

District of Columbia Comments to NTIA on State Alternative Plan Program

August 17, 2016

Re Docket Number: 160706588-6588-01

RIN 0660-XC027

State Alternative Plan Program (SAPP) and the First Responder Network Authority Nationwide Public Safety Broadband Network

The District of Columbia is providing the following comments to the National Telecommunications and Information Administration (NTIA) based on its preliminary guidance concerning how a qualified state may apply to NTIA for authority to enter into a spectrum capacity lease with FirstNet and receive a grant to construct its radio access Network (RAN) through its State Alternative Plan Program (SAPP).¹

In general, the District's comments seek to ensure equitability, transparency, and thoroughness in all aspects of the alternative state plan and technical and financial demonstration review processes. The District is concerned that NTIA's timing of release of its SAPP guidelines and state buildout funding levels will coincide with the release of FirstNet's draft state plan, which will not leave states adequate time to simultaneously review both the FirstNet state plan and detailed NTIA SAPP requirements and forge an informed state opt-in/opt-out decision. The District recommends the timely release of SAPP requirements and buildout funding levels in advance of the FirstNet draft state plan just as it recommends that FirstNet and its partner release RAN and other network policies in advance of the draft state plan. States need critical and timely information to develop a realistic design, cost estimate, and deployment schedule as part of an informed decision by their executive leaders.

The District also recommends the following measures to support impartiality and transparency:

- An independent assessment of the validity of FirstNet state plans of states based on the criteria NTIA will apply to alternative state plans (including, for example, a review of reasonableness regarding the FirstNet plan timeline and an evaluation of FirstNet services as they relate to state requirements provided to FirstNet) as a baseline for alternative state plan evaluation. This criteria and evaluation results should be shared with states.
- Share with states now or as soon as they are determined the criteria and process for determining state funding and expected revenue levels.
- Provide a mechanism for states to review and provide input on National Public Safety Broadband Network (NPSBN) policies before they are enacted.

¹ <https://www.ntia.doc.gov/files/ntia/publications/fr-sapp-firstnet-rfc-07182016.pdf>

- Work with the FCC to establish an external, impartial oversight by the FCC of the spectrum capacity lease negotiations between the state and FirstNet.

The District also has the following specific comments to statements within the Notice.

Reference	Comment
<p>I – “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...”</p> <p>II C. – “Required authorization to enter into a spectrum capacity lease from FirstNet to operate its state RAN...”</p>	<p>Further clarification is required regarding what the term “FirstNet” means as it <i>relates to the actionable licensee</i>—whether this refers to the FirstNet board, the FirstNet organization, or the FCC Technical Advisory Board for First Responder Interoperability. The District also recommends that for the sake of impartiality and thoroughness a third party, not part of FirstNet, be commissioned to review all leases, plans and grant programs that pertain to the State’s opt-out solution submitted for approval.</p>
<p>II B. – “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.”</p>	<p>Clarification is required on what “complete” means. The District’s interpretation is that the state will have completed its issuance of an RFP within the 180 day limit.</p>
<p>II D. “NTIA will utilize FirstNet’s relevant interpretations of provisions of the Act in carrying out its responsibilities on these matters.”</p>	<p>As NTIA utilizes FirstNet’s interpretations of provisions of the Act in areas related to state opt-out responsibilities to meet NTIA, FCC, and other requirements, the District recommends that NTIA play a role in ensuring that FirstNet state plans meet these same criteria that state alternative plans must meet and that its evaluations be shared with the states in question.</p>
<p>III A.1 – “NTIA tentatively sets this deadline [to file its application to NTIA] to be no later than 60 days after the FCC has approved a state’s alternative plan.”</p> <p>III A.2 – “Eligible applicants for Lease Authority or a RAN Construction Grant will be those states... whose alternative state plan was approved by the FCC...”</p> <p>III A.6 – “NTIA will evaluate the proposed RAN as it has been approved by the FCC.”</p>	<p>This process requires clarification:</p> <ul style="list-style-type: none"> • The FCC approval is specifically for interoperability, while the NTIA state alternative plan approval is for the broader determinants. Are state submissions to the FCC expected to address the broader NTIA SAPP requirements? • What is the required content of the submission to the FCC? • Will NTIA demonstrations requirements be made available to states before the submission to FCC or only after approval? • What is the required content for the NTIA demonstrations? • Will the state have the opportunity to clarify, modify the plan submitted for FCC approval before submitting its demonstrations to NTIA (60 days later)?
<p>III A.3 – “NTIA is authorized to</p>	<p>The District recommends that the funding portion of the selected</p>

<p>grant or reject applications and determine final award amounts, based on an assessment against the statutory demonstration and other factors...”</p>	<p>NPSBN vendor’s plan be included as criteria.</p>
<p>III C.2 – “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... Further, the final grant award amount to a state may be impacted by financial factors....”</p>	<p>According to this statement, states will not know the actual final grant award until after FirstNet and its partner know the states will opt-out—which by law may be up to 90 days after FirstNet issues its final state plans. This places states in a position of making an opt-in/opt-out decision without having all required buildout funding information. A transparent process is needed to ensure that grant award levels are accurate and fair. This should be based on FirstNet’s partner’s buildout funding with explicit justifications regarding any reductions. States should have the opportunity to negotiate this amount.</p> <p>Because the delay in the release final grant award levels also impacts state planning and deployment schedules, state timelines should be extended accordingly.</p> <p>Additional clarification is required:</p> <ul style="list-style-type: none"> • What methodology will be used to fairly determine whether there will be “additional costs” to FirstNet? • Will definitive cost baselines be pre-established? • Will the factors be universal across all states and territories or will these vary from region to region or location to location? • Will “additional costs” be structured to reflect one-time costs (such as costs related to the initial start-up/connection to FirstNet)? • Will there be a “total cost of ownership/operation” evaluation conducted which may show ultimate cost savings to FirstNet? • If so, will those cost savings offset any one-time additional costs to FirstNet? • How can grant funding reductions for state buildout be announced prior to FirstNet’s final state plan if the very criteria for those funding reductions depends on state opt-in/out decisions, which cannot be made until after the final state plan? • Also, if buildout funding levels are adjusted, will spectrum capacity revenue expectations also be adjusted or will these not be subject to change?
<p>III C.3 – “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</p>	<p>NTIA should consider that there may be cases in which the state alternative plan can be justifiably more costly than the FirstNet plan. Several examples:</p> <ul style="list-style-type: none"> • The FirstNet state plan may not accurately reflect the needs and requirements of the state or territory as provided to FirstNet. • FirstNet has not yet defined the scope of public safety users

<p>will not be increased to accommodate any such proposal.”</p>	<p>and public safety entities that will be participating on the network, impacting the scope of user requirements (a true all-hazards inclusion could significantly change the requirements of the network).</p> <ul style="list-style-type: none"> • FirstNet has not provided states information about federal agencies that will use the state RAN. <p>It is also uncertain to what extent the FirstNet State Plan review process will allow states to raise these issues. Therefore, the State Plan may be inadequate to meet the needs of the RAN users and the review process may not allow for meaningful adjustment. In addition, federal agency information needs to be available to states in the FirstNet state plan just as it is available to FirstNet’s partner.</p> <p>NTIA should establish a mechanism to enable the state to submit a reasonable justification for need for an alternate design and management that may be more costly than FirstNet’s State Plan. Such an action by NTIA would better ensure a more thorough and impartial approach.</p>
<p>III C.4 – “Applicants will be required to disclose the value of a partnering agreement that will enable and support the state in the construction and/or operation of the state RAN.”</p>	<p>Clarification is needed:</p> <ul style="list-style-type: none"> • How is “partnering agreement” defined? • What formal role will FirstNet have in an opt-out state partnership? • What methodology/mechanism will be used to determine the “value” of partnering agreements? Will FirstNet’s partnership agreement be a model for determining the value of state partnership agreements?
<p>IV – “The forthcoming FFO notice will provide more specific, quantifiable, and finalized criteria and application questions.”</p>	<p>Will NTIA require state grant matching? If so, will it follow its own BTOP CCI and public safety early builder infrastructure grants as a model?</p>
<p>IV A – “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).” II A “Further, the Act requires FirstNet to establish policies...”</p>	<p>Policies for the RAN and other components of the network have not yet been established by FirstNet. The timing of the release of these policies can impact the state’s ability to develop an alternative state plan that will provide adequate demonstrations. Clarification is required on how differences between state laws or policies and FirstNet policies are resolved. For example: How will NTIA handle a scenario whereby a state law or policy exceeds FirstNet’s requirements, and could potentially present the state with a choice between an alternative state plan that must exceed FirstNet requirement (and may add expense or be deemed not sufficiently interoperable) or accepting a FirstNet plan that does not meet state requirements?</p>
<p>IV A – “A state will also need to address funding risks and lifecycle plans in its demonstrations and how these</p>	<p>Clarification is required on when spectrum lease terms will be made available. To prepare a complete and inclusive state-operated RAN plan, a state should know how the terms of the spectrum lease will impact cost, terms, and funding cycles.</p>

<p>may impact its ability to financially support the implementation of FirstNet’s RAN-specific network policies...”</p>	<p>The state will also need to know about the specifics of the NPSBN equipment and infrastructure to address lifecycle plans, because the equipment that a state deploys must be compatible with the NPSBN’s.</p>
<p>IV B – “... a state’s RAN must be capable of interoperability with the NPSBN as it evolves and improves...including compliance with new or evolving network policies.”</p>	<p>Clarification is needed regarding how the costs for network upgrades will be covered, how compliance will be evaluated, and whether the state be responsible for funding the periodic demonstrations.</p>
<p>IV C – “... 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.”</p>	<p>NTIA should clarify how the state’s timeline will correspond, given a recognized initial offset starting point, to the FirstNet partner’s. NTIA’s clarification should recognize the inherently understood delays in the opt-out process that are not within the state’s control, including:</p> <ul style="list-style-type: none"> • Potential delay in knowing buildout grant award funding levels. • Potential delays in FCC and NTIA review and approval. <p>The District recommends that a reasonable starting point for the state plan’s timeline is the NTIA final approval to begin RAN buildout and the successful negotiation of a spectrum lease. The District also recommends that NTIA review FirstNet State Plans before they are released to the states to determine whether the timelines are reasonable. If FirstNet state plans have ambitious timelines that are not realistic and are subsequently amended, will states in the opt-out process have the opportunity to amend its state timelines as well? The District recommends a combination of third party review and final approval by NTIA, in keeping with its statutory obligation.</p>
<p>Section IV D – “In determining cost-effectiveness, NTIA may assess areas, including, but not limited to, the proposed federal and state partner share of the RAN cost ...”</p>	<p>Clarification of this statement is required:</p> <ul style="list-style-type: none"> • What does the “federal and state partner share of the RAN cost” mean, specifically, what does “partner” mean and how is “RAN cost” defined? • How will the value, use, and revenue return of spectrum and other assets be defined? <p>A baseline, template, or range will help the state to determine cost-effectiveness.</p>