

**Before the  
National Telecommunications and Information Administration  
Department of Commerce**

	)	
Request for Public Comment	)	
Regarding the State Alternative Plan	)	Dkt. No. 160706588-6588-01
Program and the First Responder	)	
Nationwide Public Safety Broadband	)	RIN 0660 - XC027
Network	)	

**STATE ALTERNATIVE PLAN PROGRAM (SAPP)  
AND THE FIRST RESPONDER  
NATIONWIDE PUBLIC SAFETY BROADBAND NETWORK (NPSBN)  
RESPONSE OF THE STATE OF ALABAMA  
NOTICE AND REQUEST FOR COMMENTS**

The State of Alabama (“State” or “Alabama”) submits the following response to the Request for Public Comment regarding the State Alternative Plan Program (SAPP) for the First Responder Nationwide Public Safety Broadband Network posted by the National Telecommunications and Information Administration (NTIA), Department of Commerce (DoC) and published in the Federal Register on July 19, 2016 (“Notice”).

**I. Introduction**

The formation of the First Responder Network Authority (FirstNet), and the Nationwide Public Safety Broadband Network (NPSBN), as described in the Middle Class Tax Relief and Job Creation Act of 2012 (“the Act”), created a significant opportunity for FirstNet to design and deliver to public safety a dedicated interoperable wireless broadband technology. The NPSBN will support critical mobile broadband communications for all public safety entities across the nation. In crafting the Act, Congress recognized the fundamental requirement to implement a NPSBN that ensured interoperable communications over standards based wireless technology. The NPSBN will be anchored on the Long Term Evolution (“LTE”, “4G LTE”, “4G”) technology, the most robust commercial wireless system available for mobile broadband communications.

Congress specifically enabled states and United States (U.S.) territories (hereinafter referred to as “states”) with the ability for their governors to “opt-out” of the FirstNet plan for its state and to present an alternative state plan. The alternative plan approval process necessarily requires demonstration of capabilities and compliance with a variety of previously established and evolving requirements and obligations as developed by the National

Telecommunications and Information Administration (NTIA), the Federal Communications Commission (FCC), and FirstNet. The NTIA's public notice provides a reasonably comprehensive outline of these requirements, and further presents a more focused discussion and request for comment on the State Alternative Plan Program (SAPP) currently being prepared by the NTIA. The State of Alabama appreciates the opportunity to share our comments to this public notice, all of which we trust will assist the NTIA, the FCC, and FirstNet in their individual and collective efforts to design a fair and equitable SAPP.

The State of Alabama is committed to cooperating with FirstNet to advance the implementation of the NPSBN in the best interest of our State and in the best interest of all of our nation's first responders. The State hopes that FirstNet's State Plan for Alabama will not only meet, but exceed the State's public safety needs. However, we have an obligation to our first responders and citizens to thoroughly assess the State Plan and to make a decision that results in the best outcome for the State. We applaud the efforts of FirstNet, the NTIA, the FCC, and the nationwide public safety community supporting the NPSBN initiative. We look forward to continuing our State's participation in and contribution to this collaborative process.

## **II. The State of Alabama Response**

The State's response to the NTIA's SAPP public notice is anchored on the following key tenants and associated comments. Where appropriate, we provide direct comment to specifics provided within the notice.

### **A. The transparency of the Opt-Out and SAPP process will result in the best outcome for the NPSBN and will mitigate avoidable delay and objection of states and territories**

Transparency in government best informs the public and results in best solutions and opportunities by minimizing and ideally mitigating unwarranted cries of procedural foul and legal challenge to important government initiatives. Implementation delays that could result from actual or perceived absences of transparency as this nationwide initiative advances must be avoided at all cost. A fair, full and complete process for opting out of the FirstNet plan must have clearly defined procedures that are fully articulated far in advance of the delivery of FirstNet's State Plans, and well before any state's Alternative State Plan development process.

Congress was clear that each state, through its governor, should have a choice to accept FirstNet's plan or to develop their own. Nowhere in the Act does Congress state that such a process should be a hindrance to, or require a delay in deployment of a state's Band 14 broadband services. As such, Opt-Out requires clear, concise and unambiguous procedures to guide the review and evaluation of the states' applications for Opt-Out. Therefore, it is essential that the NTIA, the FCC, and FirstNet adhere to a transparent procedural process to author and make publicly available all critical components that states must follow in the event that a given state seeks to pursue this option. Chancing that the Opt-Out and associated SAPP process are not fully transparent, including cloudy or insufficient guidance regarding the demonstration

requirements, undefined evaluation criteria, or the role of federal agencies, including FirstNet and others, could result in unnecessary delays that may negatively affect the rollout of the NPSBN for all states and territories.

**B. Collaborative partnership between the NTIA, the FCC and FirstNet in all matters regarding the interpretation of the Act regarding Opt-Out and the SAPP review process is fundamental**

The NTIA, the FCC and FirstNet hold unique roles and responsibilities regarding various steps of the Opt-Out and SAPP process. The specific roles and functions of these agencies continues to evolve and needs to be clarified. The multitude of Opt-Out and SAPP steps require independent demonstration, review and approval by each agency on any given application submitted by a state or territory. However, when considered as the collective process that it entails, the three independent entities need to work cooperatively and collaboratively to create a fine tuned equitable procedure that is seamless and indistinguishable to the states. There are clear opportunities for the NTIA, the FCC and FirstNet to work from a common round table to create a comprehensive program that details individual agency activities, and clearly delineates the handoff of obligations between them. Cross agency cooperation will additionally result in greater transparency, and best manage the potential inequities of individual agency approval/rejection of applications.

The states have been asked to work collaboratively within their respective borders to engage all first responder disciplines in the definition of NPSBN requirements. Tribal Nation members are likewise engaged into the NPSBN process within the respective states. Additionally, the states are working collaboratively across state borders to advance regional NPSBN requirements. Literally, millions of individuals are advancing the cause of public safety nationwide as a cooperative undertaking. Thus, it is not unreasonable to expect the same from our federal partners. Underlying the critical objective to implement an interoperable NPSBN, that honors the spirit of the Act to provide unambiguous Opt-Out options, the NTIA, the FCC and FirstNet will best render their decisions on a state's Alternative State Plan through a collaborative federal strategy.

**C. Opt-In and Opt-Out states must be partners driven by a common purpose and objective**

The State of Alabama acknowledges and applauds the FirstNet objective to secure buy-in of its State Plans from all 56 states and territories and we recognize the potential administrative, operational and financial benefits of an all in strategy. However, we acknowledge that Opt-Out may be a preferred NPSBN solution for any given state that does not accept the FirstNet State Plan, and who successfully meets the requirements as required by law. The requirements and conditions being established by NTIA, the FCC and FirstNet to guide the SAPP process must be

designed to properly guide and fairly validate the Opt-Out review and authorization process. Alabama considers Opt-In and Opt-Out states and territories as NPSBN common partners with varying operational foundations, but who all must be committed to a common nationwide broadband communications objective. All should be treated fairly and none should be delayed by making a choice that it feels is in its best interest.

**D. The concept and interpretation of cost-effectiveness as it relates to Opt-Out demonstrations and SAPP process, review and determination cannot be predetermined and must be based on fair and appropriate evaluation criteria**

The concept of cost-effectiveness, as it relates to the SAPP process, is frequently highlighted within the public notice. Cost-effectiveness, and the resultant impact public safety NPSBN subscription fees, is certainly an underlying NPSBN objective and evaluation criteria for the FirstNet commercial partner selection and the SAPP process. However, the Act limits the cost-effectiveness criteria. As opposed to the other “comparable” measures to the FirstNet State Plan, the Alternative State Plan “demonstration” has no such measure. Furthermore, the Alternative State Plan itself, not the cost effectiveness effects on the NPSBN, are to be considered. Therefore, the Act provides no latitude to the NTIA to evaluate how the Alternative State Plan could reduce the cost-effectiveness of the NPSBN. Finally, the State interprets the evaluation of Cost Effectiveness on the taxpayer investment and benefit associated with that investment.

The NTIA should proceed cautiously regarding the interpretation of the law in its determination of “cost-effectiveness.” Ultimately, the intention of Congress focused on the efficient use of taxpayer funding for FirstNet. If, for example, FirstNet determined that the proposed funding level as stated in its State Plan for any given state or territory is comparable to the funding proposal for an Alternative State Plan recipient, and results in greater coverage and a more robust infrastructure due to substantially higher private investment, taxpayers would agree that their contribution would be better served by the Alternative State Plan. Likewise, the NTIA’s rejection of the cost-effectiveness of “greenfield” approach is an arbitrary evaluation factor that ignores a potentially results-oriented measure. NTIA’s SAPP would essentially require the Alternative State Plan to be based on an existing commercial carrier. In many cases, this is exactly why public safety needs its own network, because commercial carriers refuse to build infrastructure in places where they cannot meet their profit requirements. As an illustrative example, a state that included a full or partial greenfield approach that did not require any RAN construction grant funds and solely used its own funding to achieve comparable or greater results to the FirstNet State Plan would provide a significant “cost-effective” result to the taxpayer.

Consideration must also be focused on the long-term cost effectiveness with regards to the cost of NPSBN service to public safety stakeholders. This, ultimately, is the most substantial long-

term cost to the taxpayer. Any measurement of cost effectiveness must be results oriented and not be a disincentive to private investments that include new infrastructure that is purpose built to suit public safety's requirements. NTIA should be fostering investments of the private community, not dissuading investments. While greenfield buildouts will face disadvantages in terms of buildout timeliness, NTIA must avoid arbitrary measurements that do not have an impact on the resulting service provided to the public safety community.

**E. Various policies, requirements, evaluation criteria, and all critical elements of the Opt-Out and SAPP process must be expeditiously prepared and published:**

Throughout the NTIA's public notice, there are number references to an Opt-Out entity's obligations, include for example, but not limited to: 1) evolving demonstrations and requirements of the SAPP, 2) the guidelines of the Federal Funding Opportunity (FFO) regarding the RAN Construction Grant, 3) obligations to FirstNet design and deployment policies, 4) common terms and conditions of the FirstNet spectrum lease agreement, and many other tenants underlying the pursuit of an approved Opt-Out status. It is essential that these guidelines and requirements be created immediately. With an underlying objective to mitigate NPSBN implementation delays resulting from the absence of, or delayed production and public availability to key SAPP information that could promote objections and process appeals, Alabama encourages the NTIA, the FCC and FirstNet to expeditiously make this guiding information publically available for comment. The State fully appreciates the NTIA's proactive effort to solicit public opinion and comment on the SAPP process and we encourage similar early publication by all guiding federal documents from all entities involved in the opt-out process.

**F. Limitation of a state's use of revenues emanating from covered lease agreements exclusively to RAN, construction, maintenance, operations, and improvements**

In order to successfully manage any project, funding is required. The law states that "Any revenue gained by the State from such a leasing agreement shall be used only for constructing, maintaining, operating, or improving the radio access network of the State." The State believes that funding for State personnel that are involved in managing its public-private partner satisfies this requirement. Essentially, State personnel would be involved in prioritizing RAN buildouts, holding the vendor accountable for its commitments, including maintaining interoperability with the NPSBN. In addition, to effectively direct investments in the RAN "construction, maintenance, operations, and improvements", allowances for state personnel to manage these elements are fundamental necessities.

**G. FirstNet may bear increased expenses related to interconnection of the State RAN to the NPSBN and migration of potential interference by the state RAN to the NPSBN operations in a bordering state**

The law clearly states that NTIA is to provide funding per the State Plan provided by FirstNet. Therefore, any reduction, for any reason, in the funding level is in violation of the Act. The Act only calls for NTIA to receive, not be involved with, the approval of the spectrum lease with FirstNet. It does not stipulate that funding is provided only upon approval of the spectrum lease. Furthermore, in (C) (2), NTIA indicates that it has discretion regarding the funding level for RAN construction. The PN includes proposed funding reductions for increased costs to FirstNet for interference, cost efficiencies, and interconnection costs. The law allows for no such reductions in funding levels and provides NTIA with no ability to evaluate these factors. Additionally, it is Alabama's position that these are issues and costs that FirstNet will have regardless of a state's decision to opt-in or opt-out and, therefore, no state should be penalized for choosing its Congressionally approved option to opt-out.

**H. The Act requires the NPSBN to include “substantial rural coverage milestones as part of each phase of the construction of the network”**

The delivery of FirstNet coverage to rural geographies is an important milestone established for each phase of the NPSBN rollout strategy. Alabama has vast areas of rural geography, much of which is unserved or underserved. Our phased rollout strategy highlights the State's objective to serve high population density population centers, critical infrastructure areas, rural environments, and other areas of interest. We additionally recognize that each state is likely to have differing perspectives on the ideal rollout strategy for their marketplace.

While we support and encourage substantial rural coverage milestones, we also acknowledge that not all strategies are equal. Comparable state coverage objectives may not be directly analogous, and therefore, a given FirstNet State Plan and an Alternative State Plan may differ per phase, based on what best meets a specific implementation strategy. While FirstNet has established specific “objectives” for rural milestones, states are only obligated to the law's “substantial rural coverage milestones as part of each phase.” And the ability to opt-out requires only that the coverage be “comparable”, not equivalent or better. NTIA must understand that the state is best positioned to determine its own coverage priorities, and therefore, must fully recognize a state's coverage priorities during the evaluation of “comparable” coverage.

**I. Applicants will be required to disclose the value of any partnering agreement that will enable and support the state in the construction and/or operations of the state RAN**

The PN implies that the “Partnership Valuation” revenues be used only for constructing, maintaining, operating, and improving the state RAN. The wording in the PN is vague, however, the State would like to make it clear that the law restricts only revenues to the state, and not the state's partner. The state's RFP partner has full discretion to use the revenues from the CLA as it pleases. FirstNet has not established any requirements regarding its CLA revenue use, and

neither should NTIA for the Opt-Out states. Therefore, the Opt-Out partner should be free to use revenues for RAN operations, sales, marketing, and even profit if it can provide a solution that the state deems superior to the FirstNet plan and that satisfies the law's Opt-Out requirements. It is assumed that FirstNet will fully account for this issue through its spectrum lease agreement with an opt-out state. Additionally, disclosure laws vary from state-to-state, and consideration of the local regulations must be given regarding partnership disclosure requirements.

### III. Conclusion

The State of Alabama is committed to a productive collaboration with the NTIA, the FCC, and FirstNet to ensure the successful implementation of the NPSBN. We additionally respect the complexity of the undertaken, and recognize that the ongoing interpretation of the Act regarding Opt-Out and Alternative State Plans will evolve over the coming months. The State seeks the best outcome for the State and the rest of the nationwide public safety community. We will continue to engage in the overall process to provide comments and recommendations that lead to a productive outcome and that directly advance the objectives and timely implementation of the NPSBN. The State is eager to hear from NTIA regarding our comments and we stand ready to further discuss and collaborate with the NTIA, the FCC and FirstNet.

Respectfully submitted,

*/s/ Ryan E Burchnell*

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