

June 15, 2017

EX PARTE NOTICE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On June 14, 2017, Joseph Euteneuer, Co-Chief Executive Officer, Peter Campbell, Chief Information Officer, Chris Moore, Senior Vice President, Brian Carney, Senior Vice President, and Joe Titlebaum, counsel, all of Rivada Networks, LLC (“Rivada”), and I met with David Furth, Deputy Bureau Chief, and Roberto Mussenden and Rasoul Safavian, all of the Public Safety and Homeland Security Bureau, regarding the above-referenced proceeding and the draft Report and Order published by the Commission.¹ On June 15, 2017, Messrs. Euteneuer, Campbell, Carney, Titlebaum, Patricia Paoletta of Harris, Wiltshire & Grannis LLP and I met separately with Chairman Ajit Pai and Public Safety and Consumer Protection Advisor Zenji Nakazawa and with Commissioner Michael O’Rielly and Legal Advisor Erin McGrath. That same day, Messrs. Euteneuer, Campbell, Carney, Titlebaum and I also met with Commissioner Mignon Clyburn, Daudeline Meme, Wireless, International and Public Safety Legal Advisor, and Jeremy Greenberg, Law Clerk.

Rivada appreciates the hard work and attention to the statutory framework of the Public Safety Spectrum Act² reflected in the Draft Order. Congress expressly provided states the right to opt out, preserving an important tenant of Our Federalism. Opt-out provides a market-based check on the offers that AT&T, as FirstNet’s commercial partner, will make to states. Opt-out also ensures that states can be laboratories of innovation. For example, some opt-out states may wish to deploy innovative public safety apps before AT&T is to deliver them nationwide, like Mission Critical VoLTE Push-to-Talk. Without the right to opt out, there is no pressure on AT&T to continue to evolve FirstNet, as Congress directed.

Rivada supports the proposals set forth in the Draft Order. We support the procedural schedule proposed by the Bureau and oppose the further changes suggested by AT&T:

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

² 47 U.S.C. §§ 1401-1443, 1457.

- Allowing 60 days for submission of the plan following the 180 days for completing the bid and award process reasonably recognizes that assembling and documenting the plan requires some time beyond completion of a competitive award. While 90 days would be even more helpful, 60 days is reasonable.
- The Draft Order appropriately would give flexibility to the state, such as allowing a Governor's designee to provide required notices. There is no reason to believe that Congress meant to micromanage internal state processes by precluding delegation, and micromanagement should not be presumed from silence.
- The comment schedule reasonably allows for state refinements and corrections. We oppose AT&T's request to limit to *de minimis* changes. In the first instance, a state will not be able to completely redo a state plan in the fifteen days between comments and filing any amendments. That is just unrealistic. State plans will need to be well-thought out in advance, and fifteen days is not a sufficient amount of time to re-think an entire plan. Second, it does not make sense to litigate whether a change is *de minimis*. By incorporating such a requirement the Commission would just build litigation into the process and further burden a state's exercise of its opt-out right. Third, the Commission's role is to evaluate interoperability, and if a state plan can fix an interoperability problem or clarify that it is not a problem, that furthers, rather than frustrates, the statutory framework for state market-based choices.
- The Commission should reject AT&T's proposal that state plans must be accompanied by a final, binding, executed contract. This is not realistic given the structure of the opt-out process. The Commission's interoperability review is at the start, not the end, of the opt-out process. Key business terms unrelated to interoperability but that would need to be memorialized in the final contract may need to be adjusted in light of the terms of the FirstNet spectrum lease agreement, which is not specified until the end of the process. Of course, FirstNet could do more to make this more transparent upfront, but they have not done so to date.

Rivada also supports the Draft Order's proposal (at para. 61) for the Commission to review the FirstNet network policies (i.e., its interoperability matrix) to determine which policies are part of the Commission's interoperability assessment. In this regard, we noted that it is unclear whether the document filed by FirstNet on June 5, 2017 with no explanatory information is the final interoperability matrix or just an initial draft. In any event, simply throwing this matrix in the docket at the last minute cannot reasonably substitute for the review contemplated in the Draft Order.

With respect to the Commission's review of the FirstNet interoperability matrix, we urged that the Commission make clear that it will review FirstNet's policies to determine which ones are *necessary* to interoperability. The Draft Order states that the Commission would review to determine which policies are "relevant" to interoperability, which is ambiguous.³ The Commission should not, and is not statutorily required, to reject a state opt-out plan because of a

³ Draft Order ¶ 61.

FirstNet policy that merely relates to or touches on interoperability but is not necessary to interoperability. “Necessary” sets a standard at the appropriate level, ensuring that states cannot frustrate interoperability, but otherwise maintaining flexibility in designing networks.

Rivada also appreciates that the Draft Order (at para. 62) states that the FCC will not reject an otherwise qualified plan that includes a state core. This is wholly appropriate for the reasons that Rivada, Southern Linc, and Colorado FirstNet have set forth.⁴ We also agree that there is no reason for the Commission to examine the connection and interoperability between a state radio access network (“RAN”) and a state’s core elements. The Commission should also make clear that in evaluating the interoperability of the state RAN with the FirstNet core, a state RAN can be interconnected and interoperated with the FirstNet core directly, in the same way that a tower would be connected with a switch, such as through an S1 interface, or the state RAN can be interconnected and interoperated with the FirstNet core indirectly, via a state core. As Rivada set forth in its ex parte letter of June 12, 2017, and as the Technical Advisory Board for First Responder Interoperability documented in its report, there are a range of ways to interconnect a RAN to the FirstNet core including connecting a state RAN through state core elements.⁵ The Commission should make clear that as long as interoperability can be achieved, it does not matter whether that is done through a direct or indirect interconnection. There is certainly no reason for the Commission to rule out ex ante indirect interconnection and interoperability between a state RAN and the FirstNet core.

There are real advantages that can be brought to a state when the state network includes both the RAN and state core elements that can interoperate with a state. Indeed, every state RFP that has been issued specifies a requirement for a state core. State core elements give the state a higher degree of local insight into and control over the use of their RAN – well in excess of ninety percent of the public safety traffic will be local – as well as more control over integration with existing public safety communications such as land mobile radio (“LMR”). A state with its own core elements can decide to introduce additional innovative services, such as Mission

⁴ See Letter of Declan Ganley and Joseph Euteneuer, Co-CEOs, Rivada Networks, LLC to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269, at 4-8 (filed June 12, 2017) (“Rivada June 12 Ex Parte”); Letter from Kenneth S. Fellman, Counsel to FirstNet Colorado, to Robert Mussenden, Attorney Advisor (Policy and Licensing), Pub. Safety & Homeland Sec. Bur., FCC, PS Docket No. 16-269, at 4-5 (filed June 14, 2017); Letter from Trey Hanbury, Counsel to Southern Communications Services, Inc. d/b/a Southern Linc, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269 & 17-83, at 3-4 (filed June 14, 2017) (“FirstNet Opt-Out Ex Parte Rebuttal”); Letter from Trey Hanbury, Counsel to Southern Communications Services, Inc. d/b/a Southern Linc, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 16-269 & 17-83, at 2-4 (filed June 14, 2017) (“AT&T FirstNet Ex Parte Rebuttal”).

⁵ See Rivada June 12 Ex Parte at 3-8 and Appendices 1 and 2; Technical Advisory Board for First Responder Interoperability, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network*, Final Report, at 31, 39, Table 1 (May 22, 2012), <https://ecfsapi.fcc.gov/file/7021919873.pdf>.

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Critical Push-to-Talk, ahead of FirstNet and AT&T. Keeping more traffic local and minimizing the use of FirstNet core elements also minimizes costs and thus makes more funds available for rural deployment. Moreover, to the extent that the state's partner has a better business model for secondary commercial use of the bandwidth available through Band 14 that can also generate greater funding for a broader rural deployment than AT&T will offer, a state should be allowed to pursue that opportunity. At the same time, the state core elements can be built to meet all FirstNet RFP standards for security, and all the Required Minimum Technical Requirements specified by the Commission's Technical Advisory Board for First Responder Interoperability.

In discussing Rivada's own plan for what it can offer the state, we noted that Rivada does not need to be a facilities-based carrier to be able to begin to provide LTE services to states while it builds out the Band 14 network – or to supplement Band 14 after that network is built. Rivada can and will enter into MVNO and roaming agreements with existing facilities-based LTE providers to obtain the capability for public safety entities to use existing commercial LTE services in addition to Rivada's dedicated Band 14 services.

Please contact me if you have any questions.

Sincerely,



John T. Nakahata

Counsel to Rivada Networks, LLC

cc: Chairman Ajit Pai
Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Zenji Nakazawa
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