

# June 2017 FCC Meeting Recap: FCC Adopts Rules to Govern State Opt-out of FirstNet Plan

Chip Yorkgitis

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At its June 2017 Open Meeting, the Federal Communications Commission's ("FCC" or "Commission") unanimously approved a process to review the alternative plans of States and Territories ("States") that seek to opt out of the First Responder Network Authority ("FirstNet") plan for the radio access network ("RAN") portion of the nationwide public safety broadband network ("NPSBN" or "the Network"). Under the FCC's [Report and Order](#) ("Order"), a State will have 90 days following receipt of FirstNet's plan to notify the FCC, FirstNet, and the National Telecommunications and Information Administration ("NTIA") of its decision to opt out. Following a preliminary Commission review, as detailed in the procedures adopted in the *Order*, the Commission will allow comment from approved stakeholders on a State's alternative RAN plan and then make a decision on the sufficiency of that alternative plan.

## *FirstNet Background*

The Middle Class Tax Relief and Job Creation Act of 2012's Public Safety Spectrum Act (the "Act") established FirstNet and charged it with creating, deploying, and operating the NPSBN in the 700 MHz spectrum band. The Act directed the FCC to license the 758-769/788-799 MHz band to FirstNet on a nationwide basis for use by the NPSBN. In addition, the Act called for a "single, national network architecture," consisting of a core network and a RAN. The Act allowed States to choose to participate in the Network as proposed by FirstNet or deploy their own RAN. The Act designated the Commission as the entity responsible for approving or denying State alternative RAN plans while NTIA will decide on applications for grant money for State plans that are approved by the FCC.

In late March 2017, FirstNet [selected](#) AT&T as the provider to build and manage the Network under a 25-year contract. FirstNet will provide 20 MHz of spectrum and success-based payments of \$6.5 billion over the next five years to support AT&T's build out of the NPSBN. AT&T will spend about \$40 billion over the course of the contract. First responders will have priority and preemption rights of use on the Network. A few days before the June Open Meeting, FirstNet and AT&T provided [initial versions](#) of the customized buildout RAN plan to each State for them to evaluate, as discussed below.

## *Opt-out Notification Process*

Under the Act, if a State chooses to opt out of the FirstNet RAN plan, the State must notify FirstNet, the NTIA, and the FCC of the decision and then submit an alternative RAN plan to the FCC for its approval. This *Order* implements the Act's provisions regarding a State's notice of intention to opt out as follows:

- FirstNet must immediately notify the FCC’s Public Safety and Homeland Security Bureau (“Bureau”) when it provides the State with notice of the *final* State plan.
- Upon receipt of this notification from FirstNet, the Bureau must issue a Public Notice formally commencing the 90-day opt-out period.
- A State Governor or the Governor’s duly authorized designee must be the one to provide an opt-out notice should a State make that decision. The notification should include a certification that the State is providing “simultaneous notice of its opt-out decision to both NTIA and FirstNet.”

Furthermore, under the Act, States were given 180 days to “develop and complete” a request for proposal (“RFP”) for an alternative RAN. The FCC found that to be in compliance with this opt-requirement, a State, within 180 days of notifying all required parties of its opt-out decision, must issue a RFP for the deployment of the State RAN, receive commitment bids, *and* select a winning bidder. In the *Order*, the FCC affords States that develop and complete the RFP process in a manner consistent with the *Order* an additional 60 days to finalize and submit their alternative plans. This provision is intended to address concerns raised by some State officials that 180 days would not be enough time to conduct the entire RFP process and prepare an alternative plan.

The *Order* also requires a State to certify that its alternative RAN plan adheres to FirstNet technical interoperability network policies and support such certification with specific references to corresponding sections of the RFP and/or bid responses.

#### *FCC Assessment of Alternative Plans*

The FCC’s review of State alternative plans will apply a two-prong test to assess

1. Whether the Plan is compliant with recommendations from the Technical Advisory Board for First Responder Interoperability; and
2. Whether the Plan demonstrates interoperability with the Network.

The FCC’s review will solely focus on the RAN elements. The FCC will not examine elements related to user equipment or issues related to coverage or financing. The FCC must consider the certification and adherence of the state plan to FirstNet interoperability network policies but the FCC will leave matters regarding testing and implementing the plan to the NTIA grant application process.

The *Order* also explains that FirstNet filed with the FCC, on an *ex parte* basis, an interoperability compliance matrix with technical standards to inform how the FCC could consider whether a State plan was interoperable with the NPSBN. FirstNet urged the FCC to limit its consideration to recommended requirements numbered 4 and 5 of the 3GPP LTE Standards, Interfaces, and Guidelines section from the May 2012 FirstNet Technical Advisory Board Report which deal with hardware and software systems that are a part of the NPSBN supporting access point names, a connection gateway between a carrier’s cellular network and another network (often the Internet). Specifically, recommendations 4 and 5 state:

- Hardware and software systems comprising the NPSBN SHALL support access point names (“APNs”) defined for public safety application network (“PSAN”) usage.
- Hardware and software systems comprising the NPSBN SHALL support nationwide APNs for interoperability.

The FCC directed the Bureau to publish in the Federal Register a Public Notice, seeking comment on FirstNet's proposed matrix. The [Public Notice](#) was released but has not yet been published in the Federal Register. **Comments will be due 10 days after publication.**

Upon review of the resulting record, the FCC intends to issue a subsequent order clarifying the considerations that will guide its review of alternative plans.

#### *FCC Evaluation Procedure*

Every State alternative plan will be placed in a separate FCC docket with access restricted to the relevant State, FirstNet, and the NTIA. At the end of the 90-day opt-out period, the FCC will issue a Public Notice listing all States pursuing approval of alternative RAN plans. At that point, members of the public wishing to comment on a particular State plan may petition the FCC for leave to intervene as a party based on a presentation of an interest that is not already represented by the State government, FirstNet or the NTIA.

The Bureau will conduct initial reviews of States' alternative plans as they are filed. Within ten business days of receipt of a State plan, whenever possible, the Bureau will determine whether it meets the baseline requirements and is, thus, accepted for filing, issuing a Public Notice in such cases. After the Public Notice, recognized parties to the restricted proceeding, including NTIA and FirstNet, will have 15 days within which to provide comments then the State will have 15 days to amend or respond. The Public Notice will also trigger an aspirational 90-day shot clock for the FCC to make a final decision about the application.

#### *FirstNet Individual State Plans*

State Governors will have up to 45 days to preview the FirstNet plan and engage in feedback with FirstNet before the official 90-day opt-out notification period starts to accrue. Some states, including New Hampshire, Arizona, Colorado, Michigan, Alabama, Wisconsin, and California, have already issued RFPs for their RAN but the States say they have made no decision and are merely exploring options. AT&T has indicated that States that opt in early could start accessing FirstNet capabilities at some point in 2017 via AT&T's commercial wireless network in advance of the NPSBN being deployed. AT&T has expressed its desire to have 100 percent state participation but it remains to be seen whether the perks AT&T is offering will eliminate any desire to opt out.