

Response to the DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
State Alternative Plan Program (SAPP)
and the First Responder Network Authority
Nationwide Public Safety Broadband Network
Notice and Request for Comments

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Public Safety Broadband Network Working Group
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The Illinois Terrorism Task Force Public Safety Broadband Network Working Group (“IL-PSBN” or “Illinois”) appreciates this opportunity to submit comments to the Department of Commerce, the National Telecommunications and Information Administration, and the First Responder Network Authority (“FirstNet”) regarding their State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network Notice and Request for Comments

These comments are a collaborative response from the IL-PSBN, which is a multi-disciplinary, multi-jurisdictional Public Safety/Service stakeholder group focused on FirstNet in Illinois.

(Please Note: *“Quotes from the Notice are in underlined italics.”*)

General Comments:

Illinois fully supports the efforts National Telecommunications & Information Administration and the First Responder Network Authority (known as FirstNet) have put forth on moving the Nationwide Public Safety Broadband Network (NPSBN) forward for public safety. The network must be fully integrated across the U.S., fully interoperable and usable by any user from any state as they are operating in any other state. This must be accomplished invisibly to the user, that is, there should be no difference in network functionality or user experience no matter who is supplying the Radio Access Network (RAN). A seamless, technically compliant, and financially sustainable network is a goal that we believe all stakeholders share.

And although we agree with the concepts for the requirements for a state to proceed with an Opt-Out scenario, we are concerned by the absolute lack of hard information and defined guidance that is required for the states wishing to Opt-Out to start planning, or even evaluating their options. Based on the current lack of information, it is practically impossible for a state to make an informed decision on the matter. If NTIA and FirstNet are serious about supporting Opt-Out as defined in The Act, we believe much more detailed information should be made available as soon as possible, far in advance of the State Plans being delivered to the governors of individual states.

Time is short—we are potentially only six to nine months away from State Plan delivery—and we urge the NTIA and FirstNet to develop this guidance posthaste. We hope that the final guidance and instructions are not delivered at the same time as the State Plans. With the already short timelines for Opt-Out, this would make it extremely difficult for a state to properly analyze the complex implications of an Opt-Out decision.

We are also concerned about the potential RAN Construction Grants as described later in this document. It is unclear what the financial parameters of the grant are, i.e., how much funding is available, what the formula is for assigning funding amounts to various states, etc.

Comments on Specific Sections of the Document:

SUPPLEMENTARY INFORMATION:

I. Introduction: Summary

“...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.”

Illinois observes that the criteria mentioned above have not yet been developed. Although it is possible for a state to make a determination on their own if they have the abilities and capabilities mentioned above, at this point there is no way to tell if the state would meet NTIA’s view of the criteria. NTIA needs to release guidance to the states as soon as possible so the states can make a determination if they can meet the NTIA standards. We would not want to see states expend effort and funds to begin Opt-Out planning, only to find once the guidance is issued that they would not be able to meet NTIA’s rather strict timelines and requirements. This is a case where timely and accurate information can help states make an informed decision much sooner.

“...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. ... Future notices, including but not limited to a forthcoming Federal Funding Opportunity (FFO) notice, will provide more details on the application processes...”

Illinois appreciates NTIA’s efforts to provide stakeholders with preliminary guidance. However, we must stress the need for NTIA, FCC, and FirstNet to quickly develop the finalized guidance, criteria and instructions that states will need to accurately analyze and make the Opt-In/Opt-Out decision. Again, we observe that time is of the essence here; states have very short decision and planning timeframes under the Act. Delays in providing relevant information will only exacerbate the situation.

II. Background: Relevant Statutory Provisions

A. FirstNet’s Technical Network Components and Policies

“... 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...”

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..."

Illinois believes that these two sections are an example of some of the conflicting timelines that we see in the Opt-Out scenario as laid out by FirstNet/NTIA. Our reading of the FirstNet RFP indicates that these Network Policies will be developed in concert with the contractor chosen by FirstNet to operate the network. Our concern is that these policies might not be fully developed by the time the State Plans are released. They may only be draft or preliminary policies subject to change as technology evolves or the project progresses. Especially if the policies contain only general details, it would be very difficult for an Opt-Out state to get accurate cost estimates from vendors to meet the changing network policies. In this case, costs to an Opt-Out state could rise unpredictably, especially if the network requirements are developed without any visibility to interested stakeholders.

"... 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. 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..."

This section raises two important issues:

1. The phrase "develop and complete request for proposals" is unclear. Does this mean that the RFP document must be fully developed and ready for release, -OR- does it mean that the RFP must have been developed, released, and a vendor chosen?
2. Secondly, the stated timing gives states only 270 days to analyze, make a decision, and "complete" (see above) the RFP process. If a state were to release for bid an RFP for an Opt-Out contractor before the initial decision 90-day window starts, would NTIA/FirstNet consider that as an Opt-Out decision and start the 180-day clock, bypassing the 90-day decision timeframe?

"... 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..."

This section is somewhat unclear to us. Is the "board selected by the FCC" an existing board that generated the minimum interoperability requirements, or is there a future board that will be charged with reviewing and making determinations on state plans? We also note that the "Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network" document referenced by the NTIA is already over four years old. In modern technology terms, this is an ancient document and is likely in need of an update. The possibility of changes is now another source of uncertainty. Again, this points to one of our overall themes, namely, that states are not going to get the information vital to analyze or decide on an Opt-Out scenario in a timely manner.

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

Illinois is also concerned about the timeline for all the approval processes that a state must successfully navigate to be able to execute an Opt-Out decision. For example, we see no schedule or deadlines for:

- FCC to make a determination and approve the technical and interoperability criteria
- NTIA to review and approve the five technical and financial demonstrations
- Negotiating and entering into a spectrum capacity lease agreement with NTIA
- Applying for a RAN Construction Grant with NTIA

This uncertainty will make it very difficult for states considering Opt-Out to develop reasonably accurate cost and schedule estimate that will be critical to their potential Opt-Out decision/execution.

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... 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.”

Again, Illinois generally agrees with the concept of these requirements, but we are concerned about what the actual requirements and thresholds for approval might actually be. We have two specific questions:

1. Will NTIA release specific requirements that states must meet for all five items? We are concerned about the vagueness and uncertainty of these requirements. Without knowing the exact criteria and thresholds for approval until after the approval process, it is hard for a state to determine on their own if they would be able to meet these undefined requirements. As stated earlier, if a state understands the exact requirements, they can make an informed decision about whether to consider Opt-Out.
2. Probably the vaguest of all the requirements is the “cost-effectiveness” test. We have seen no criteria, no rationale, and no proposed analysis that show what is considered “cost-effective.”

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

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

Illinois supports the release of any and all information in a timely manner in order to make informed decisions on an Opt-Out scenario. We look forward to the upcoming FFO.

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 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

We note that while there are many well established deadlines required of states who wish to Opt-Out, there are currently no deadlines established for any federal agency involved with this entire process.

“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...”

Illinois is unclear on the details of the Discretionary Grants, essentially, how the funding is set aside:

- Is there currently a fixed amount set aside nationwide overall for these grants?
- Is there a specific amount set aside for each state to be awarded in the event of a successful Opt-Out?
- If the grant funding is set aside by state, is it based on population or some other metric?

“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... We recognize that making timely decisions on a state’s application is critical to ensuring the NPSBN is deployed and operational in every state... While NTIA has not fully developed specific details on the application and grant program requirements, we will review applications as expeditiously as possible to further the intent of the Act to speed NPSBN deployment...”

Illinois appreciates the effort by NTIA to review and decide on applications as they come in as quickly as possible. However, we see a potential problem in using evaluation requirements that are not fully developed and could be changing during the process. Remembering that decisions are final, with no appeal, it is possible that an early application that was rejected based on the criteria in use at that time could have been approved using the criteria in use in later stages of the process that were changed over time. In this case, what happens to the early application that was rejected in this case? Again, we point out that it is vital that FCC, NTIA and FirstNet develop and release all the

information that is going to be used in the application, review and determination processes by all the involved agencies.

C. General Parameters for a RAN Construction Grant

“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....”

Illinois understands that NTIA will make adjustments to a grant award based on many technical and financial factors, specifically related to how an Opt-Out state’s network will interoperate with the overall NPSBN. However, we are unsure of how the initial base funding level to each state will be determined. Will the baseline funding be based on:

- Total area in square miles within the boundaries of the state?
- Population of the state, i.e., a fixed amount per person based on the latest census?
- A combination of population and area?
- Is this a competitive grant program where all successful states share a fixed amount of funding?
- Will the per-state funding be affected by the number of states that apply to Opt-Out? For example, if \$500M is set aside for construction grants and five states successfully Opt-Out, then they each receive \$100M; however, if 20 states are approved, then would the amount per state drop to \$25M?

Illinois believes that all stakeholders would be best served by a clear, concise financial statement detailing exactly what is available and what the baseline financial awards would be as a starting point.

“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...”

We note that procurement, planning and design costs are not specifically called out in this section. Would these fall under the “other associated costs related to construction,” above? Under an Opt-Out scenario, states would incur considerable costs from planning, analysis and application costs related to the rather lengthy and as-yet-unknown approval process from FCC, NTIA and FirstNet. Will these costs be reimbursable under the construction grant?

“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.”

NTIA and FirstNet will need to develop specific criteria defining what activities constitute “constructing, maintaining, operating, and improving the state RAN,” including work definitions and how much funding, either in absolute or percentage figures, is appropriate for these functions. Also,

they will need to develop examples of what constitutes “not for any other purpose.” Clear guidelines are needed to prevent later disputes and possible financial adjustments (penalties?) to states arising from unclear requirements at the start.

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 opportunities... 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 RAN

This section makes the case that the network should be operated under common technical network policies in order to ensure the successful operation and interoperability of the network.

However, as stated earlier, Illinois believes that these standards will not be developed until an estimated six to nine months after FirstNet has awarded a contract to the successful contractor. It is hard for us to see how a state’s Opt-Out plan can be evaluated by policies and standards that may not fully exist at the time of application and review. Additionally, this uncertainty affects the state RFP process in selecting their own vendor for the state’s RAN.

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

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

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 improvement—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 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.

As stated earlier in this document, Illinois believes that this is the least clear topic of all the Opt-Out issues. We have seen nothing that even begins to address the complexities here, and we are wondering how this might be done in a practical manner.

If there is a need for clarification or further explanations please do not hesitate to reach out.

Regards,

Joe Galvin
State of Illinois Statewide Interoperability Coordinator (SWIC)