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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

State Alternative Plan Program (SAPP) and the First Responder Network Authority

Nationwide Public Safety Broadband Network

[Docket Number: 160706588-6588-01]

RIN 0660-XC027

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) publishes this Notice to provide 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 (Pub. L. No. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*) (Act).

NTIA also seeks public comment on this preliminary guidance through this Notice.

DATES: Submit written comments on or before [insert date 30 days after the date of publication in the *Federal Register*].

ADDRESSES: The public may submit written comments on issues addressed in this Notice.

Written comments may be submitted electronically via email to: sapp-comments@ntia.doc.gov

or by mail to: Office of Public Safety Communications, National Telecommunications and

Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4078, Washington, DC 20230. Comments submitted by email should be machine-readable and should not be copy-protected. Commenters should include the name of the person or organization filing the comment, as well as a page number on each page of their submissions. Paper submissions should also include a CD or DVD with an electronic version of the document, which should be labeled with the name and organization of the filer. All comments received are a part of the public record and will generally be posted to the NTIA website (<http://www.ntia.doc.gov>) without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible.

FOR FURTHER INFORMATION CONTACT: Carolyn Dunn, Office of Public Safety Communications, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4078, Washington, DC 20230; sapp-comments@ntia.doc.gov; (202) 482-4103. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482-7002; via email to: press@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction: Summary

The Act requires FirstNet to take all actions necessary to ensure the deployment and operation of a nationwide public safety broadband network (NPSBN).¹ The NPSBN will, by law, initially consist of a core network and a RAN that links to the core to ensure that a single, national network architecture delivers broadband services to first responders in each state.²

Under the Act, however, a state may assume the cost and responsibility to construct, operate,

¹ See 47 U.S.C. § 1426(b).

² 47 U.S.C. § 1422(b). See also 47 U.S.C § 1401(31), defining the term "State" to include the District of Columbia and the territories and possessions.

maintain, and improve the RAN in its state, provided that it successfully undertakes three significant steps.

First, a state must submit its alternative plan for the construction, maintenance, operation and improvements of its RAN to the Federal Communications Commission (FCC) and meet specific interoperability criteria established by the FCC.³ Second, if the FCC approves the state alternative plan, that state must make five separate technical and financial demonstrations to NTIA. The state must demonstrate: 1) that it has the technical capabilities to operate and the funding to support its RAN; 2) that it has the ability to maintain ongoing interoperability with the NPSBN; 3) that it has the ability to complete the project within specified comparable timelines specific to the state; 4) the cost-effectiveness of the state alternative plan submitted to the FCC; and, 5) comparable security, coverage, and quality of service to that of the NPSBN. Third, assuming the state has successfully made such demonstrations to NTIA, the state then must negotiate and enter into a spectrum capacity lease with FirstNet, which will be required for operation of the state RAN.⁴

These three steps are fundamental to achieving a core goal of the Act, which is ensuring that the NPSBN, regardless whether FirstNet or a state assumes responsibility for the RAN, will interoperate, provide seamless broadband service across the nation, and be financially and technically sustainable. The Act directs NTIA to help determine whether a state, if it decides to pursue deploying and operating the RAN, can do so in a way that delivers these essential functionalities. NTIA's goal in reviewing state requests is to ensure that the nation has access to an interoperable, sustainable, technically sound, and cost-effective NPSBN. Accordingly, each state must ensure that its RAN functions as a fully interoperable, sustainable part of the NPSBN,

³ See 47 U.S.C. § 1442(e).

⁴ See 47 U.S.C. § 1442(e)(3)(C)-(D).

and that it will do so in a manner that most effectively utilizes the limited federal fiscal resources and the spectrum allocated under the Act. Thus, for example, and as discussed more fully below, a state that proposes to utilize a “greenfield” build for its RAN will be unlikely to successfully demonstrate to NTIA that its alternative plan is cost-effective.

This Notice provides initial guidance on NTIA’s process to review a state’s application for authority to enter into a spectrum capacity lease with FirstNet and for optional grant funds to assist in the construction of its RAN. Section II discusses applicable provisions of the Act. Section III makes clear that NTIA will treat all such requests as requests for a grant under federal law. Section III also provides general parameters of each grant request (Lease Authority or a RAN Construction Grant). Finally, Section IV specifies the manner by which each state must demonstrate compliance with the Act’s requirements in order to receive either grant. For each of the five demonstrations required of states under the Act, NTIA provides initial guidance on how to present such information and how NTIA will evaluate it.

NTIA provides this preliminary guidance to better inform states and other stakeholders as several important activities continue with regard to the future NPSBN buildout and operation. We feel that this information will be of use as states continue to consult with FirstNet on the NPSBN buildout in a given state or territory. Additionally, as FirstNet’s procurement advances, we feel that other stakeholders will benefit from understanding the initial framework NTIA has developed with regard to the demonstrations a state must make to NTIA should it desire to bear the responsibility to conduct the RAN within that state. Future notices, including but not limited

to a forthcoming Federal Funding Opportunity (FFO) notice, will provide more details on the application processes.⁵

II. Background: Relevant Statutory Provisions

A. FirstNet’s Technical Network Components and Policies

The Act requires the NPSBN to be composed of: 1) a core network consisting of national and regional data centers that connect to a RAN and the Internet/public switched network; and 2) a RAN consisting of cell site equipment, antennas, and backhaul equipment that is built and operated in consideration of state, local, and tribal consultation.⁶ Further, the Act requires FirstNet to establish policies for these components, which collectively constitute the NPSBN. Under the section of the Act entitled, “Establishment of Network Policies,” FirstNet must develop technical and operational NPSBN requirements, practices, procedures, and standards for NPSBN management and operation, terms of service for the use of the NPSBN, and ongoing compliance reviews and monitoring.⁷

B. A State’s Options on RAN Construction, Operation, Maintenance, and Improvements

The Act requires FirstNet to develop and present to each state general details of the proposed buildout of the NPSBN, including its proposed plan for building the RAN in that state.⁸ Once FirstNet presents its state plan to the governor of a given state, a state must decide whether it authorizes FirstNet to build, operate, maintain, and improve the state RAN or if it wants to take on that responsibility itself.⁹ The governor has 90 days to make that decision.

⁵ NTIA intends to issue such an FFO notice not later than the date on which FirstNet first delivers a proposed plan for the buildout of the NPSBN in a state.

⁶ See 47 U.S.C. § 1422(b).

⁷ See 47 U.S.C. § 1426(c)(1)(B)-(E).

⁸ See 47 U.S.C. § 1442(e)(1). While 47 U.S.C. § 1442(e) is not specific to this, for purposes of this Notice, the reference to a “state” incorporates both states and territories.

⁹ See 47 U.S.C. § 1442(e)(2).

FirstNet has determined that a state may choose to adopt the FirstNet state plan by either: 1) providing actual notice in writing to FirstNet within the Act's 90-day decision period; or 2) providing no notice at all within the 90-day period.¹⁰ The process for a state to reject FirstNet's state plan and receive authority to proceed with its own RAN plan is as follows: upon making a decision to assume responsibility for RAN deployment in the state, the governor shall notify FirstNet, NTIA, and the FCC of this decision within the 90-day decision period.¹¹ The governor must then develop and complete requests for proposals for the construction, maintenance, and operation of the RAN within 180 days after deciding to assume responsibility for the RAN.¹² Then, in developing its alternative plan for the construction, maintenance, operation, and improvement of the RAN that it must submit to the FCC for approval, the state must demonstrate compliance with minimum technical interoperability requirements established pursuant to the Act by a board selected by the FCC.¹³ Additionally, the alternative state plan must demonstrate interoperability with the NPSBN.¹⁴ If the FCC disapproves the alternative state plan, FirstNet shall proceed with the construction, maintenance, operation, and improvements of the NPSBN within the state.¹⁵ Alternatively, if the FCC approves the state-developed plan, the state must then apply to NTIA for the authority to enter into a spectrum capacity lease with FirstNet to operate its RAN within the state.¹⁶ Additionally, a state receiving FCC approval of its alternative

¹⁰ First Responder Network Authority, *Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, 80 Fed. Reg. 63504, 63506 (Oct. 20, 2015) (FirstNet Final Interpretations on Second Notice).

¹¹ See 47 U.S.C. § 1442(e)(3)(A).

¹² See 47 U.S.C. § 1442(e)(3)(B).

¹³ See 47 U.S.C. § 1442(e)(3)(C)(i)(I) (requiring a state alternative plan to be in compliance with minimum technical interoperability requirements established by the Technical Advisory Board for First Responder Interoperability pursuant to the Act); see also Interoperability Board, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network* (May 22, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7021919873>.

¹⁴ 47 U.S.C. § 1442(e)(3)(C)(i)(II).

¹⁵ See 47 U.S.C. § 1442(e)(3)(C)(iv).

¹⁶ See 47 U.S.C. § 1442(e)(3)(C)(iii)(II).

plan may, but is not required to, apply to NTIA for grant funds to assist in the construction of its RAN.¹⁷

C. NTIA Analysis of State Demonstrations Regarding Ongoing RAN Responsibilities

If a state wishes to assume the responsibility to construct, operate, maintain, and improve its own RAN, NTIA must evaluate a state's demonstrations of specific criteria set forth in the Act, which address its ability to operate the RAN on technical, financial, interoperability, programmatic, and qualitative levels. If successful, NTIA will grant the: 1) required authorization to enter into a spectrum capacity lease from FirstNet to operate its state RAN; and 2) optional eligibility to receive grant funds from NTIA to construct its state RAN.¹⁸

Specifically, the Act requires a state to demonstrate the following:

1. The state has the technical capabilities to operate, and the funding to support, the state RAN;
2. The state has the ability to maintain ongoing RAN interoperability with the NPSBN;
3. The state has the ability to complete the RAN buildout within specified comparable timelines specific to the state;
4. The cost-effectiveness of the state alternative plan; and
5. The ability to provide RAN security, coverage, and quality of service comparable to that of the NPSBN.¹⁹

D. Utilization of FirstNet's Statutory Interpretations

FirstNet has interpreted some of the statutory provisions described above. These include the consequences of a state's failure to meet NTIA-reviewed criteria at least with respect to a

¹⁷ See 47 U.S.C. § 1442(e)(3)(C)(iii)(I).

¹⁸ See 47 U.S.C. § 1442(e)(3)(D).

¹⁹ *Id.*

state application for authority to enter into a spectrum capacity lease with FirstNet; the consequences of a state's failure to implement an FCC-approved alternative state plan; and any determination regarding the Act's Section 6302(g)(2) limitation of a state's use of revenues emanating from covered leasing agreements exclusively to RAN construction, maintenance, operations, and improvements.²⁰ These and other interpretations may directly bear upon the issues in this Notice and any additional Notices relating to NTIA's duties described in this Notice and pursuant to the Act. NTIA will utilize FirstNet's relevant interpretations of provisions of the Act in carrying out its responsibilities on these matters.

III. Overview of Applications for Grant of Authority to Enter Into a Spectrum Capacity Lease with FirstNet and RAN Construction Funding

As noted above, states must submit, and NTIA must review, requests by states whose state alternative plans are approved by the FCC for: 1) grant of authority to enter into a spectrum capacity lease from FirstNet (Lease Authority); and 2) the optional request for RAN construction grant funding (RAN Construction Grant). The Act makes clear that a qualified state must request Lease Authority from NTIA so that the state may enter into an agreement to use spectrum licensed to FirstNet to operate the state's RAN.²¹

As a threshold matter, NTIA has determined that each of these requests are grant requests under federal regulations, and that approval of such requests are grants of something of value provided by NTIA. We make this determination pursuant to the Federal Grants and Cooperative Agreement Act of 1977, which makes clear that “[a]n executive agency shall use a grant

²⁰ See First Responder Network Authority, *Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, 79 Fed. Reg. 57058 (Sept. 24, 2014) (FirstNet First Notice); First Responder Network Authority, *Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, 80 Fed. Reg. 63523 (Oct. 20, 2015) (FirstNet Final Interpretations on First Notice); FirstNet Final Interpretations on Second Notice.

²¹ See 47 U.S.C. § 1442(e)(3)(C)(iii)(II). In contrast, applying to NTIA for construction grant funds by such a State is optional. See 47 U.S.C. § 1442(e)(3)(C)(iii)(I).

agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government. . . .”²² NTIA will evaluate a state’s request for Lease Authority, or its request for Lease Authority plus an optional RAN Construction Grant, as a single grant application.

Such applications will be processed pursuant to a forthcoming FFO notice providing specific details on the application and grant program requirements.²³ NTIA expects to establish additional application requirements for the RAN Construction Grant that are commensurate with application requirements for other federal construction grant programs.

NTIA must evaluate either grant request on the identical demonstration criteria set forth in 47 U.S.C. § 1442(e)(3)(D). Below, we address procedural issues common to both types of requests and those distinct for each type of grant application pursuant to the Act.

A. Grant Procedures Common to Lease Authority and a RAN Construction Grant

1. Timing of Applications to NTIA. The Act does not spell out deadlines for the submission of grant applications to NTIA. However, given the need for the NPSBN to be built in a timely manner, the upcoming FFO notice will establish deadlines by which a

²² See Federal Grants and Cooperative Agreement Act of 1977, sec. 5, Pub. L. No. 95-224, 92 Stat. 3, 4 (Feb. 3, 1978) (codified at 31 U.S.C. 6304).

²³ NTIA has termed the non-monetary grant of authority by NTIA to a state to enter into a spectrum capacity lease pursuant to 47 U.S.C. § 1442(e)(3)(C)(iii)(II) of the Act as a “Lease Authority” to avoid the erroneous interpretation that grant of such authority will involve the grant of funds.

state must file its application. NTIA tentatively sets this deadline to be no later than 60 days after the FCC has approved a state's alternative plan.

2. Eligible Applicants. Eligible applicants for Lease Authority or a RAN Construction Grant will be those states and territories of the United States whose alternative state plan was approved by the FCC pursuant to the Act.²⁴

3. Discretionary Grants. Because the Act did not establish mandatory funding levels for each eligible grantee, Lease Authority and RAN Construction Grants are considered discretionary grants. Therefore, NTIA is authorized to grant or reject applications and determine final award amounts, based on an assessment against the statutory demonstration criteria and other factors that will be detailed in the FFO.

4. Common Demonstration Evaluation. NTIA will apply an identical method of evaluation of the state demonstrations pursuant to 47 U.S.C. § 1442(e)(3)(D) to both types of grant requests. Should a state apply for both Lease Authority and a RAN Construction Grant, NTIA will conduct one review of the state's joint submission.

5. Rolling Application Evaluation. NTIA will review and make determinations on state applications for Lease Authority or a RAN Construction Grant on a rolling basis following the FCC's approval of a state's alternative plan and submission of a state's required demonstrations to NTIA. We recognize that making timely decisions on a state's application is critical to ensuring the NPSBN is deployed and operational in every state – regardless of the party ultimately responsible for conducting a RAN in a given state. While NTIA has not fully developed specific details on the application and grant

²⁴ See 47 U.S.C. § 1442(e)(3)(C)(ii).

program requirements, we will review applications as expeditiously as possible to further the intent of the Act to speed NPSBN deployment.

6. Evaluation of RAN as Approved by FCC in Alternative State Plan. For purposes of either grant request, NTIA will evaluate the proposed RAN as it has been approved by the FCC. Thus, a state's grant application and corresponding additional demonstrations should address the alternative state plan approved by the FCC. NTIA intends to review all relevant aspects of a state's approved plan, which may include the RAN and deployable components, as well as proposed devices, applications, and services.

B. General Parameters for Lease Authority

If the FCC approves a state's alternative plan, the state must request Lease Authority from NTIA to obtain from FirstNet the right to operate its RAN on the Band 14 spectrum licensed to FirstNet.²⁵ NTIA will not award or approve any such spectrum capacity lease itself. NTIA's role is limited to determining whether a state has demonstrated compliance with the required technical, financial, interoperability, programmatic, and qualitative criteria so that it can authorize the state to enter into a spectrum lease with FirstNet.

C. General Parameters for a RAN Construction Grant

1. Spectrum Capacity Lease Condition Precedent for RAN Construction Grant Obligation. A state cannot apply for a RAN Construction Grant without also applying for Lease Authority. Accordingly, NTIA will review a single application for both a Lease Authority Grant and a RAN Construction Grant and make determinations about whether the state has sufficiently demonstrated compliance with the required criteria of 47 U.S.C.

²⁵ 47 U.S.C. § 1442(e)(3)(C)(iii)(II).

§ 1442(e)(3)(D). If so, NTIA will award that state Lease Authority. However, NTIA will not award RAN Construction Grant funding until that state has fully executed a spectrum capacity lease agreement with FirstNet.

2. Determining RAN Construction Grant Funding Level. NTIA is developing a process for determining funding levels for each state that may apply for a RAN Construction Grant. In developing this process, NTIA may take into consideration cost increases FirstNet will incur should a state assume the responsibility to conduct its own RAN, and may reduce a final grant award accordingly. For example, FirstNet may incur increased costs to mitigate additional operational risks to the NPSBN, and losses of cost efficiencies, if a state assumes responsibility for the construction and operation of the RAN within its boundaries. Additionally, should a state conduct its own RAN, FirstNet may bear 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. Further, the final grant award amount to a state may be impacted by 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. Additionally, NTIA will set forth any cost sharing requirements for the RAN Construction Grant in the forthcoming FFO.

3. Allowable costs. RAN Construction Grant allowable costs will be limited to categories of costs, such as equipment, construction, installation, contractual, and other associated costs related to construction of the state's RAN as detailed in the state alternative plan approved by the FCC. Ongoing maintenance, operation (inclusive of all recurring costs), and improvement costs are not eligible grant expenses. A RAN

Construction Grant may fund a portion of the overall cost of the construction of a state's RAN, and any unanticipated costs beyond the RAN Construction Grant award are the responsibility of the state. Further, a state's decision to propose to NTIA a more costly plan than what is proposed in the FirstNet state plan will be at the state's discretion and expense; the RAN Construction Grant award will not be increased to accommodate any such proposal.

4. Partnership Valuation. Applicants will be required to disclose the value of any partnering agreement that will enable and support the state in the construction and/or operation of the state RAN. Further, a state must demonstrate how any such agreement and state policies and procedures will ensure that revenues from such an agreement will be used only for constructing, maintaining, operating, and improving the state RAN pursuant to the Act and not for any other purpose.²⁶

5. Environmental Compliance. NTIA will require that all of a state's RAN Construction Grant-funded activities comply with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and other applicable federal environmental requirements.²⁷

IV. Lease Authority and RAN Construction Grant Application Demonstrations

Central to the Act's provision of Lease Authority and a RAN Construction Grant is a detailed set of demonstrations a state must make to NTIA to establish eligibility for these grant

²⁶ See 47 U.S.C. § 1442(g).

²⁷ The National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other such federal policy directives require federal administrative agencies to factor environmental and historic preservation considerations into their discretionary decision-making, including federally funded actions such as grants. NEPA directs that federal agencies implement, "to the fullest extent possible," methods and procedures designed to accord environmental and historic preservation factors appropriate consideration. See 42 U.S.C. § 4332. Therefore, RAN Construction activities will be subject to compliance with NEPA and NHPA and such requirements will be set out in the FFO.

opportunities.²⁸ These demonstrations are separate and distinct from any demonstrations required of a state in its alternative state plan submitted to the FCC pursuant to the Act.²⁹ The required demonstrations to NTIA are distinct in that they address: 1) the ability to maintain ongoing interoperability, rather than the capability of interoperability as of the time the state plan is submitted to the FCC; 2) the technical and financial viability of the proposed RAN deployment, operation, maintenance, and improvement; and 3) the state's planned timelines, security, coverage, and quality of service as compared to that of the NPSBN.³⁰

NTIA interprets each of the criteria in 47 U.S.C. § 1442(e)(3)(D) below to provide NTIA's preliminary view on how states should make the required demonstrations and how NTIA will evaluate each criterion. The forthcoming FFO notice will provide more specific, quantifiable, and finalized criteria and application questions.

A. The Technical Capabilities to Operate, and the Funding to Support, the State RAN³¹

Under this provision of the Act, a state must demonstrate: 1) that it can operate the state RAN on a technical level; and 2) that it has the financial resources to do so. We discuss how a state can effectively make each part of this demonstration below.

As a primary matter, a state must be able to demonstrate with specificity that it can operate its RAN on a technical level. To make such a demonstration, it must have a technical standard against which its demonstrations may be measured. As established in the Act, all components of the NPSBN, including the core network and the RAN, must be operated under

²⁸ See 47 U.S.C. § 1442(e)(3)(D).

²⁹ See 47 U.S.C. § 1442(e)(3)(C)(i)-(ii). For the FCC review, the state alternative plan must demonstrate interoperability: a) at the technical level via compliance with the Interoperability Board Minimum Technical Requirements; and b) with the NPSBN.

³⁰ See 47 U.S.C. § 1442(e)(3)(D) (providing the requirements that a qualified state must show to obtain grant funds and spectrum capacity leasing rights).

³¹ See 47 U.S.C. § 1442(e)(3)(D)(i)(I) (requiring that a qualified state has the technical capabilities to operate, and funding to support, its RAN).

common technical network policies.³² To give meaning to the Act’s focus on ensuring technical compatibility and interoperability across each part of the NPSBN, NTIA believes that these policies must be applied to any portion of the RAN, regardless whether FirstNet or a state assumes responsibility for the building, operation, maintenance, and improvement of the RAN in a given state. Accordingly, the network policies that apply to FirstNet as it ensures the building, operation, maintenance, and improvement of the NPSBN core and any portion of the RAN also must apply to a state seeking to build, operate, maintain, and improve the RAN in its state. Applying the network policies uniformly to all parts of the RAN helps ensure the NPSBN will function uniformly and in a manner that best serves public safety, consistent with the Act’s requirement to create a single, nationwide architecture.³³ Therefore, a state will need to be compliant with the RAN-specific network policies established by FirstNet as required by the Act in order to meet the demonstrations required in 47 U.S.C. § 1442(e)(3)(D).

From a resource management perspective, NTIA will require a state to identify the proposed management capabilities and organizational structure of its RAN project team.³⁴ Further, NTIA will require a state to provide information on its planned staff size and technical operations to demonstrate how the state’s staffing plan, if properly funded, will ensure that the RAN is built, operated, and maintained in accordance with the RAN-specific network policies FirstNet establishes. A forthcoming FFO notice will provide additional details regarding the technical capabilities a state must demonstrate under 47 U.S.C. §1442(e)(3)(D)(i)(I).

In addition to this technical showing, 47 U.S.C. § 1442(e)(3)(D)(i)(I) requires a state to demonstrate that it has the financial resources to build, operate, maintain, and improve the RAN

³² See 47 U.S.C. § 1426(b)(1).

³³ See 47 U.S.C. § 1422(b) (“The [NPSBN] shall be based on a single, national network architecture . . .”).

³⁴ NTIA may require a state to provide information on each key staff member (*e.g.*, status as partner employee, government employee, contractor, or consultant; curriculum vitae; operational function via organizational chart).

for the duration of the requested authorized operation. In that context, a state will be required to provide its budgeting documents and staffing plan for its operations and must disclose its sources of funding for its RAN (*e.g.*, whether such funds are covered lease fees or other state fees, state appropriations, in-kind contributions, or grants). Further, a state must disclose any partnership agreement (whether or not such an agreement constitutes a “public-private partnership” or “covered leasing agreement” under the Act³⁵) it has executed, or intends to execute, with respect to its RAN. A state will also need to address funding risks and lifecycle plans in its demonstrations and how these may impact its ability to financially support the implementation of FirstNet’s RAN-specific network policies. Among other things, NTIA may require surety bonds to ensure RAN construction completion in the event of default by the state’s RFP partner.

B. The Ability to Maintain Ongoing Interoperability with the Nationwide Public Safety Broadband Network³⁶

Under this requirement, a state must demonstrate that its RAN and other network attributes will be interoperable with the NPSBN on an “ongoing” basis. Consistent with the interoperability demonstration a state must make to the FCC in its state alternative plan, NTIA will determine interoperability with the NPSBN if a state demonstrates the ability to ensure that its RAN is capable of: 1) meeting the Interoperability Board Minimum Technical Requirements; and 2) interoperating with the NPSBN.³⁷ To the extent FirstNet’s network policies establish interoperability requirements, NTIA will consider a state’s demonstration of adoption of and long-term capability of compliance with those requirements, including potential changes in

³⁵ See 47 U.S.C. § 1442(g) (stating prohibitions which a state must adhere to in developing partnership arrangements).

³⁶ See 47 U.S.C. § 1442(e)(3)(D)(i)(II) (stating a State must show the ability to maintain ongoing interoperability with the NPSBN).

³⁷ See 47 U.S.C. § 1442(e)(3)(C)(i).

policies, as strong evidence of a state RAN's interoperability with the NPSBN from a technical perspective.

However, the 47 U.S.C. § 1442(e)(3)(D)(i)(II) demonstration must include a state's ability to ensure ongoing interoperability with the NPSBN. Thus, a state must demonstrate that its entire operation as authorized by the FCC, insofar as it engages any RAN or core elements of the NPSBN, will be interoperable on an ongoing basis. For this reason, a state's demonstration must also show how, for example, any deployable RAN components and related applications the state intends to use will be interoperable with the NPSBN. This demonstration must include technical attributes and a plan for ensuring, through staffing and resources, the ability to meet those technical imperatives. Additionally, NTIA may require that a state demonstrate the ability to maintain ongoing interoperability with the NPSBN from a non-technical standpoint and require information on planned RAN governance models, standard operating procedures, training and exercises, and usage.

As a state must show capability of "ongoing" interoperability with the NPSBN, a state's demonstration must be forward looking and illustrate how its RAN and other network attributes will be interoperable with the NPSBN over time. Recognizing that the ongoing aspect of interoperability will largely be facilitated by a state's partner charged with constructing, operating, maintaining, and improving the RAN, NTIA will require that any state partnership agreement ensures the RAN will be interoperable with the NPSBN from deployment onward. Such a requirement may include demonstration of a partner's commitment to complying with FirstNet's evolving interoperability-based network policies.

Further, a state's RAN must be capable of interoperability with the NPSBN as it evolves and improves throughout the duration of the proposed RAN operation by the state, including

compliance with new or evolving network policies. Such demonstrations should also include evidence that the state has the funding to fulfill these necessary elements for maintaining ongoing interoperability as detailed in Section IV. B.

C. The Ability to Complete the Project within Specified Comparable Timelines Specific to the State³⁸

FirstNet currently anticipates that its state plans will include timelines for NPSBN buildout as “minimum legally required contents of a FirstNet plan for a State” against which a state may present project completion time frames for comparison in its demonstration to NTIA.³⁹ Accordingly, we require that a state’s demonstration to NTIA contain specified timelines for the completion of its project as authorized by the FCC. These timelines must be of the same number, nature, and type as those presented to the state by FirstNet in its proposed state plan so that identical benchmark topics and timeframes may be readily compared and assessed.

D. The Cost-Effectiveness of the State Plan Submitted to the FCC

NTIA will require that a state alternative plan, as submitted by a state to and approved by the FCC pursuant to the Act, is the plan at issue in this required demonstration. We believe every aspect of that plan as itemized in the Act -- RAN construction, maintenance, operation, and improvement⁴⁰ -- must be assessed for cost-effectiveness for the duration of the requested authorized operation.

In determining cost-effectiveness, NTIA may assess areas, including but not limited to, the proposed federal and state partner share of the RAN cost; the value, use, and revenue return of spectrum and other assets; and overall financial value of the proposed plan. For example, a

³⁸ See 47 U.S.C. § 1442(e)(3)(D)(i)(III) (providing that states must demonstrate the ability to complete projects with specified timelines).

³⁹ FirstNet Second Notice, 80 Fed. Reg. at 13342.

⁴⁰ See 47 U.S.C. § 1442(e)(3)(C)(i).

state plan that proposes a “greenfield” build (one that does not leverage existing infrastructure and/or a public-private partnership and deploys a network solely consisting of new components) is not likely to demonstrate cost effectiveness. Additionally, the Act makes clear that a nationwide buildout can provide significant economies of scale across state boundaries that can leverage existing infrastructure when feasible and reduce the cost of NPSBN RAN construction in any given state or territory. NTIA will take these cross-border economies into account in the context of a state opt-out plan’s cost effectiveness.

E. Comparable Security, Coverage, and Quality of Service to That of the NPSBN⁴¹

FirstNet anticipates including specific details on security, coverage, and quality of service in its proposed plan for the buildout of the NPSBN in a given state.⁴² This will form the basis around which a state should build its demonstration pursuant to 47 U.S.C. § 1442(e)(3)(D)(iii). NTIA will compare the security, coverage, and quality of service aspects of a state’s demonstration to the equivalent elements and for the equivalent duration in FirstNet’s proposed plan for the buildout of the NPSBN in that state.

With respect to coverage, we note that the Act requires the NPSBN to include “substantial rural coverage milestones as part of each phase of the construction and deployment of the network.”⁴³ As a result, any state with significant rural areas should include substantial rural coverage milestones as part of its overall demonstration to enable NTIA to make an appropriate rural buildout plan comparison between the two plans.

V. Request for Public Comment and Ex Parte Communications

⁴¹ See § 1442(e)(3)(D)(iii).

⁴² See FirstNet Second Notice, 80 Fed. Reg. at 13342.

⁴³ 47 U.S.C. § 1426(b)(3).

NTIA invites public comment on any and all issues identified in this Notice. Any non-public oral presentation to NTIA regarding the substance of this Notice will be considered an ex parte presentation, and the substance of the meeting will be placed on the public record and become part of this docket. No later than two (2) business days after an oral presentation or meeting, an interested party must submit a memorandum to NTIA summarizing the substance of the communication. NTIA reserves the right to supplement the memorandum with additional information as necessary, or to request that the party making the filing do so, if NTIA believes that important information was omitted or characterized incorrectly. Any written presentation provided in support of the oral communication or meeting will also be placed on the public record and become part of this docket. Such ex parte communications must be submitted to this docket as provided in the ADDRESSES section above and clearly labeled as an ex parte presentation. Federal entities are not subject to these procedures.

Dated: July 14, 2016.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

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