



July 12, 2017

**Ex Parte Memorandum**

By email to: [sapp-comments@ntia.doc.gov](mailto:sapp-comments@ntia.doc.gov)

Ms. Carolyn Dunn  
Office of Public Safety Communications  
National Telecommunications and Information Administration  
1401 Constitution Avenue, NW Room 4078  
Washington, DC 20230

Re: State Alternative Plan Program and the First Responder Network Authority  
Nationwide Public Safety Broadband Network, Docket Number 160706588-6588-01

Dear Ms. Dunn:

In accordance with the Federal Register Notice and Request for Comment, 81 Fed. Reg. 46907 (“Request for Comment”), Rivada Networks, LLC (“Rivada”) submits this memorandum of an ex parte meeting between Rivada representatives and NTIA staff members. In attendance on behalf of Rivada were Joe Euteneuer, Peter Campbell, Peter Cramton, Chris Moore, Elisabeth Moore, and Joe Titlebaum, all of Rivada, Jessica Kearns, of PJT Partners, and John Nakahata, of Harris, Wiltshire & Grannis LLP. In attendance from NTIA were Len Bechtel, Marsha MacBride (by phone), Kathy Smith, Carolyn Dunn, Mike Dame, Giulia McHenry, Yuki Miyamoto (by phone), Dan Phythyon, Natalie Romanoff, and Patrick Sullivan. Rivada appreciates greatly the opportunity to meet with NTIA staff as they are considering the processes and evaluation criteria that will be set forth in the upcoming Notice of Funding Opportunity (NOFO).<sup>1</sup>

Rivada was formed to develop and bring improved and dedicated communications capabilities to first responders. If selected by a state and given the opportunity to work to implement a state plan, Rivada would be working with that state to deploy a purpose-built LTE network designed and operated for the needs of first responders on the Band 14 spectrum. The network designs that Rivada has been discussing with states provide for ruthless preemption of commercial traffic in favor of public safety traffic in times of need, as determined by state and local public safety agencies. Should states decide to implement such networks and choose Rivada as their partner, Rivada is fully committed to working with AT&T and FirstNet to ensure that the networks it operates and the services it provides integrate into a nationwide, interoperable, and secure public safety broadband network.

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<sup>1</sup> Rivada did not file comments at the time of the initial request for comment because, at the time, it was a bidder in FirstNet’s procurement of its network partner. None of the entities that were bidding filed comments at that time.

Rivada has been, and continues to be, in discussions with many states, including responding to Requests for Proposals and Requests for Information where those have been issued. What is apparent and not at all surprising is the seriousness with which all states are approaching the decisions on how best to deploy an interoperable public safety broadband network within their state. States are clearly considering the state-specific information and plans that they have received from AT&T, as FirstNet's contractor, and they are conducting detailed evaluations of potential alternatives. States are clearly reviewing and evaluating all aspects on which NTIA will review state plans, including:

- technical capabilities of an alternative network operator;
- sustainable funding of initial deployment, ongoing operations and continued investment;
- security, coverage and quality of service;
- the timeframe for network deployment and services;
- continued integration and interoperability with the rest of the country; and
- overall cost-effectiveness and costs and benefits of pursuing an alternative network.

States want to be sure that they will actually have a public safety broadband network that works with the rest of the country and that integrates with the other communications systems they already have. Crucially, they want to make sure that the public safety broadband network operationally works within the structure of public safety agencies in the state and provides necessary local adaptability and control. States have an obvious need to maintain accountability over deliverables, whether those be deliverables from AT&T as FirstNet's partner or from an alternative state partner.

We observed that, given the structure of the opt-out process, no state is going to opt out unless the Governor, as advised by the public safety agencies within the state, concludes that the state plan proposed by FirstNet and AT&T has significant deficiencies in one or more critical aspects, and that the state has a superior and sustainable alternative for the deployment and operation of the nationwide, interoperable public safety broadband network within its borders. When a state reaches that conclusion, state opt out is exactly the safety valve that Congress envisioned. In that situation, it is in the national interest for the state opt out process to work, and to be flexible enough to allow the state to achieve the better deployment it seeks, within the framework of nationwide interoperability.

Rivada recognizes fully that the Public Safety Spectrum Act tasks NTIA with the responsibility of reviewing state plans to ensure that the requirements of 47 U.S.C. § 1442(e)(2)(D) are met. This is an important statutory safeguard. Rivada urges NTIA, as it designs its NOFO criteria and its review process, not unduly to second guess states' evaluations of their own needs, and of the costs and sustainability of alternative network deployments within their states. As with all judgments, there will be a range of reasonableness, and Rivada urges NTIA to design and conduct its review processes to approve state plans where the state has reached conclusions within the range of reasonableness. States will necessarily be much more familiar with their own public safety structures, local needs, areas where coverage improvements are critical, and local market conditions, than a nationally centralized panel of experts.

Moreover, as it designs and implements its review of state plans according to the statutory criteria, NTIA should also bear in mind how reasonable state opt out can improve the overall likelihood of success of the nationwide public safety broadband network, both within the specific state under consideration and in the states in which AT&T deploys the state RAN. The presence of a critical mass of alternative state networks will provide NTIA and FirstNet with a set of ongoing benchmarks against which it can review the performance of the entire nationwide public safety broadband network, including with respect to the specific parameters of delivery timelines, cost-effectiveness, security, coverage and quality of service that are enunciated in 47 U.S.C. § 1442(e)(2)(D). If AT&T is the only entity operating the interoperable public safety broadband network across the country, NTIA and FirstNet will lack any market-based comparisons for evaluating AT&T's performance. This is particularly important with respect to service quality and innovation. No regulator has ever developed means of ensuring delivery of a high quality of service and continued innovation that is comparable to the discipline provided by the market, and market-based comparisons.

Rivada greatly appreciates the spirit of transparency that underlies the NOFO process. It will be helpful for NTIA to provide greater detail on how it plans to evaluate state plans along each of the statutory criteria, and how it will score those evaluations. With respect to transparency, we note that in a number of places, both the Request for Comment and more recent NTIA presentations reference FirstNet policies, lease terms, and, as part of the financial evaluation, payments to FirstNet.<sup>2</sup> It is difficult for states and their prospective partners to take these into account when FirstNet has not made those policies, terms and payments available. Furthermore, consideration of the lease terms and payments creates a problem in sequencing, as those are the subject of negotiations between the state and FirstNet at the end of the process, occurring after NTIA's review and approval. We further urge NTIA, as it is discussing these matters with FirstNet, to ensure that these policies and terms are open and flexible, and, where there are multiple ways to achieve an objective, to not preclude reasonable alternatives or service enhancements that may suit a particular state, and that do not disrupt baseline interoperability.

Finally, Rivada has provided to NTIA staff a copy of the white paper authored by Dr. Cramton and Dr. Doyle. A copy of that paper is attached for inclusion the record.

At the meeting, Rivada offered to continue to provide background information to NTIA staff as they move forward, or to answer questions as they come up.

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<sup>2</sup> See e.g. NTIA Presentation, "National State Plan Kickoff Meeting State Alternative Plan Program (SAPP) Presentation", at Slide 9 (payments to FirstNet), 11 (FirstNet lease terms), 12 (FirstNet Network Policies) (June 8, 2017), available at: <https://www.ntia.doc.gov/other-publication/2017/state-alternative-plan-program-sapp-discussion-notice-funding-opportunity>.

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Please contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata". The signature is fluid and cursive, with the first name being the most prominent.

John T. Nakahata  
*Counsel to Rivada Networks, LLC*