

May 26, 2017

**VIA ECFS**

Marlene H. Dortch, Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington, DC 20554

Re: Notice of Ex Parte Presentation, *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269

Dear Ms. Dortch:

On May 25, 2017, Jason Karp, Chief Counsel (by phone), Jeff Bratcher, Chief Technology Officer (by phone), Brian Hobson, Director-State Plans (by phone), Kevin Green, Attorney, and the undersigned, all of the First Responder Network Authority (“FirstNet”), met with David Furth, Rasoul Safavian, and Erika Olsen (by phone) of the Public Safety and Homeland Security Bureau, regarding the above-referenced proceeding. During the meeting, we discussed FirstNet’s planned timeframes for the development and delivery of the interoperability compliance matrix[[1]](#footnote-1) and State Plans.[[2]](#footnote-2)

FirstNet also discussed concerns raised by Southern Communications Services, Inc. d/b/a/ Southern Linc (“Southern Linc”).[[3]](#footnote-3) FirstNet emphasized that a number of Southern Linc’s concerns are outside the scope of this proceeding and should have instead been raised with either Congress prior to enactment of the Middle Class Tax Relief and Job Creation Act of 2012 (the “Act”), or FirstNet, the entity Congress charged with taking “all actions necessary to ensure the building, deployment, and operation of the [NPSBN].”[[4]](#footnote-4)

Notably, Southern Linc began its most recent filing with a lengthy legal analysis of section 6202 of the Act,[[5]](#footnote-5) but in that analysis failed to acknowledge the basic and fundamental premise of section 6202, which mandates that “[FirstNet] shall ensure the establishment of a nationwide, interoperable public safety broadband network.”[[6]](#footnote-6) Regardless of this omission, it is disingenuous for Southern Linc to now raise its concerns related to the provisioning of multiple core networks with the Federal Communications Commission (“Commission”), having failed to do so when FirstNet, the entity tasked by Congress with taking all actions necessary to build and operate the NPSBN, sought comment on this specific question more than two years ago.[[7]](#footnote-7)

On October 20, 2015, FirstNet concluded that a State choosing to opt out must “use the FirstNet core network to provide public safety services within the State.”[[8]](#footnote-8) Southern Linc’s efforts to resurrect this issue are clearly an inappropriate attempt to forum shop on a matter that was fully resolved by FirstNet consistent with its mandate under the Act. Accordingly, this issue is no longer subject to debate and should be dismissed out of hand.

**I. A State Choosing to Opt Out Must Use the FirstNet Core Network to Provide NPSBN Public Safety Services**

FirstNet has already determined that an opt-out State must use the FirstNet core network to provide NPSBN *public safety services*.[[9]](#footnote-9) However, if an opt-out State enters into a public-private partnership or arrangement through which its private sector Radio Access Network (RAN) partner will leverage Band 14 excess capacity to provide *commercial services*, the opt-out State’s partner will be required to use its own commercial core, or purchase third party commercial core services.

*i. FirstNet has Already Determined that Opt-Out States Must Use the FirstNet Core Network to Provide NPSBN Public Safety Services*

FirstNet is the sole entity tasked by Congress with the responsibility to ensure the establishment of a nationwide, interoperable public safety broadband network.[[10]](#footnote-10) In particular, Section 6202(a) of the Act explicitly charges FirstNet with the duty to “ensure the establishment of a nationwide, interoperable public safety broadband network…based on a single, national network architecture.”[[11]](#footnote-11) Section 6202(b) defines the architecture of this network as initially consisting of a “core network” and a “radio access network.”[[12]](#footnote-12) Section 6206(b) further requires FirstNet to take all actions necessary to ensure the building, deployment, and operation of the network.[[13]](#footnote-13) Thus, under the Act, it is clear that FirstNet is solely responsible for ensuring that all components of the network, including the core network and the radio access network are built, deployed, operated, and maintained, and, ultimately, that the network provides services to public safety entities throughout the nation.

Under Section 6302 of the Act, however, a State may, subject to the process described in Section 6302(e), seek to participate in the establishment of the network by choosing to conduct its own deployment of a *RAN* in such State.[[14]](#footnote-14) The Act does not provide for State deployment of a core network that serves public safety entities separate from the core network established by FirstNet. Rather, the Act repeatedly confines an opt-out State’s participation in the NPSBN to deploying the RAN in that State.[[15]](#footnote-15)

To illustrate, following the State’s notice of the State’s decision to opt out under Section 6302(e)(3), the Act allows a State to develop an alternative plan for deploying the RAN within such State. Section 6302(e)(3), however, expressly limits the substance of any alternative plan, as well as the scope of review of the alternative plan, to the *RAN* in the State.[[16]](#footnote-16) Specifically, Section 6302(e)(3) requires a State choosing to opt out of the proposed FirstNet network deployment plan for the State to develop and submit an alternative plan for the construction, maintenance, operation, and improvements of the *RAN* to the Commission.[[17]](#footnote-17)

The Commission’s review is limited in scope to either approving or disapproving a State’s alternative plan for RAN deployment based on the specific interoperability objectives described in the Act.[[18]](#footnote-18) Consequently, a State’s deployment of an alternative core network that serves public safety entities, as proposed by Southern Linc, would not be subject to Commission review under the Act. Under such an interpretation, the alternative core network would not be required to satisfy the Act’s interoperability requirements[[19]](#footnote-19) thereby jeopardizing the mandate under the Act for the establishment of an interoperable network for public safety, a result Congress surely did not intend.[[20]](#footnote-20) Similarly, following the Commission’s approval of an alternative plan, the opt-out State may apply to the National Telecommunication and Information Administration (NTIA) for grant funds to construct the *RAN* and must apply to NTIA for the opportunity to lease spectrum capacity from FirstNet, subject to meeting the demonstration requirements in the Act, which include the technical capabilities and funding to support the *RAN*.[[21]](#footnote-21) These requirements make no mention of and are generally irrelevant with respect to a core network. For example, the lease of spectrum capacity is necessary for the legal operation of a RAN, but would not be required to operate a core network, which again indicates that under the Act an opt-out State may only assume responsibility for RAN deployment in the State.

Further, even after an opt-out State successfully completes the Section 6302(e) process, Section 6302(f) of the Act requires States that choose to build their own RAN to pay any user fees associated with such State’s use of “the core network.”[[22]](#footnote-22) The only user fees expressly defined under the Act are those FirstNet is authorized to assess and collect, and, as mentioned above, the Act does not require any party other than FirstNet to build and operate a core network. Accordingly, similar to the discussion above, there would be no practical reason for the Act to require an opt-out State to pay a separate user fee for use of elements of the core network if an opt-out State were operating both a core network and a RAN that served public safety entities.

Moreover, despite section 6206(d)(2) of the Act exempting FirstNet from the procedural requirements of the Administrative Procedure Act (APA),[[23]](#footnote-23) FirstNet issued a series of Public Notices seeking comment on legal issues having an impact on FirstNet’s operations. One of FirstNet’s preliminary conclusions was that “opt-out State radio access networks must use FirstNet’s core network to provide services to public safety entities.”[[24]](#footnote-24) Although providing comments on certain interpretations, Southern Linc chose not to provide any feedback to FirstNet on its preliminary interpretations related to the core network.[[25]](#footnote-25)

After reviewing and analyzing the comments submitted in response to FirstNet’s preliminary conclusion, including those related to the core network, FirstNet determined that “a State choosing to conduct its own deployment of a radio access network under 47 U.S.C. 1442(e) must use the FirstNet core network to provide public safety services within the State.”[[26]](#footnote-26) FirstNet further reasoned that this interpretation, in addition to being consistent with the Act, helped to ensure that public safety throughout the nation would have a truly interoperable network. Specifically, FirstNet noted that “roaming among networks with separate core networks, potentially from different vendors, can substantially complicate the goal of a national, interoperable network. For example, features such as end-to-end QOS, priority and preemption are controlled by several elements in the core network, and handling these features across multiple core networks would materially increase costs and complexity overall.”[[27]](#footnote-27)

*ii. If an Opt-Out State’s Contractor Provides Commercial Services Utilizing Band 14 Excess Capacity, Such Contractor will be Required to Use its Own Commercial Core*

FirstNet also discussed the distinction between an opt-out State using a core network to serve NPSBN public safety users and an opt-out State using a core network to serve commercial users on Band 14. While FirstNet has already determined that opt-out States must use the FirstNet core network to provide NPSBN public safety services,[[28]](#footnote-28) if an opt-out State’s private sector RAN contractor(s) decides to provide commercial services over Band 14 excess capacity via a covered leasing agreement with the State, the opt-out State RAN contractor(s) will be required to use its own commercial core, or purchase third party commercial core services. Under this scenario, for the provisioning of commercial non-public safety services over Band 14, the opt-out State’s partner must (1) use its own commercial core, (2) use its own PLMN-ID, which shall be broadcast by the State-deployed Band 14 sites, and (3) connect the State-deployed Band 14 sites to the State partner’s commercial core, and commercial traffic will need to be directed accordingly. FirstNet will address these requirements in greater detail in its network policies.[[29]](#footnote-29)

**II. The Commission Should Help Achieve Congress’s Interoperability Objectives by Conducting a Robust Review of Alternative Plans**

Based on Southern Linc’s recent filings, FirstNet is concerned that Southern Linc may attempt to partner with an opt-out State without having to submit a thorough and complete alternative plan to the Commission on the opt-out State’s behalf.[[30]](#footnote-30) If this is the case, such a haphazard approach could put the deployment of a nationwide interoperable public safety network in jeopardy and should not be permitted by the FCC.

FirstNet reiterates that States choosing to opt out have a responsibility not only to public safety within their own State, but also to public safety and citizens in adjoining States and across the country.  This is not a decision to be taken lightly.  Indeed, if a State chooses to opt out, it will be a substantial endeavor that will come with significant responsibility and risk.  Congress recognized this risk and intentionally imposed a stringent process to ensure that interoperability is not compromised by allowing an unprepared State to opt out and build its own RAN.

*i. A State Choosing to Opt Out Must Be Able to Demonstrate to the Commission that it will be Able to Satisfy the Act’s Interoperability Requirements Within the 180-Day Deadline Imposed by Congress*

Southern Linc has argued that 180 days is not enough time to submit a thorough alternative plan that is based on a contract and firm commitments from a vendor.[[31]](#footnote-31) While FirstNet recognizes that this timeframe may pose challenges to States choosing to opt out, FirstNet was created by Congress and is therefore bound by the statutory language contained within the Act. Moreover, the Act explicitly provides for a 180-day period following the Governor’s decision to submit an alternative plan to the Commission, and that alternative plan must demonstrate that the opt-out State will be capable of complying with the Act’s interoperability requirements.[[32]](#footnote-32) Neither FirstNet, nor the FCC, have the ability to change the plain language of the Act, and neither is authorized to extend the 180-day time period.

In its most recent filing, Southern Linc references the Act’s requirement for an opt-out State to “develop and complete requests for proposals for the construction, maintenance, and operation of the [RAN] within the State” prior to submitting its alternative plan to the Commission.[[33]](#footnote-33) Southern Linc then relies upon the Black’s Law Dictionary definition of “request for proposal” and argues that the Commission should simply require an opt-out State to do no more than “extend…an invitation to submit proposals or bids.”[[34]](#footnote-34)

Southern Linc is thus suggesting that Congress intended for an opt-out State’s “alternative plan” to include nothing more than a simple demonstration that it extended “an invitation to submit proposals or bids” rather than an actual “plan.”[[35]](#footnote-35) This reading would compel absurd results. For example, under the Act, after an opt-out State receives FCC approval, it must then seek NTIA approval and must also apply for a spectrum lease from FirstNet.[[36]](#footnote-36) Under Southern Linc’s reading, however, after receiving FCC approval, NTIA and FirstNet (and public safety users within the opt-out State) would then have to wait for the opt-out State to be ready to actually demonstrate that it has a legitimate RAN plan, but without a deadline and without a guarantee that the final plan will be able to satisfy the interoperability demonstrations that were already reviewed by the Commission. To adopt this reading would mean, among other absurdities, that Congress would impose a 180-day deadline on opt-out States to submit an alternative plan that includes nothing more than an invitation to bid, but at the same time provide opt-out States with an indefinite period of time to demonstrate that they are actually capable of deploying and operating a RAN.

To be clear, Southern Linc’s approach would likely force public safety users located within an opt-out State to have to wait years to access the NPSBN, which would substantially delay the deployment of a truly nationwide public safety broadband network. It would also have the effect of removing one of the Act’s key safeguards - the FCC’s interoperability determination, since the actual final alternative plan submitted to NTIA may bear no resemblance to the platitudes and promises that were submitted to the FCC prior to completion of the proposal and contracting process. Both results are unacceptable.

Southern Linc’s reading would not only significantly delay the deployment of a nationwide network, but it would also be contrary to the plain language of the Act. The Act requires opt-out States to “submit an alternative *plan* for the construction, maintenance, operation, and improvements of the [RAN]…and such plan shall *demonstrate*” compliance with the FCC’s Technical Advisory Board report and interoperability with the NPSBN.[[37]](#footnote-37)  As the term is generally used, a “plan” is “[a] detailed proposal for doing or achieving something.”[[38]](#footnote-38) Simply requiring an opt-out State to extend invitations to prospective suppliers or contractors without including a “detailed proposal for doing or achieving something” would certainly not constitute a *plan* as the term is generally used.

In addition, the term “demonstrate” should be given its ordinary, broadly flexible meaning: “to prove or make clear by reasoning or evidence.”[[39]](#footnote-39)  A State choosing to opt out must therefore do much more in its alternative plan than prove to the FCC that it extended an invitation to prospective suppliers or contractors. Rather, based on the common usage of “demonstrate,” the opt-out State must prove or make clear by reasoning or evidence that it will actually be able to achieve the Act’s interoperability objectives. Under no circumstances can this be done by the opt-out State simply providing the Commission with proof that it sent an invitation to vendors. Moreover, it would be nonsensical for the FCC, the expert agency tasked by Congress with ensuring that opt-out States have met the Act’s interoperability objectives, to base its determination simply on whether or not an opt-out State extended an adequate invitation to potential vendors.

ii. *The Commission Should Conduct a Robust Review of States’ Alternative Plans to Ensure a Nationwide Interoperable Network*

We also discussed Southern Linc’s argument that the Commission’s evaluation of alternative plans should “assess only whether a state plan is workable” and that the Commission “should not require any specific method of demonstrating compliance with the technical interoperability requirements or interoperability with the NPSBN.”[[40]](#footnote-40) FirstNet reiterated that the Commission has an important role to play in ensuring nationwide interoperability. It is imperative for the FCC to conduct a diligent and thorough investigation to ensure than an alternative plan is consistent with the Act’s interoperability objectives. A simple determination that an alternative plan is “workable” will not suffice.

iii. *The Act Requires an Opt-Out State to Proceed in Accordance with FirstNet’s Proposed State Plan following FCC Disapproval of the State’s Alternative Plan*

The Commission should reject Southern Linc’s argument that a State choosing to opt out should be given an opportunity to revise its alternative plan after it has been disapproved by the Commission. Specifically, Southern Linc argues that “[i]f the Commission disapproves a state plan, it should explain its rationale for the rejection in writing and provide an opportunity to correct any perceived deficiency.”[[41]](#footnote-41) The Act, however, is unequivocal in providing that “[i]f the Commission disapproves a [state or territory’s alternative RAN] plan…, the construction, maintenance, operation, and improvements of the network within the State shall proceed in accordance with the plan proposed by [FirstNet].”[[42]](#footnote-42) Thus, as reiterated in FirstNet’s final interpretations, the plain language of the statute makes clear that deployment within the state or territory shall proceed according to FirstNet’s proposed State Plan following FCC disapproval of the state or territory’s alternative plan, subject only to the judicial review under 47 U.S.C. § 1442(h).[[43]](#footnote-43)

**III. The Act is Clear that an Opt-Out State’s Governor Must Provide the Opt-Out Notification to the FCC, NTIA, and FirstNet**

Southern Linc implies that the Act is somehow ambiguous about whether or not a Governor specifically is required to provide notice of an opt-out decision and asserts that the Act “allows parties other than the Governor of a State to submit the state’s opt-out notification on behalf of the Governor.”[[44]](#footnote-44) The Act is clear, however, that the Governor – and the Governor alone – must provide the opt-out notification to the FCC (as well as NTIA and FirstNet).

As Southern Linc acknowledges, the Act explicitly provides that “*the Governor shall notify* the First Responder Network Authority, the NTIA, and the Commission of [a decision to opt-out].” [[45]](#footnote-45) By contrast, under the same section of the Act, FirstNet’s notification of completion of the request for proposal (RFP) process, details of the proposed network buildout, and funding level (as determined by NTIA) for the State may be provided to “the Governor….*or* his designee.”[[46]](#footnote-46) Thus, Congress drew a clear distinction between the distribution of information from FirstNet about the proposed plan for network deployment in the State and the actual *decision* by the State to opt out of the plan and thereby assume all responsibilities associated with constructing, maintaining, operating, and improving the RAN – entirely reasonable given the magnitude of such a decision.[[47]](#footnote-47) It is the Governor alone, therefore, who must provide the notice of an opt-out decision to FirstNet, the FCC, and NTIA.[[48]](#footnote-48)

Southern Linc claims that requiring no one but the Governor to submit the mandated opt-out notice would reach “absurd results” and points to the provision of the Act stating that “the Governor shall develop and complete requests for proposals ….” as evidence that the reference to “Governor” is not meant to be read literally.[[49]](#footnote-49) It is hardly “absurd,” however, to make the Governor responsible for the development and completion of such RFPs. Of course this provision does not require the Governor to execute an RFP *process* on his or her own, just as the provision requiring the Governor to choose whether to opt in or out of FirstNet’s proposed plan for network deployment in the State does not compel the Governor to participate in the decision *process* alone without receiving the advice and counsel of his or her staff, advisors, and subject matter experts. Rather, these provisions logically require the Governor to have ultimate *responsibility* for those actions and decisions.

Even assuming, arguendo,a reason to look beyond the plain meaning of the statutory text (and no such justification exists), there is nothing “absurd” about requiring the Governor – the chief executive of the State – to provide notice of a decision made by the Governor that commits the State to serious and substantial obligations and investments on behalf of its public safety community. Requiring the notice to come directly from the Governor ensures that this critically important decision has, in fact, actually and personally been made by the Governor.[[50]](#footnote-50) Indeed, true absurdity would be to blatantly disregard an express, clear, and reasonable directive of Congress.

Pursuant to section 1.1206 of the Commission’s rules, this *ex parte* notification is being filed electronically for inclusion in the record of the above-referenced proceeding. If you have any questions, please feel free to contact me at (202) 430-3090.

Respectfully submitted,

/s/ Patrick Donovan

Patrick Donovan

Attorney

1. *See* Richard Reed, FirstNet Chief Customer Officer, *FirstNet Outlines Key Steps for Development of State Plans,*

   *Interoperability Requirements* (July 8, 2016), *available at*: <https://www.firstnet.gov/newsroom/blog/firstnet-outlines-key-steps-development-state-plans-interoperability-requirements>. [↑](#footnote-ref-1)
2. *See* 47 U.S.C. § 1442(e)(1). [↑](#footnote-ref-2)
3. *See* Comments of Southern Linc, PS Docket No. 16-269 (filed Oct. 21, 2016) (“Southern Linc Comments”); Reply Comments of Southern Linc, PS Docket No. 16-269 (filed Nov. 21, 2016) (“Southern Linc Reply Comments”); *FCC Review of State Opt-Out Requests from the FirstNet Radio* *Access Network*, attached to *Ex Parte* Letter from Trey Hanbury, Counsel to Southern Linc to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 (filed Feb. 2, 2017) (“Southern Linc Feb. 2 Ex Parte”); *FCC Review of State Opt-Out Requests from the FirstNet Radio* *Access Network*, attached to *Ex Parte* Letter from Trey Hanbury, Counsel to Southern Linc to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 (filed May 1, 2017) (“Southern Linc May 1 Ex Parte”); *Ex Parte* Letter from Trey Hanbury, Counsel to Southern Linc to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 (filed May 8, 2017) (“Southern Linc May 8 Ex Parte”). [↑](#footnote-ref-3)
4. *See* 47 U.S.C. § 1426(b)(1). [↑](#footnote-ref-4)
5. *See* Southern Linc May 8 Ex Parte. [↑](#footnote-ref-5)
6. 47 U.S.C. § 1422(a)(1). [↑](#footnote-ref-6)
7. *See* First Responder Network Authority Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 79 Fed. Reg. 57,058 (Oct. 24, 2014) (“FirstNet Preliminary Interpretations”); 47 U.S.C. § 1426(b)(1). *See also,* 47 U.S.C. § 1426(c)(1) (describing FirstNet’s responsibility to develop the technical and operational requirements of the network and also the practices, procedures, and standards for the management and operation of the network). [↑](#footnote-ref-7)
8. *See* Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63,504, 63,524 (Oct. 20, 2015) (“FirstNet Final Interpretations”), *available at* <https://www.federalregister.gov/articles/2015/10/20/2015-26622/final-interpretations-of-parts-of-the-middle-class-tax-relief-and-job-creation-act-of-2012>. [↑](#footnote-ref-8)
9. FirstNet Final Interpretations, 80 Fed. Reg. at 63,524. [↑](#footnote-ref-9)
10. *See* 47 U.S.C. 1422(a). [↑](#footnote-ref-10)
11. 47 U.S.C. 1422(a)-(b). [↑](#footnote-ref-11)
12. *See* 47 U.S.C. 1422(b). [↑](#footnote-ref-12)
13. *See* 47 U.S.C. 1426(b). [↑](#footnote-ref-13)
14. 47 U.S.C. § 1442(e). [↑](#footnote-ref-14)
15. *See generally* 47 U.S.C. §§ 1442(e)(2), (e)(3), (f), (g).  [↑](#footnote-ref-15)
16. 47 U.S.C. § 1442(e)(3). [↑](#footnote-ref-16)
17. 47 U.S.C. § 1442(e)(3)(B-C). [↑](#footnote-ref-17)
18. 47 U.S.C. § 1442(e)(3)(C). [↑](#footnote-ref-18)
19. 47 U.S.C. § 1442(e)(3)(C)(i)(II) (requiring an alternative plan to demonstrate (1) compliance with the minimum interoperability requirements of the Technical Advisory Board report and (2) interoperability with the nationwide public safety broadband network). [↑](#footnote-ref-19)
20. *D. Ginsberg & Sons, Inc. v. Popkin,* 285 U.S. 204 (1932) (reiterating that effect shall be given to every part or clause of a statute). [↑](#footnote-ref-20)
21. 47 U.S.C. § 1442(e). [↑](#footnote-ref-21)
22. *See* 47 U.S.C. § 1442(f). [↑](#footnote-ref-22)
23. 47 U.S.C. § 1426(d)(2) (exempting FirstNet from 5 U.S.C. §§ 500-596). [↑](#footnote-ref-23)
24. FirstNet Preliminary Interpretations, 79 Fed. Reg. at 57,060. [↑](#footnote-ref-24)
25. *See generally* Comments of Southern Company and SouthernLinc Wireless available at <http://www.regulations.gov/#!documentDetail;D=NTIA-2014-0001-0053>. [↑](#footnote-ref-25)
26. FirstNet Final Interpretations, 80 Fed. Reg. at 63,524. [↑](#footnote-ref-26)
27. FirstNet Preliminary Interpretations, 79 Fed. Reg. at 57,059. [↑](#footnote-ref-27)
28. FirstNet Final Interpretations, 80 Fed. Reg. at 63,524. [↑](#footnote-ref-28)
29. *See* 47 U.S.C. § 1426(c)(1). [↑](#footnote-ref-29)
30. *See* Southern Linc Comments at 11-16; Southern Linc Reply Comments at 5-11; Southern Linc May 8 Ex Parte at 6-9. [↑](#footnote-ref-30)
31. As evidence that a State choosing to opt out should not be held to the 180-day period mandated by Congress, Southern Linc has repeatedly referred to the fact that it took FirstNet more than five years to select a network partner.  This comparison is specious.  FirstNet needed to accomplish many tasks prior to making a contract award that are inapplicable to an opt-out State.  For example, unlike a State choosing to opt out, FirstNet had to (1) complete a process to identify and select Board members, (2) adopt bylaws and establish Board committees, (3) establish the Public Safety Advisory Committee (PSAC) to provide recommendations to FirstNet, (4) hire an entire staff to manage the organization and execute its statutory mission, (5) develop a comprehensive business plan for the sustainability of the organization and network, (6) establish a grant program to clear 700 MHz narrowband incumbents, (7) develop and approve a network architecture, (8) identify and lease headquarters in the D.C. area and Boulder, CO and establish a technical lab in Boulder, (9) consult with stakeholders throughout the entire nation, including public safety personnel, other federal agencies, states, territories, tribes, localities, commercial vendors, and interested members of the public, and (10) conduct an RFP process for a *nationwide* solution (versus a one-State, RAN-only solution).  Southern Linc also ignores the reality that States have been aware of their ability to opt out for years. *See Wisconsin expected to become sixth state to issue public-safety RFP*, Urgent Communications (May 11, 2017), *available at* <http://urgentcomm.com/public-safety-broadbandfirstnet/wisconsin-expected-become-sixth-state-issue-public-safety-rfp>. [↑](#footnote-ref-31)
32. 47 U.S.C. 1442(e)(3)(C). [↑](#footnote-ref-32)
33. 47 U.S.C. 1442(e)(3)(C). [↑](#footnote-ref-33)
34. *See* Southern Linc May 8 Ex Parte at 6-7. [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. *See* 47 U.S.C. 1442(e)(3). [↑](#footnote-ref-36)
37. 47 U.S.C. 1442(e)(3)(C) (emphasis added). [↑](#footnote-ref-37)
38. *Plan*, Merriam-Webster Dictionary, *available at:* <https://www.merriam-webster.com/dictionary/plan>. *See also*, Dictionary.com, *available at:* http://www.dictionary.com/browse/plan (defining “plan” as “a scheme or method of acting, doing, proceeding, making, etc., developed in advance”). [↑](#footnote-ref-38)
39. *Demonstrate*, Merriam-Webster Dictionary, *available at:* <https://www.merriam-webster.com/dictionary/demonstrate>. [↑](#footnote-ref-39)
40. Southern Linc May 1 Ex Parte, attach. at 9. [↑](#footnote-ref-40)
41. Southern Linc May 1 Ex Parte, attach. at 10. [↑](#footnote-ref-41)
42. 47 U.S.C 1442(e)(3)(C)(iv). [↑](#footnote-ref-42)
43. *See* Second Notice Final Interpretations, 80 Fed. Reg. at 63,517. [↑](#footnote-ref-43)
44. *See* Southern Linc Ex Parte (May 8, 2017) at 7. [↑](#footnote-ref-44)
45. 47 U.S.C. 1442(e)(3)(A) (emphasis added). [↑](#footnote-ref-45)
46. 47 U.S.C. 1442(e)(1) (emphasis added). [↑](#footnote-ref-46)
47. As noted in FirstNet’s prior comments to the Commission, presumably Congress would have included a specific reference to a Governor’s designee in the opt-out notification provision if it had intended to allow such designee to provide the statutorily required opt-out notice to FirstNet, the FCC, and NTIA. *See Comments of the First Responder Network Authority* at 5 (Oct. 21, 2016). *See also Sebelius v. Cloer,* 133 S. Ct. 1886, 1894 (2013) (“We have long held that [w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”) (internal quotation marks omitted). [↑](#footnote-ref-47)
48. *See Puerto Rico v. California Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (stating that where a statute's language is plain, the analysis should begin and end with that language); *Cloer,* 133 S. Ct. at 1896 (“[W]hen [a] statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.”) (internal quotation marks omitted); *see also Household Credit Services, Inc. v. Pfennig*, 541 U.S. 232, 239 (2004)(Where “‘Congress has directly spoken to the precise question at issue,’ courts, as well as the agency, ‘must give effect to the unambiguously expressed intent of Congress.’”) (quoting *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984)); *Levin v. United* States, 133 S. Ct. 1224, 1232 (2013) (“In determining the meaning of a statute, we look first to its language, giving the words used their ordinary meaning.”) (internal quotation marks omitted). [↑](#footnote-ref-48)
49. *See* Southern Linc Ex Parte (May 8, 2017) at 7-8. [↑](#footnote-ref-49)
50. At the very least, the Commission will need to require a Governor to provide a written declaration acknowledging that he or she has delegated his or her opt-out notice statutory responsibility to a designee, to ensure the Governor has made the decision as required by the Act. [↑](#footnote-ref-50)