

NTIA Notice and Request for Comments on State Alternative Plan Programs and FirstNet

Comments of APCO International

Docket No. 160706588-6588-01

The Association of Public-Safety Communications Officials-International, Inc. (APCO) submits the following comments in response to the above-captioned Notice and Request for Comments (Notice) issued by the National Telecommunications and Information Administration (NTIA). NTIA is seeking comment on its preliminary guidance concerning how a qualified state may apply to NTIA for authority to enter into a spectrum capacity lease with the First Responder Network Authority (FirstNet) and receive a grant to construct its radio access network (RAN) should it opt to do so as allowed under the Middle Class Tax Relief and Job Creation Act of 2012 (the Act).

Founded in 1935, APCO is the nation's oldest and largest organization of public safety communications professionals. APCO is a non-profit association with over 26,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including Public Safety Answering Points (PSAPs), dispatch centers, emergency operations centers, radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies. APCO's members are the public safety communications professionals that will be among the primary users of the nationwide public safety broadband network (NPSBN).

APCO fully agrees with NTIA's goal "to ensure that the nation has access to an interoperable, sustainable, technically sound, and cost-effective NPSBN."<sup>1</sup> As a whole, APCO supports and agrees with NTIA's preliminary guidance concerning how a qualified state may apply to NTIA for authority (Lease Authority) under the Act to enter into a spectrum capacity lease with FirstNet and receive a grant to construct its own RAN (RAN Construction Grant). Below, APCO first reiterates its support for a nationwide RAN build by FirstNet. The state opt-out option is a false choice and likely will negatively impact the NPSBN. Next, APCO provides specific feedback to NTIA's guidance.

I. Opt-out Is a False Choice

There is simply no reason for any state to opt-out, which entails an arduous process and shifts the important responsibility to implement a radio access network from FirstNet to the state. Compared to any state, FirstNet has significant advantages provided by Congress to achieve the best overall solution for the country. Yet a state that seeks to construct its own RAN introduces many serious risks to the communications capabilities of first responders within its own borders as well as those across the nation. Further, a state can benefit from welcoming the RAN build-out provided by FirstNet, and still augment the network itself provided it meets FirstNet's technical requirements to ensure sustained

---

<sup>1</sup> 81 Fed. Reg. 46907, 46908 (Jul. 19, 2016).

interoperability. Finally, any notions that opt-out can lead to new revenue-generating opportunities for a state are baseless.

Prior to enactment of the groundbreaking FirstNet legislation, efforts were underway to deploy broadband networks with the same interoperability problems that have historically plagued first responders. Several jurisdictions were seeking to develop public safety broadband networks with a “network of networks” model. The FirstNet legislation was a complete repudiation of this model. While the opt-out provision of the Act, which was never supported by APCO, served as a compromise to achieve passage, the primary thrust of the Act was the creation of a nationwide network with a single governance body. As FirstNet has progressed, the disadvantages and risks associated with separate FirstNet and state RAN build-out efforts have become increasingly clear.

In creating FirstNet, Congress completely reversed the way public safety networks have been traditionally implemented, with the full support of APCO and many other major public safety associations. FirstNet’s inherent advantages include:

- An expert team that can deliver a sustainable and secure network design, including ongoing maintenance and coordinated upgrades across state borders and throughout the country;
- The ability to avoid differing state and local procurement and approval processes;
- National-level bargaining power and synergies with potential partners across a competitive, diverse, multiple vendor ecosystem;
- National-level economies of scale in network and device equipment costs; and
- A special focus on establishing and maintaining a seamless, nationwide level of interoperability for all first responders.

No single state can match these advantages. Further, there is no recourse for a state that has opted out and then faces a change in leadership or competing priorities that removes essential resources from the responsibilities of implementing, operating, maintaining, and sustaining an advanced, wireless broadband RAN. There is no rescue plan in the Act for a failed opt-out RAN, which would be a very complex and costly problem to fix. And the network as a whole, including the primary goal of achieving nationwide interoperability, would be at risk.

An opt-out state cannot provide commercial service to consumers. Any revenue derived from operation of an opt-out state RAN must be reinvested into the public safety network. Revenue cannot be diverted to a state’s general fund, cannot be spent on any other programs, or even used for other public safety-related expenses. The Act is quite clear on these points. We have already seen examples of states diverting 9-1-1 fees to cover budget gaps or other priorities, and this cannot be replicated when it comes to the NPSBN.

Further, while Congress created an option for states to pursue their own RAN builds, a state should not discount the fact that Congress strongly discouraged such a path. A state that seeks to opt out commits itself to a painstaking endeavor. It must confront a rigorous double-agency approval process designed to ensure interoperability and long-term sustainability. Hiring additional personnel,

issuing an RFP, procuring network equipment, negotiating covered leasing agreements, and collaborating with FirstNet to ensure seamless integration will each be substantial undertakings.

To build, operate, and maintain the RAN will require significant technical, contract, and grant management personnel. Why waste resources on duplicative efforts that lack FirstNet's economies of scale and invite additional risks to the network's success? Instead, a state can accept the RAN FirstNet offers to build and focus its resources on augmenting it without giving up any benefits. FirstNet is subject to extensive consultation requirements with states regarding network policies. APCO commends FirstNet's staff for its outstanding consultation efforts to date. And, because LTE technology enables local control options and features, states accepting FirstNet's RAN build will not sacrifice control over service for users within their borders.

FirstNet has been taking the steps it needs to. Led by highly qualified and dedicated board members, it has been hiring expert staff, extensively consulting with state and local agencies, and evaluating responses to its request for proposals. When FirstNet presents its plans to the states, they will reflect the full weight of its singular focus to carry out the goals of the Act. Each state should accept FirstNet's plans and direct available resources to augmenting the RAN as it desires. This is the most efficient and effective way to provide all first responders with the communications tools they need to protect the safety of life and property, including when they render assistance to other jurisdictions.

## II. Lease Authority and RAN Construction Grant Procedures

APCO supports NTIA's preliminary guidance with respect to procedural issues involved with considering state applications for lease authority and construction grants, and offers the following additional comments:

While the Act does not specify a deadline for states to submit applications to NTIA, NTIA should establish its proposed deadline of 60 days following FCC approval of an alternative plan, in the interests of ensuring the NPSBN is constructed in a timely manner.<sup>2</sup>

Eligible applications should be limited to states and territories whose alternative plan was approved by the FCC.<sup>3</sup>

Grants are discretionary, meaning NTIA has full discretion to grant or not grant applications, and to determine the amount of funds, if any, consistent with the statutory criteria and NTIA's future federal funding opportunity. NTIA should also take into account the needs of the NPSBN as a whole, to ensure that sufficient funding is preserved for the remainder of the FirstNet network. In this respect, APCO supports NTIA's intention to consider the "cost increases FirstNet will incur should a state assume the responsibility to conduct its own RAN, and may reduce a final grant award accordingly."<sup>4</sup>

---

<sup>2</sup> Id. at 46910

<sup>3</sup> Id.

<sup>4</sup> Id.

States that pursue opt-out have the potential to harm the network as a whole, and thus NTIA is correct to consider “increased costs to mitigate additional operational risks to the NPSBN, and losses of cost efficiencies,” “increased expenses related to interconnection of the state RAN to the NPSBN and mitigation of potential interference by the state RAN to the NPSBN operations in a bordering state,” and “financial factors, such as how efficiently FirstNet and its partner(s) can build the RAN for that state and the projected income from that state’s partnership agreement(s) and all other revenue sources.”<sup>5</sup>

NTIA’s commitment to review and make determinations on state applications on a rolling basis following any FCC approval is much appreciated. As NTIA points out, this will be key to minimizing any delay to FirstNet’s implementation.<sup>6</sup>

NTIA’s intention to evaluate only the state RAN as approved by the FCC is very important.<sup>7</sup> States should not be able to stray from their original proposal. If a state secures FCC approval, but for any reason desires to change design, it may no longer pursue its opt-out choice.

In the event that a state succeeds in obtaining a Lease Authority Grant, NTIA is taking the right approach by requiring the state to then successfully execute a spectrum capacity lease with FirstNet as a condition precedent to considering whether to also award the state RAN Construction Grant funding.<sup>8</sup>

States that succeed in receiving a RAN Construction Grant are properly put on notice by NTIA that these funds are for initial construction only – ongoing maintenance, operation and improvements are not covered.<sup>9</sup> This raises one of the major risk factors noted above with states that opt out: that they will be unable to sustain their RANs. And when a state RAN fails, that state will thwart the primary goal of nationwide interoperability, leave its responders at the state and local levels vulnerable to gaps in communication, and require a bail-out for which there is no mechanism.

### III. Required Demonstrations

APCO also supports NTIA’s guidance with respect to carrying out its statutory responsibilities to review state applications for lease and grant authority, as directed by the Act’s specific criteria. Below, APCO provides detailed commentary.

#### a. Technical Capabilities to Operate, and the Funding to Support, the State RAN

NTIA believes that to ensure and preserve technical compatibility and interoperability across the entire NPSBN, any state that seeks to assume responsibility for constructing a RAN must follow the network policies established by FirstNet.<sup>10</sup> APCO fully agrees. Of the many benefits of the overall FirstNet concept is the fact that public safety will for the first time be able to benefit from national-level

---

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id. at 46911.

commercial standards and network policies, which will drive innovation, achieve economies of scale, and ensure seamless interoperability. The objective is to depart from fragmented and insular network builds, which historically have led to proprietary technologies that limit or defeat interoperability and increase costs. Thus it is imperative that any state that seeks to construct its own RAN must follow FirstNet's network policies.

In this regard, APCO also supports NTIA's intention to examine a state's project management team, including its technical operations, to ensure a state RAN can be built in accordance with FirstNet's network policies.<sup>11</sup> States are not by their nature constructors of advanced wireless communications networks. FirstNet by comparison is specifically designed to possess a significant level of business acumen, and network design and technical expertise.

Even if a state is able to develop a team expert enough to construct an advanced wireless RAN, APCO continues to have significant concerns about the capacity of any state to guarantee it will be able to sustain its RAN. This includes a sufficient funding stream that even if maintained is not misdirected to other purposes, as well as maintaining sufficient project oversight and technical experts. Thus, NTIA properly intends to request states to provide budgeting documents, staffing plans, funding sources, partnership agreements, funding risks, etc.<sup>12</sup>

b. Ability to Maintain Ongoing Interoperability with the NPSBN

Perhaps most important, and most risky, of any state-built RAN is the need to maintain ongoing interoperability with the NPSBN. The lack of a nationwide level of interoperability for public safety communications networks is the most fundamental and problematic shortcoming that public safety communications professionals and emergency responders must cope with every day. Fortunately, FirstNet is well on its way to solving this problem by delivering an advanced, nationwide, interoperable, public safety broadband network.

A state should make no mistake that it assumes a major responsibility that extends well beyond its borders should it decide, despite all of the inherent risks and showings it must make, to construct its own RAN. This responsibility is not only to the first responders within its state, from state police to volunteer firefighters, but to adjoining states and the entire country. Failing to maintain interoperability with FirstNet means failing nationwide interoperability.

APCO is thus pleased to see that NTIA fully recognizes this danger, and that NTIA intends to require states to make a thorough showing of the ability to maintain interoperability, including with respect to deployable network elements, related applications, staffing, resources, governance models, standard operating procedures, training and exercises, commitments from the state's partner(s), new or evolving FirstNet network policies, etc.<sup>13</sup>

---

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 46912.

c. Ability to Complete the Project within Specified Comparable Timelines Specific to the State

If a state takes on the responsibility to construct its own RAN, then it should be able to demonstrate that it can accomplish its build-out in a timeframe comparable to FirstNet's plans for that state. Thus, NTIA is right to require states to provide specified timelines of the same number, nature, and type as those presented by FirstNet to the state.<sup>14</sup>

d. Cost-Effectiveness of the State Plan

As noted above, APCO believes that among FirstNet's inherent advantages is the ability to achieve economies of scale that no single state could match. Accordingly, any additional costs that a state assumes, or causes to FirstNet, by becoming an outlier must be borne by the state. Thus, APCO supports NTIA's planned investigation into a state's entire plan, including construction, maintenance, operation, and improvement.<sup>15</sup> This is important because, for example, FirstNet will make improvements to the NPSBN over time to, among other things, take advantage of innovations in wireless broadband technology. A state that has taken on the responsibility for its own RAN must be in a position to upgrade in concert with the NPSBN using its own resources. If a state cannot do so, then that state again risks breaking interoperability with the NPSBN.

e. Comparable Security, Coverage, and Quality of Service to That of the NPSBN

As NTIA notes, it will compare the security, coverage, and quality of service of a state's demonstration to FirstNet's proposed plan for that state, including FirstNet's compliance with the Act's requirement of "substantial rural coverage milestones."<sup>16</sup> All of these characteristics are important, but APCO will focus on just two. First is security. Security, and more specifically cybersecurity, is a very serious and complex threat. A compromise to the NPSBN could rapidly become a national security matter. FirstNet has, and will continue to acquire, significant resources including from partners with the federal government to best detect, mitigate, and prevent cyber threats and attacks. Accordingly, APCO recommends that NTIA employ its own significant resources, and any and all other resources as appropriate, to review a state's plan on cybersecurity in particular. A vulnerability in a state network is all it would take to impact the entire NPSBN.

Second is the rural coverage milestone. Again, FirstNet has the economies of scale and scope to best achieve rural coverage. States thus should be subject to the same requirement. No state and its partner(s) should expect that they can cherry-pick populated areas and leave out responders and citizens in areas traditionally unserved or underserved.

---

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

## CONCLUSION

For the reasons stated above, APCO supports NTIA's proposals to carry out its responsibility under the Act to review state alternative plan proposals.

Respectfully submitted,

APCO International

By: /s/

Jeffrey S. Cohen  
Chief Counsel  
(571) 312-4400 ext. 7005  
[cohenj@apcointl.org](mailto:cohenj@apcointl.org)

August 18, 2016