

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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November 20, 2017

Mr. Michael Poth
CEO
First Responder Network Authority
12201 Sunrise Valley Drive
Reston, VA 20192

Dear Mr. Poth:

Thank you for appearing before the Subcommittee on Communications and Technology on Wednesday, November 1, 2017, to testify at the hearing entitled "Oversight of FirstNet: State Perspectives."

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 with a transmittal letter by the close of business on Wednesday, December 6, 2017. Your responses should be mailed to Evan Viau, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Evan.Viau@mail.house.gov.

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

Sincerely,



Marsha Blackburn
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Michael F. Doyle, Ranking Member,
Subcommittee on Communications and Technology

Attachment

Additional Questions for the Record

Subcommittee Vice Chairman Leonard Lance

1. In his testimony before the Subcommittee, Chris Sambar, Vice President of AT&T, stated that AT&T intends to develop, test and certify devices and applications for use on the FirstNet network based on "proprietary" standards, despite the fact that *The Middle Class Tax Relief and Job Creation Act of 2012* requires FirstNet to "promote competition in the equipment market, including devices for public safety communications by requiring that equipment for use on the network be built to open, non-proprietary, commercially-available standards."
 - a. How will FirstNet work to ensure that all aspects of its network deployment plan, including the activities of its contractors and subcontractors, are open and fully competitive?
 - b. How will FirstNet work with the National Institute of Standards and Technology (NIST) to ensure that any devices and applications developed for use on FirstNet's network are open and interoperable and agnostic as to device manufacturer, application developer, and network provider?

The Honorable Gus Bilirakis

1. In your testimony, you indicate that FirstNet has provided States with a draft Spectrum Managers Lease Agreement (SMLA), which includes terms and conditions that opt-out states would have to satisfy. In his testimony, John Stevens, the New Hampshire Statewide Interoperability Coordinator, testified that the SMLA New Hampshire received includes various "arbitrary and capricious" fees and penalties. This includes termination penalties and adoption disincentive payments. Please provide additional information regarding any fees, penalties, and other conditions associated with the SMLA states considering an opt-out have received.
 - a. What spectrum fees, if any are included and how was the amount of such fee determined for each state?
 - b. What adoption disincentive payments, if any, are included and how was the amount of such fee determined for each state?
 - c. What termination penalties, if any are included in the SMLA?
 - d. Additionally, please expand on the process that FirstNet and any opt-out states will go through as the "draft" SMLA shifts to a final set of terms and conditions. What flexibility will states have, if any, to negotiate the terms? At what point in the process will that discussion take place?

The Honorable Susan W. Brooks

1. In your opening statement, you referenced risk. Can you expand upon the risks that you at FirstNet face?

- a. I understand that your RFP was designated to shift risk away from the government and onto your partner, AT&T, but what are the issues that concern you going forward? Security? Deployment? Adoption?

The Honorable Anna G. Eshoo

1. My home state of California has serious concerns regarding estimated costs to states that opt-out of FirstNet, and are unable to build out and operate its own Radio Access Network (RAN). In California's case, the cost would be in the area of \$15 billion. California was told this figure was calculated based on the assumption that if California failed in deploying its own RAN, a "green field" build (one in which all construction is new and on bare soil) could cost as much as that amount. However, in its partnership with FirstNet, AT&T is basing its deployment of the NPSBN on existing infrastructure.
 - a. Why wouldn't the transition to a FirstNet/AT&T deployment use the same "existing AT&T infrastructure?" There would be no change to the cost for AT&T for its NPSBN deployment from that already planned.
 - b. Will you provide California with a detailed breakdown of how this cost was calculated?
2. In addition to the basis for the \$15 billion Termination Payment Estimates, please provide the basis for your calculation of Annual Spectrum Network Capacity Payment as presented by NTIA.
 - a. If under an Opt-Out scenario California is responsible for a payment exceeding \$250 million annually, what is the total calculation for all such payments for the 56 states and territories year to year?
3. If one were to apply the same basis that NTIA used for determining the range of grant funds that California could receive in an Opt-Out scenario, the total revenue expected from all such use should exceed \$3.4 billion annually.
 - a. If so, how would that \$3.4 billion, or portion thereof, be used to expand coverage in California?
4. It is my understanding that FirstNet requires AT&T to meet aggressive adoption targets in California. Specifically, FirstNet is requiring 218,000 subscribers in California by the third year and 350,000 subscribers by the 25th year.
 - a. How can AT&T meet this adoption target when there are only approximately 160,000 first responders in the entire state of California?
5. I'm also concerned about the interoperability with FirstNet of existing public-safety broadband networks like Los Angeles Regional Interoperable Communications System (LA-RICS), which was built using \$150 million from the Broadband Technologies Opportunity Program (BTOP) grant program.
 - a. Will LA-RICS be interoperable with FirstNet's network if California opts-in?

The Honorable Peter Welch

1. What is the specific statutory authority for FirstNet to assess any kind of termination or disincentive fees or penalty against states that decide to opt out?
2. What is the specific methodology FirstNet used to calculate proposed termination fees, disincentive payments and spectrum lease fees?
3. Does FirstNet plan to disclose the terms of its contract with AT&T to the public?
4. If FirstNet has no plans to release the AT&T contract(s), why not?
5. Why does FirstNet require a FOIA exemption or PLA exemption?
6. Why are there no proposed service fees in the state plans specified for mission critical public safety services such as Push To Talk (PTT), Group communications and direct mode?
7. What assurances will FirstNet make to a state that it will require AT&T to continue to provide these three services at a price comparable to a competitive service or at a discount after a state has entered a 25 year monopoly agreement?
8. What mandatory roll out schedule for MCPTT and group communications and direct mode is First Net contractually binding AT&T to deliver?
9. As these services are in the proposed roadmap and their costs can significantly impact the FirstNet service affordability in evaluating the option for opting into the ATT proposal, how do you justify the omission?
10. If opt-out states are prohibited by the Spectrum Manager Lease Agreement (SMLA) from building an Evolved Packet Core (EPC) for public safety, please specify the fees for an opt-out state to connect to the National Public Safety Broadband Network (NPSBN) core?
11. What is the basis for establishing the core connection charge for a state that chooses to opt out?
12. Will FirstNet acknowledge the need for a state right of appeal to the FCC as to the reasonable determination of the core interconnection charges?
13. As this cost is a critical component in determining the financial sustainability of operating an opt-out state Radio Access Network (RAN) how can any state make an informed decision lacking this information?
14. Since AT&T has announced that it will leverage most of its commercial network to provide public safety services, why do the penalties specified in the SMLA assume costs of a complete greenfield "reconstitution" of a mobile network in a failed opt-out RAN scenario?
15. As in the above scenario, most of the AT&T network infrastructure will already be in place and only parts of the state RAN might need to be hardened and surgical coverage updated, how do you justify the proposed enormous penalties based on a greenfield build?
16. What is the basis of the expected 30 month delay for an opt-out state?

17. What provisions has FirstNet considered or implemented to mitigate or minimize the unsafe disadvantage of the estimated 30 month delay in approving a state plan exercising its right under law to opt and build its own RAN?
18. Is FirstNet willing to provide assurances that an enforceable cause of action is available to the state in the event AT&T fails to meet the requirements as set forth in the state plan?
19. Is FirstNet willing to assume responsibility for enforcing the terms of the add-on tower or deployable agreements offered by AT&T above and beyond those specified in the state plan?
20. Is FirstNet willing to provide written assurances and binding enforceable agreements to the state that in the event that AT&T fails to deliver on time the coverage, public safety grade infrastructure and Band Class 14 deployment, that the state will have the option to revert to opt-out status and recover the entire amount of the NTIA grant, the Band 14 spectrum and equivalent "reconstitution" costs from AT&T?
21. Is FirstNet willing to pledge the full faith and credit of the First Responder Network Authority in order to stand behind the FirstNet state plan provisions and contracts it has entered with AT&T?
22. Is FirstNet willing to post Performance bond to assure that the state is made whole in the event the state plan provisions are not completed and on time?
23. Why is there no discussion of, or assurances for, "public safety grade" system hardening standards for the existing towers and proposed new towers in the State Plans?
24. The SMLA is clear with regards to the penalties to states if performance criteria are not met. Will AT&T be subject to the same penalties if they:
 - a. Do not add the towers included in their state plans?
 - b. Do not meet the 99.99% reliability standard?
 - c. Do not meet the standards for deployables during emergency events?
25. Will the very large penalties described in the draft SMLA for opt-out states that do not meet First Net system requirements be levied against AT&T if the AT&T system is found by the state Public Utility Commission and/or the FCC to be deficient in a state and that opt-in state finds it necessary to invest in replacement RAN?
26. Under what circumstances is it inappropriate for all FirstNet subscribers to have access to all FirstNet applications regardless of which FCC approved state RAN, core or national core network is used to reach those resources?
27. Because many states share borders with Canada and Mexico, it is important to know how communications will be managed near our borders. In addition, the possibility that opt-out states will develop their own systems add other sets of examples where the state FirstNet RAN systems must include roaming agreements that allow seamless communications during emergency situations. How will FirstNet require AT&T ensure roaming agreements are implemented and maintained at borders where non-AT&T systems are necessary for communication?

28. Will FirstNet do everything in their power to ensure the States right, to Opt- out of using FirstNet's contracted supplier, is preserved?
29. Will FirstNet continue to leverage their authority to ensure the success of a State Opt-out decision, if a State so chooses to exercise that option?