



**EXECUTIVE DIRECTOR  
CHIEF EXECUTIVE OFFICER**

Derek K. Poarch  
poarchd@apcointl.org

**HEADQUARTERS**

**J. Rhett McMillian, Jr. Building**  
351 North Williamson Boulevard  
Daytona Beach, FL 32114-1112  
386-322-2500

**EXECUTIVE OFFICES**

**Gregory T. Riddle Building**  
1426 Prince Street  
Alexandria, VA 22314  
571-312-4400

www.apcointl.org

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June 15, 2017

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte*, PS Docket No. 16-269

Dear Ms. Dortch:

On Thursday, June 15, 2017, the undersigned, Mark Reddish, and Nicole Zimelman of APCO International held phone calls with Public Safety and Consumer Protection Advisor Zenji Nakazawa, of the Office of Chairman Pai, and subsequently with representatives of the Public Safety and Homeland Security Bureau concerning the above-referenced proceeding.<sup>1</sup>

During this call, APCO expressed continued support for its previously filed positions in this proceeding and offered two overarching considerations as the Commission finalizes its Order. First, achieving a nationwide level of interoperability is the primary objective of the nationwide public safety broadband network (NPSBN) and a responsibility that Congress fundamentally and ultimately entrusted to FirstNet.<sup>2</sup> Second, the Commission's role is an important one: to provide a specific interoperability assessment of alternative plans in the initial phase of the opt-out process.<sup>3</sup>

With the above in mind, APCO noted that multiple parties in this docket are misinterpreting the Act concerning responsibility for the NPSBN core network.<sup>4</sup> The plain language of the law, reflected in Section 6202 and elsewhere, is that FirstNet is solely responsible for establishing the core

<sup>1</sup> Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, PS Docket No. 16-269, *Draft Report and Order*, FCC-CIRC1706-02 (rel. Jun. 1, 2017) (“Draft Order”).

<sup>2</sup> See Comments of APCO, PS Docket Nos. 16-269, 12-94, & 06-229, WT Docket No. 06-150, at 2-3, 6, 8-9 (filed Oct. 21, 2016); Reply Comments of APCO, PS Docket Nos. 16-269, 12-94, & 06-229, WT Docket No. 06-150, at 2 (filed Nov. 21, 2016).

<sup>3</sup> See Comments of APCO at 4-8.

<sup>4</sup> See *Ex Parte* Letter of Rivada Networks, LLC, PS Docket No. 16-269 (filed Jun. 12, 2017); *Ex Parte* Letter of Southern Communications Services, Inc. d/b/a Southern Linc, PS Docket No. 16-269 (filed May 8, 2017).

network, which is a fundamental part of the overall statutory design for FirstNet to ensure a nationwide level of interoperability. Accordingly, APCO agrees with the Draft Order's finding that requests for consideration of a separate state network core are "outside the scope of [the Commission's] statutory review responsibility."<sup>5</sup>

APCO next explained that states must clear a high bar to opt out because doing so introduces risks to first responders within their borders and throughout the country.<sup>6</sup> States and localities have historically struggled with achieving interoperability with much less technically complex land mobile radio systems. This is why Congress strongly discouraged opt out, "closely circumscribed the review that the Commission is to undertake with respect to States that choose to 'opt out' of the nationwide network and to build their own state-wide RAN,"<sup>7</sup> and placed the burden upon the state that it "shall demonstrate"<sup>8</sup> that its proposal meets the statutory criteria related to interoperability.

APCO raised several concepts relevant to the Commission's statutory responsibilities to provide the initial interoperability review of a state's alternative plan:

*The Governor Should be Responsible for Notifying FirstNet, NTIA, and the Commission.* As the Draft Order states, the Act is clear that "the Governor shall notify" not only the Commission, but FirstNet and NTIA as well, of his or her intent to opt out.<sup>9</sup> By notifying FirstNet, the Commission, and NTIA of an intent to opt out, the Governor is choosing to assume significant responsibility, accountability, and risk for the state's public safety professionals and the citizens they serve. Thus, the Governor alone should make this notification in accordance with the responsibility and seriousness that opt out entails. The Commission should clarify that if a Governor's designee handles the ministerial duty of transmitting the notification, the content of such transmission should clearly be the Governor's. For example, a designee could email a copy of the Governor's signed letter.

*States Should be Required to Have Signed Contracts.* APCO reiterated that a state should be required to have a signed contract in order to meet the law's requirement to "complete requests for proposals for the construction, maintenance, and operation of the radio access network within the State."<sup>10</sup> The burden is on the state to make its case for interoperability, and APCO would question a state's commitment, seriousness, and ability to meet the interoperability requirements if it is unable to achieve a signed contract in the time provided by the law. Further, the details of a state plan in a winning bid may not necessarily be the details included in the final contract. Therefore, APCO urged that in its final Order the Commission require states to reach a final, signed contract to provide the certainty needed to judge interoperability showings.

*The Opt Out Process Should be as Expedited as Practical.* The longer the opt out process becomes, the more compelling the caution to states that pursuing opt out will introduce additional delays to the delivery of FirstNet's advanced communications capabilities for the state's public safety community. These delays, and the opt out process in general, would be compounded by a restricted notice and comment period, an opportunity to petition to intervene, or allowing a state to amend or correct its plan after formal submission to the Commission to demonstrate interoperability. Too much is at stake to diminish the significant due diligence and preparation a state must undertake by the time it presents its alternative plan to the Commission.

<sup>5</sup> Draft Order at para. 62.

<sup>6</sup> See Comments of APCO at 2-4.

<sup>7</sup> Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, PS Docket No. 16-269, *Notice of Proposed Rulemaking*, FCC 16-117, para. 58 (rel. Aug. 26, 2016).

<sup>8</sup> Act, § 6302(e)(3)(C)(i).

<sup>9</sup> Draft Order at para. 11.

<sup>10</sup> See Comments of APCO at 5; Reply Comments of APCO at 2-3; Act, § 6302(e)(3)(B).

*FirstNet is Best Positioned to Determine Interoperability Criteria.* The Draft Order would direct the Public Safety and Homeland Security Bureau to issue a Public Notice seeking comment on FirstNet’s network policies related to interoperability and have the Commission “issue a subsequent order specifically identifying those elements of FirstNet’s network policies that [the Commission] will consider in evaluating state compliance with the second prong of the statutory test.”<sup>11</sup> Given the statutory responsibilities, experience, and insight that FirstNet uniquely possesses concerning the NPSBN, APCO respectfully noted that no entity would be in a position to substitute its own judgement on what would enable interoperability with the NPSBN.

Finally, APCO does not view the Commission as a “neutral arbiter” tasked with weighing “competing interests” between FirstNet and states.<sup>12</sup> Congress tasked FirstNet with implementing a nationwide, interoperable, public safety broadband network for the benefit of first responders and public safety communications professionals throughout the country. FirstNet will serve public safety in every state, regardless of opt out decisions. The Commission’s role is an important one – to guard against state plans that will not be interoperable and thereby support the nationwide mission. Accordingly, APCO offered that all of the parties involved in the opt out process should meet their respective obligations under the Act to ensure that nationwide interoperability is achieved.

Respectfully submitted,

/s/  
Jeffrey S. Cohen  
Chief Counsel  
(571) 312-4400 ext 7005  
[cohenj@apcointl.org](mailto:cohenj@apcointl.org)

CC (via email):  
Zenji Nakazawa  
David Furth  
Roberto Mussenden  
Erika Olsen  
Rasoul Safavian

<sup>11</sup> Draft Order at para. 61.

<sup>12</sup> *Id.* at para. 60.