building and operating the nationwide public safety broadband network (NPSBN) that is reliable, secure, and interoperable. In March of this year, FirstNet awarded a 25-year contract to AT&T to build, operate, and maintain the network.¹

Differences in the early proposals to authorize the NPSBN still drive many of the discussions regarding the progress of FirstNet:

¹ <https://firstnet.gov/news/firstnet-partners-att-build-wireless-broadband-network-americas-first-responders>

- **House Approach:** Then-Communications and Technology Subcommittee Chairman Greg Walden’s “Jumpstarting Opportunity with Broadband Spectrum Act” passed the House in December 2011 as part of the Middle-Class Tax Relief and Job Creation Act of 2011. That approach would have empowered States or groups of States to negotiate with commercial wireless providers to build out their portions of the nationwide network so long as they met minimum interoperability requirements determined by the Federal Communications Commission (FCC). The act would have made \$5 billion in implementation grants available to the States, administered by the U.S. Department of Commerce’s National Telecommunications and Information Administration (NTIA), and funded with spectrum auction proceeds.
- **Senate Approach:** Then-Commerce, Science, and Transportation Committee Chairman Jay Rockefeller’s “Public Safety Spectrum and Wireless Innovation Act” passed the Committee in June 2011. That approach would have created a national, non-profit, quasi-governmental corporation akin to Amtrak, with access to \$11.75 billion in spectrum auction proceeds to build the network.
- **Final Compromise:** The bipartisan, bicameral compromise embodied in the Middle-Class Tax Relief and Job Creation Act of 2012 created FirstNet as an “independent authority” within NTIA to oversee construction of a national public safety broadband network (NPSBN). The law provided \$7 billion in net spectrum auction proceeds to be available for FirstNet for use toward construction of the network (the AWS-3 spectrum auction that concluded in January 2015 generated roughly \$41 billion, of which, \$7 billion was set aside for FirstNet). The law also provided 20 MHz of spectrum in the 700 MHz band for the NPSBN. FirstNet will build and operate the core and radio access networks (RANs) that comprise the national system. States are permitted to “opt out” and build their own radio access networks, subject to interoperability rules created by FirstNet and approved by the FCC, as well as entering into a Spectrum Manager Lease Agreement (SMLA) with FirstNet to access the 20 MHz for the NPSBN.

IV. CURRENT DEBATE WITHIN THE STATES

On September 29, 2017, FirstNet delivered official notice of State Plans to governors for deploying the NPSBN.² The State Plans outline for Governors the details on how the FirstNet network will be deployed in their State or Territory. Under the law, States are permitted to opt-in to their respective State Plan, or opt-out of the FirstNet network and build their own RAN towers and base stations necessary to provide wireless connectivity. Under the law, a Governor has 90 days from receipt of the State Plan to choose whether to opt-in or opt-out. Thus, Governors must make their decision to opt-in or opt-out by December 28, 2017.

At present, 27 States and Territories have issued letters of intent to opt-in to the FirstNet network, and 18 States have issued requests for proposals (RFPs) to build and maintain RANs

² <https://www.firstnet.gov/news/firstnet-momentum-official-notice-provided-governors-90-day-timeline-begins>

from vendors other than FirstNet (it should be noted that 3 States that issued RFPs to explore the possibility of opting-out have since issued letters of intent to opt-in).³

Should a State decide to opt-out, the State must submit its plan to the FCC for approval before moving forward. In August 2016, the FCC commenced a rulemaking seeking comment on the opt-out process to be conducted by the Commission.⁴ On June 22, 2017, the FCC released a Report and Order adopting procedures governing the State opt-out process and specifying standards by which the Commission will review State applications.⁵

On October 16, 2017, the Governor of New Hampshire signed an Executive Order establishing a FirstNet Opt-Out Review Committee. The Subcommittee will examine the financial and regulatory viability of a competing vendor's opt-out plan, and, as part of this review, seek clarification of certain proposed fees and penalties that may be imposed by FirstNet on a State or Territory if an opt-out plan were to fail.

V. General Accountability Office Audit

The General Accountability Office's (GAO) recent performance audit reviewed FirstNet from May 2016 to June 2017. GAO reported that, according to stakeholders contacted, FirstNet faces various challenges to ensure the network's reliability, security, and interoperability. These include:

- providing coverage to rural areas, in buildings, or underground;
- ensuring the network's overall resiliency and cybersecurity; and
- managing frameworks for user identity, credentialing of users, access management, and prioritization of users on the network.

GAO also noted that the majority of stakeholders GAO contacted were satisfied with FirstNet's efforts, but many noted that much uncertainty remains about how the network will be implemented.⁶

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Tim Kurth or Sean Farrell of the Committee staff at (202) 225-2927.

³ <http://www.wireless2020.com/media/white-papers/What-States-Should-Look-For-in-Responses-to-Public-Safety-Networks-RFPs-10202017.pdf>

⁴ See, Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, Report and Order and Notice of Proposed Rulemaking, PS Docket No. 16-269, FCC 16-117 (August 24, 2016)

⁵ See, Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, Report and Order, PS Docket 16-269, FCC 17-75 (June 22, 2017)

⁶ <https://www.gao.gov/products/GAO-17-569>