Before the
National Telecommunications and Information Administration
U.S. Department of Commerce
Washington, D.C. 20230

State Alternative Plan Program (SAPP)	)	Docket No.160706588-6588-01
and the First Responder Network	)	
Authority Nationwide Public Safety		
Broadband Network		

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

August 18, 2016

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I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association[1] ("NTCA") hereby submits comments in the above captioned proceeding,[2] in which the National Telecommunications and Information Administration ("NTIA") has published 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"), as allowed under the Middle Class Tax Relief and Job Creation Act of 2012 ("the Act").[3] In its notice and request for comment, NTIA offers preliminary guidance concerning the criteria that will be used to evaluate

[1] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers ("RLECs") and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended.

[2] National Telecommunications and Information Administration, State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network, Docket No. 160706588-6588-01, 81 Fed. Reg. 46907 (rel. July 19, 2016). ("Notice").

[3] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, Title VI, 126 Stat. 156, codified at 47 U.S.C. § 1401, et seq. (2012).

each alterative (or "opt-out") state proposal. In order to provide interested states and potential industry partners with the information they need to create a successful alterantive state plan, and to comply with the spirit and intent of the Act, NTIA should offer guidance with more detail and specificity. NTCA's members live and work in the rural communities they serve, and are committed to continuing to work closely with first reponders, and their states and municipal government agencies, and to ensure that rural consumers benefit from the nationwide public safety broadband network ("NPSBN"). However, there is concern that the overly broad nature of NTIA's proposal will lead to uncertainty in the market, and will not provide interested opt-out states with the ncessary guidance to submit proposals that comply with the letter and intent of the Act, and achieve its desired outcomes.

Of particular import, the Act requires a state to make five separate technical and financial demonstrations before it can receive approval from NTIA, including a showing that the state's alternative network proposal is cost effective. However, NTIA has offered few details in regard to how these criteria will be evaluated, and/or how a state can meet the required benchmarks.

Consistent with the Act and the overarching need to maximize reach, leverage expertise, and improve the economies of network deployment, NTIA should specify that an alternative state plan will be judged on its ability to utilize existing commercial assets and infrastructure as a critical input into its demonstration of cost effectiveness. In particular, given that the Act itself calls expressly for leveraging of rural assets as one means of ensuring cost effectiveness, NTIA should require an opt-out state to incorporate partnerships with rural telecommunications providers—those wireline and/or wireless network operators that are based in rural areas of the country and primarily serve rural customers[4]—for a minimum of 15% of the wireline and wireless assets thus implicated by the state's proposed network strategy. However, this 15% rural telecommunications provider partnership target should be used as a rough, *minimum* guideline, as in many states rural providers have deployed significant assets across wide swaths of the geography, and in those cases a mere 15% partnership requirement will not be enough to ensure that the alterative state plan is cost effective in the manner contemplated by the Act.

Under either a Federal framework or on a state-by-state basis, NTCA members stand ready and willing to partner with interested stakeholders to provide service to public safety. Rural telecom providers have valuable assets in rural areas that should be of particular interest to FirstNet and potential complementary opt-out states, including transport connections, copper and fiber infrastructure, utility poles, wireless networks and towers, right-of-ways, and other operational and technical resources.

Although it might be tempting for an opt-out state to form a partnership with a single large mobile network operator ("MNO"), they cannot offer a cost-effective or

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4 As a guide in considering how better to identify companies that operate predominantly in rural areas and thus represent the kinds of rural partnerships to be contemplated, NTIA should looks to definitions such as that of a "rural telephone company" in other provisions of law. See 47 U.S.C. § 153, (44): "The term `rural telephone company' means a local exchange carrier operating entity to the extent that such entity-- `(A) provides common carrier service to any local exchange carrier study area that does not include either-- `(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or `(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; `(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; `(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or `(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."

efficient solution in rural areas, or achieve the degree of coverage specified by statute for rural public safety needs.

In addition to the 15% minimum rural service provider partnership requirement, NTIA must put in place backstops to ensure that alternative state plans are efficient and the Federal government does not enable the overbuilding of existing commercial network assets. In sparsely populated, high-cost rural areas, overbuilding areas sufficiently served by rural providers is wasteful and unnecessary, and would quickly deplete the entire $6.5 billion network construction budget allocated to the NPSBN and its potential complementary, interoperable, alternative state network(s).

Beyond the straightforward overbuilding of existing assets and infrastructure, NTIA should install appropriate guidelines and ongoing oversight to ensure that an opt-out state does not jeopardize other Federal programs and policy goals. More specifically, NTIA should review a state's proposed alternative network plan to ensure that it does not intend to undermine other initiatives such as the Broadband Technology Opportunities Program ("BTOP") and the Broadband Initiatives Program ("BIP"), authorized through the American Recovery and Reinvestment Act of 2009 ("ARRA"); U.S. Department of Agriculture financing; and Federal Universal Service Fund support. To further guard against the threat that federal initiatives may "cannibalize" one another and harm local operators of existing infrastructure that have leveraged and taken on obligations to deploy and operate networks pursuant to these other federal programs, NTIA should ensure that, at a minimum, an opt-out state establishes secondary lease rates and terms that are in line with the prevailing wholesale market rates for spectrum/leasing. Additionally, NTIA should require an opt-out state to narrowly tailor the definition of "public safety entity" to ensure that the primary users of the NPSBN are first responders.

Finally, NTIA should provide additional guidance to opt-out states in regard to the "substantial rural coverage milestones"[5] required as part of the Act. NTIA has tentatively concluded that these milestones should only apply to "any state with significant rural areas,"[6] however the Act did not make that distinction. Rather, the Act clearly intends for *all* rural areas of the country to be treated with the same priority and commitment as conveyed upon more urban areas. As such, NTIA should require all opt-out states to include "substantial rural coverage milestones as part of each phase of the construction and deployment of the network"[7] within the state's boundaries.

II. AS PART OF A DEMONSTRATION OF COST EFFECTIVENESS, NTIA SHOULD REQUIRE OPT-OUT STATES TO UTILIZE EXISTING ASSETS AND INFRASTRUCTURE BY PARNTRING WITH RURAL TELECOMMUNICATIONS SERVICE PROVIDERS

The Act requires an opt-out state to make five separate technical and financial demonstrations before it can receive approval from NTIA, including showing that the state's alternative network proposal is cost effective. NTIA should provide further detail on how this can be evaluated. Cost effectiveness as an attribute is fundamentally wed to the concept of leveraging existing assets and infrastructure. Indeed, a network deployment plan that leverages existing public and private investments is more efficient

[5] The Act, Section 6206(b)(3).

[6] Notice, Section IV, E.

[7] The Act, Section 6206(b)(3).

and effective versus engaging in a "greenfield" deployment of entirely new network components, as the Notice recognized.[8]

From a macro perspective, the Act has allocated scarce Federal fiscal resources and valuable spectrum to the construction of the NPSBN. Given the breadth and depth of the mission, corresponding network deployment plan(s) must be cost effective, and maximize the use of existing assets and infrastructure – primary tenets of the authorizing legislation.[9] These overarching principles have been well documented, recognized, and supported by Federal agencies and private-sector stakeholders within related FirstNet proceedings.[10] To further ensure efficient network deployment, Congress endorsed the need for FirstNet to partner with rural telecommunications service providers in regard to the deployment, operations, maintenance, and evolution of the NPSBN.[11] And, based upon this congressional intent and the benefits thus accrued to public-safety, FirstNet included a 15% rural telecommunications service provider partnership target as a

[8] Notice, Section I: "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, 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."

[9] The Act, Sections 6206(b)(3) and Section (b)(1)(c).

[10] *See* Notice, Section I. *Also see* the Act, Section 6206(b)(1)(c); Section 6206(b)(3); Section 6206(c)(1)(A)(i); and Section 6302(e)(3)(D)(ii). *Also see* FirstNet Request for Proposals, Solicitation No. D15PS00295E, Sections L.2.1.2; Section M.4.1.2; and Section C.5 Objective 12. ("FirstNet RFP").

[11] The Act, Section 6206(b)(3).

minimum requirement for responses to its nationwide FirstNet Request for Proposals. ("RFP").[12]

Consistent with the intent of the Act and the approach subsequently undertaken by FirstNet, NTIA should likewise require state alternative network deployment plans to utilize existing commercial assets and infrastructure as a critical input into a demonstration of cost effectiveness. NTIA should require an opt-out state to incorporate partnerships with rural telecommunications providers —those, wireline and/or wireless network operators that are based in rural areas of the country and primarily serve rural customers[13]—for a minimum of 15% of the wireline and wireless assets thus implicated by the state's proposed network deployment strategy. However, this 15% rural telecommunications provider partnership target should be used as a rough, *minimum* guideline, as in many states rural providers have deployed significant assets across wide swaths of the geography, and in those cases a mere 15% partnership requirement will not

[12] FirstNet RFP, Section M.2.3.2 "Offerors shall…demonstrate their ability to meet the objective to provide coverage in each of the 56 states and territories and to ensure that rural coverage includes partnerships with rural telecommunications providers. The Offeror's solution must demonstrate commitment to exercise rural telecommunications provider partnerships for at least 15 percent of the total rural coverage nationwide."

[13] As a guide in considering how better to identify companies that operate predominantly in rural areas and thus represent the kinds of rural partnerships to be contemplated, NTIA should looks to definitions such as that of a "rural telephone company" in other provisions of law. See 47 U.S.C. § 153, (44): "The term `rural telephone company' means a local exchange carrier operating entity to the extent that such entity-- `(A) provides common carrier service to any local exchange carrier study area that does not include either-- `(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or `(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; `(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; `(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or `(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."

be enough to ensure that the alterative state plan meets the "cost effective" threshold in the manner contemplated by the Act.

Of import, states that elect to opt-out and independently develop an alternative network plan will not reap the economies of scale gained from the nationwide deployment strategy thus employed by FirstNet. As a result, if the evaluation standards are thus argued to be *different* for nationwide proposals submitted directly to FirstNet for review and selection, versus the alternative proposals submitted by opt-out states for NTIA approval, then the later should, if anything, be subject to *additional* scrutiny. In other words, NTIA should ensure that a state's alternative network deployment plan has thereby exhausted all avenues to ensure expenses are limited, including by requiring that an opt-out state partner with existing commercial operators that own and operate networks in the most sparsely populated, rural regions of the country. Put quite simply, NTIA's allotted financial resources cannot go far enough and achieve its intended purpose without leveraging these kinds of existing network assets in the nation's most rural, remote, and high-cost areas.

A. Rural Providers Have a Vast Array of Existing Infrastructure and Assets that Should Be Leveraged by Opt-Out States

Under either a Federal framework or on a state-by-state basis, rural telecommunications providers stand ready and willing to partner with interested stakeholders to provide service to public safety end-users. Independent, rural telcos have valuable assets in rural areas that should be of particular interest to opt-out states, including transport connections, copper and fiber infrastructure, utility poles, wireless networks and towers, right-of-ways, and other operational and technical resources—a further testament to the underlying need to include rural telcos in cost-effective network solutions.

NTCA's nearly 900 members operate wireline networks in 45 states. On average, an NTCA member company's customer density is approximately 7 customers per square mile. By contrast, larger telecommunications companies, on average, serve 130 customers per square mile. As a result, NTCA's members serve the most rural and sparsely populated areas of the country with advanced telecommunications services—areas where it is incredibly expensive and time consuming to deploy network technology.

Existing copper and fiber optics infrastructure will be particularly useful for backhaul and middle-mile transport of traffic within the NPSBN and its complementary alternative state RANs. One hundred percent of respondents to the *NTCA 2015 Broadband/Internet Availability Survey Report*[14] offer broadband[15] to some part of their customer base. Respondents use a variety of technologies, including 49% percent who offer broadband via fiber to the home (FTTH), 29% via copper loops, 15% cable modem, 6% fiber to the node (FTTN), 1% licensed and unlicensed fixed wireless, and 0.1% satellite. In addition, 55% of those survey respondents currently deploying fiber serve at least 50% of their customers with FTTH. Seventy-four percent of survey respondents indicated they had a long-term fiber deployment strategy, and 50% of those respondents plan to offer fiber to the node to more than 75% of their customers by year-end 2018, while 78% plan to offer fiber to the home to at least 50% of their customers over the

[14] To access the *NTCA 2015 Broadband/Internet Availability Survey Report*, visit http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2015ntcabroadbandsurveyreport.pdf.

[15] Broadband was defined as throughput of at least 3 Mbps in at least one direction.

same time frame. An additional 40% have already completed fiber deployments to all customers.

Rural telecommunications providers also have invested considerable resources in and have considerable experience with wireless technology and operations. According to the *NTCA 2015 Wireless Survey Report*,[16] 62% of survey respondents indicated that 100% of their existing wireless sites deployed are currently IP backhaul-ready. Further, the average total cumulative investment by respondents in wireless facilities, excluding spectrum, was $12.5 million per company. Sixty percent of respondents assert that they offer wireless services to their customers. They offer service beyond expansive highways, reaching rural communities, homes, farms, and ranches. Further, 15% of respondents not currently offering wireless service indicated that they are considering doing so.

In addition to their last-mile networks, in 34 primarily rural states these same telecommunications cooperatives and small companies have formed statewide fiber network companies, interconnecting their local wireline and wireless networks throughout the region. Of special note, 28 statewide fiber network providers have invested in INDATEL Services, LLC ("INDATEL").[17] Given the breadth and depth of the FirstNet project, INDATEL has further expanded the tent stakes to represent additional rural service providers' assets and capabilities. In early 2016, INDATEL engaged in an ambitious data collection effort to quantify rural assets. Of import,

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[16] To access the *NTCA 2015 Wireless Survey Report*, visit http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2015ntcawirelesssurvey.pdf.

[17] For more, visit INDATEL's website: www.INDATEL.com.

INDATEL members provide 90,000 total route miles of fiber, including in middle-mile backbone networks. INDATEL members have a long history of providing high-quality TDM and Ethernet circuit backhaul services to wireless carriers; collectively, rural carriers are providing 11,749 CMRS towers with fiber. In addition, 23,858 towers could be fiber-fed by rural providers with less than five miles of network construction. For their part, rural providers own and operate an additional 2,495 wireless towers. Rural providers also collectively serve 706 public safety answering points ("PSAPs") with fiber, and have the ability to serve an additional 1,777 PSAPs that are in close proximity (less than five miles) to members' fiber facilities, bringing the total serviceable PSAPs to 2,483. Last but not least, rural service providers own and operate 11 secure data storage facilities.

In areas without existing commercial service where it may be necessary for FirstNet to deploy new wireless infrastructure, the rights-of-way and real estate assets of telecom providers should be applied in new site construction.

In addition to their network infrastructure, rural service providers employ experienced technicians in rural America who can cost effectively provide the operational and technical resources needed to deploy a next-generation, interoperable network. Rural telecom providers are experts in the terrain and geographic challenges within their service territories; they understand where local public safety coverage is needed most, and how to effectively set wireless assets to meet the end users' communications requirements. They also are experts at efficiently utilizing the assets that they have to meet the ever-increasing needs of their users.

Further, when the NPSBN is subject to critical outages via man-made or natural disasters, given their physical presence in rural areas, these providers are "first responders" themselves—they are better positioned than any other carrier or operator to provide on-the-ground network operational and technical support to ensure the FirstNet network is repaired and restored to service as soon as possible.

B. Large Mobile Network Operators Cannot Offer a Cost-Effective or Efficient Solution in Rural Areas, or Achieve the Degree of Coverage Specified by Statute for Rural Public Safety Needs

Although it may be tempting for an opt-out state to partner with only one or two of the large MNOs for the RAN construction within their state, these partnerships would be neither cost effective nor efficient for rural areas of the country. Despite their extensive networks, large wireless providers generally focus their activities around more populated areas and highways, and have traditionally declined to build out their networks in rural areas. They also lack local presence, meaning that mean time to restore and repair can be more difficult in the remote and rural areas that smaller providers call home. As NTCA has highlighted in past proceedings,[18] when left to their own tactics, large

[18] As NTCA has noted:

> The large carriers argue that if it was economically beneficial for them to deploy services in a particular area, they already have the incentive to do so without regulatory intervention. This large carrier argument is a prime example of the different incentives driving large carriers and small carriers. Large carriers ignore the less dense and less lucrative markets because it is easier to make quick profits in densely populated areas or high usage corridors. Their cost-benefit analysis does not include a look at the needs of a particular community. If they can make enough money by serving an area, or freeing the spectrum, they will do so. If it's not financially worth their trouble, they will not. Small carriers, in contrast, are situated in the communities they serve. . . A cost-benefit analysis includes a look at the rural community's needs. What may be considered a longer term and too risky investment to a large carrier, can be a necessary one to a rural carrier. Wireless carriers that are not willing to risk their capital in rural areas should not also be permitted to hold the unused spectrum hostage.

operators typically focus capital investments on urban areas with concentrated population centers, while licensed spectrum in rural areas lies fallow. Historically, "nationwide" wireless providers do not provide service in rural areas, or, if they do, the implementation timeline is significantly longer than that in urban areas. For example, the top 250 Cellular Market Areas contain approximately 74% of the total U.S. population but encompass just 14% of the total U.S. land area. This is a stark contrast to America's independent telephone systems, which serve more than 40% of the nation's landmass, but less than 5% of the nation's telephone subscribers.

To the extent that national providers do operate in rural areas, MNOs tend to focus their coverage around highway systems, ignoring the surrounding residential areas and rural parts of the country, including state highways and local roads over which many first responders must travel to reach emergency sites. This isolated coverage is not conducive to the mission or the communications needs of rural first responders. Indeed Congress clearly envisioned a ubiquitous *nationwide* public safety broadband network, going so far as to specify the NPSBN include "substantial rural coverage milestones."[19] That means in many rural areas, a smaller rural-focused operator is the best and perhaps only resource for the NPSBN and, as part and parcel of that network, states that wish to opt-out and develop complementary and interoperable alternative network plans.

See In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services; 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services; Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation (WT Docket No. 02-381, 01-14, 03-202), Comments of the National Telecommunications Cooperative Association, January 14, 2005.

[19] The Act, Section 6206(b)(3).

Further, in areas where they do operate, the "national" MNOs often do not own their vertical assets; instead these assets are owned by companies that specialize in the construction and operation of these assets who lease the infrastructure to the MNOs. In rural areas, the MNO backhaul facilities and wired infrastructure often are supplied by rural telecommunications providers.

In short, NTIA should ensure that states do not fall into the trap of partnering solely with a few large wireless providers that offer little in the way of vertical assets and infrastructure in rural areas. Instead, to achieve a cost-effective and efficient solution with significant rural coverage parameters, NTIA should be clear that a factor to be considered in the judging of an application is the state's efforts at contacting and successfully partnering with independent rural operators.

III. NTIA SHOULD PUT IN PLACE APPROPRIATE RESTRICTIONS AND ONGOING OVERSIGHT TO ENSURE THAT AN OPT-OUT STATE DOES NOT JEOPARDIZE OTHER FEDERAL PROGRAMS AND POLICY GOALS

A. NTIA Should Ensure that an Opt-Out State Does Not Overbuild Existing Assets

As an initial matter, NTIA must put in place clear restrictions on overbuilding existing rural assets. As noted above, Congress clearly intended for FirstNet, and likewise, a state that elects to opt-out and develop an alternative plan for the RAN within its boundaries, to rely upon the trove of existing infrastructure already deployed across the country.[20] And moving beyond congressional intent, NTIA should not waste scarce resources and public funds to overbuild an existing rural network that already has

[20] The Act, Sections 6206(b)(3) and (b)(1)(c).

sufficient capacity and robust redundancies to handle public safety traffic. In sparsely populated, high-cost rural areas, overbuilding areas sufficiently served by rural providers would quickly deplete the entire $6.5 billion network construction budget allocated to the NPSBN and thereby jeopardize the Federal government's ability to create a ubiquitous wireless network for first responders. Unfortunately, states may desire to forge partnerships with private-sector entities that have a financial incentive to overbuild existing assets using Federal funding, particularly if the entity can benefit by using the new duplicative infrastructure for their gain via commercial operations. As such, NTIA should prevent opt-out states and/or their network partners from overbuilding existing assets and infrastructure.

B. NTIA Should Place Parameters Around the Use and Sale of Excess Capacity in an Opt-Out State

Beyond the straightforward overbuilding of existing assets and infrastructure, NTIA should install appropriate guidelines to ensure that an opt-out state does not jeopardize other Federal programs and policy goals. Rural service providers operate in high-cost, low-density areas of the country through a combination of private capital; BTOP and BIP financing, authorized through the ARRA; U.S. Department of Agriculture financing; and Federal Universal Service Fund support, which assist the operator with providing affordable telecommunications services. A second commercial network offering at below-market rates in these areas could entice and thereby remove anchor tenants and other customers from rural carriers' customer bases.

An opt-out state, in developing its alternative network proposal, is authorized to enter into a covered leasing agreement ("CLA") within the state's boundaries, and the authorized CLA provider can utilize the allotted public safety spectrum to provide a commercial, secondary wireless service. Unfortunately, this opens the door to a new competitive telecommunications provider, which has the ability to undermine the financial health and sustainability of existing commercial networks in high-cost areas of the country that are supported via other Federal programs. However, many rural and remote areas of the country are home to limited residents and even fewer commercial anchor tenants, ensuring that the business case will not support more than one telecommunications operator. In the worst-case scenario, this may jeopardize the ability of consumers to continue to access affordable broadband service.

"Cherry-picking" the most attractive, high-volume, lucrative customers consequently leaves the most costly-to-serve remnants of the service area to the carrier of last resort ("COLR"). This scenario threatens continued infrastructure investment and *increases* the existing service provider's reliance upon high-cost Universal Service support. In the worst-case scenario, the existing service provider may be unable to continue to meet its network investments and infrastructure loans—reminiscent of the unfortunate consequences that resulted from EAGLE-Net Alliance ("EAGLE-Net"). A grant to EAGLE-Net—at $100.6 million, one of the largest broadband grants under the ARRA—was marketed as a project designed to provide service to underserved communities; however, EAGLE-Net subsequently overbuilt existing fiber infrastructure, and attempted to "cherry-pick" anchor institutions from existing providers.[21]

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[21] *For more on EAGLE-Net, see various press reports*: "Waste is Seen in Program to Give Internet Access to Rural America," The New York Times, February 11, 2013, available at http://www.nytimes.com/2013/02/12/technology/waste-is-seen-in-program-to-give-internet-access-to-rural-us; "ABC New Reports on E&C Investigation of Waste in Broadband Stimulus Programs," https://www.youtube.com/embed/5wbvZG54Pxk. *Also see the House Energy &*

To guard against this threat, any secondary network provider that is allowed to utilize excess capacity on the NPSBN—including the state government itself—should not be given unduly favorable lease terms or rates that enable the operator to unfairly compete in the commercial wireless marketplace by subsequently offering artificially low subscriber rates. In other words, NTIA should ensure that, at a minimum, opt-out state applications establish secondary lease rates and terms that are in line with the prevailing wholesale market rates for spectrum/leasing.[22]

Proceeding in this manner also serves the network's primary purpose, as it will enable FirstNet and NTIA to maximize the value of excess spectrum in Tier 2 and Tier 3 markets, and thereby assist with the independent financial sustainability of the NPSBN in opt-out states.

C. NTIA Should Require an Opt-Out State to Narrowly Tailor the Definition of 'Public Safety Entity' to Ensure that the Primary Users of the NPSBN within Opt-Out States are First Responders

In addition, an opt-state may desire to expand the definition of public safety user beyond its traditional first-responder role. However, as NTCA has previously noted in its

Commerce Committee's extensive archive of hearings, letters and inquiries into the EAGLE-Net project, including this Letter to NITA: https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20130620NTIA.pdf.

[22] As a guide, NTIA should look to how it addressed other network telecommunications grant and loan programs, such as BTOP and BIP through ARRA, to ensure efficient network deployment. NTIA should ensure that the excess capacity available in an opt-out state has non-discrimination obligations that confer upon the leasee and transfer to its subcontractors and sub-recipients. NTIA should also ensure that it has restrictions in place to ensure the opt-out state contractor, and/or its subcontractors and sub-leasees, are prohibited from duplicating services already provided by a telecom network funded by another Federal program. See. *e.g.,* In the Matter of Department of Agriculture, Rural Utilities Services, BIP, Department of Commerce, NTIA, BTOP, Notice of Funds Availability and Solicitation of Applications, 74 Fed. Reg. 33104, July 9, 2009. *Also See* In the Matter of Department of Commerce, NTIA, BTOP, Notice of Funds Availability (NOFA) and Solicitation of Applications, 75 Fed Reg. 3800, January 22, 2010.

regulatory filings, consistent with the authorizing legislation, the term "public safety entity" should be properly tailored to ensure that users with priority access to the NPSBN are, in fact, performing functions related to or in conjunction with the provision of a "public safety service."[23] Likewise, NTIA should require an opt-out state to rely upon a final definition of "public safety entity" that is consistent with the duties of traditional first responders, i.e. police, fire, and emergency medical technicians, engaged in public safety services.

As discussed in detail above, authorizing a broad FirstNet primary user base that strays from the core first-responder, public-safety definition could undermine existing commercial networks by removing key anchor tenants from commercial networks, and thus creating competitive pressures in many high-cost, rural areas that cannot sustain multiple service providers. Once again, in the worst case scenario this could have the unfortunate consequence of incumbent providers going out of business altogether—or consumers paying unaffordable prices for services in markets that can barely (or not at all) justify a single provider, never mind two commercial network operators targeting the same user base.

In addition, the spectrum allotted to the NPSBN is a finite and highly valuable resource, and therefore must always be carefully managed to constantly ensure that its use is the most efficient and effective at all times. In various venues, FirstNet has

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[23] *See* Comments of NTCA–The Rural Broadband Association, In the Matter of First Responder Network Authority, Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, Docket No. 140821696-5400-03, 80 Fed. Reg. 25663 (rel. May 5, 2015), available at http://www.ntca.org/images/stories/Documents/Advocacy/FederalFilings/06.04.15%20ntca-comments-firstnetthirdlegalnotice.pdf.

suggested including utility employees engaged in routine network maintenance or administration duties; public works employees such as highway departments and building inspectors; animal control; parks and recreation departments; and educational institutions within the definition of "public safety entity."[24] By expanding the primary user base to a broad coalition of other interests, FirstNet is allowing its finite spectrum to serve the general communications needs of wireless customers, which can—and indeed in many instances already are—met by commercial network operators.

For these reasons, NTIA should make clear that state and municipal governments may not expand the definition beyond traditional first responders engaged in the practice of public safety services.

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[24] First Responder Network Authority, Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, Docket No. 140821696-5400-03, 80 Fed. Reg. 25663 (rel. May 5, 2015). ("Third Legal Notice"). *Also see* Third Legal Notice, Comments of APCO, available at www.regulations.gov.

IV. NTIA SHOULD REQUIRE *ALL* OPT-OUT STATES TO INCLUDE SUBSTANTIAL RURAL COVERAGE MILESTONES WITHIN EACH NETWORK DEPLOYMENT PHASE

NTIA should also provide additional guidance to opt-out states in regard to the "substantial rural coverage milestones"[25] required as part of the Act. NTIA has tentatively concluded that these milestones should only apply to "any state with significant rural areas,"[26] however the Act did not make that distinction. Rather, the Act clearly intends for *all* rural areas of the country to be treated with the same priority and commitment as conveyed upon more urban areas. As such, NTIA should require all opt-out states to include "substantial rural coverage milestones as part of each phase of the construction and deployment of the network"[27] within the state's boundaries.

[25] The Act, Section 6206(b)(3).

[26] Notice, Section IV, E.

[27] The Act, Section 6206(b)(3).

V. CONCLUSION

In keeping with congressional intent for an integrated, cost effective NPSBN constructed through public-private partnerships with existing rural providers, NTIA should require alternative state plans to include partnerships with rural telecommunications service providers for a minimum of 15% of the wireline and wireless assets thus implicated by the state's proposed network strategy. NTIA should also install adequate network deployment restrictions and ongoing oversight to ensure that an opt-out state does not jeopardize other Federal programs and policy goals. In addition, NTIA should require an opt-out state to narrowly tailor the definition of "public safety entity," as indicated by Congress. Finally, NTIA should require all alternative state plans to include substantial rural coverage milestones.

Respectfully submitted

NTCA-THE RURAL BROADBAND ASSOCIATION

By: /s/ Jill Canfield
Jill Canfield
Vice President, Legal & Industry and Assistant General Counsel

By: /s/ Jesse Ward
Jesse Ward
Industry & Policy Analysis Manager
jward@ntca.org

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000