July 28, 2017

**EX PARTE VIA ELECTRONIC FILING**

Ms. Marlene Dortch

Secretary

Federal Communications Commission

The Portals

445 12th Street SW

Washington DC 20554

Re: **In the Matter of Procedures for Commission Review of State Opt-Out**

**Requests from the FirstNet Radio Access Network, PS Docket No. 16-269**

Dear Ms. Dortch:

AT&T submits this letter in response to an ex parte recently submitted by Verizon[[1]](#footnote-1) in this proceeding. In that letter, Verizon seeks to revisit a decision that has been extensively debated and resolved -- the issue of whether an opt-out state may deploy its own, separate core network. Verizon is asking the Commission to reverse itself and rule that a separate state core is permissible and could pass muster under the statutory framework.

Verizon is wrong on both the policy and the law, and is woefully late to the debate. In response to identical requests made previously in this proceeding, the Commission has clearly held that statutory interpretation questions regarding the permissibility of a separate state core are outside the scope of its responsibilities. The Commission should therefore ignore or deny as moot the late and redundant pleas of Verizon.

Not only are Verizon’s pleas repetitious, they are also legally erroneous. Like the others making this argument before it, Verizon simply fails to address the plain language of the Public Safety Spectrum Act.[[2]](#footnote-2) The Act comprehensively defines two separate components of the Nationwide Public Safety Broadband Network (“NPSBN”): (i) a “core network”, and (ii) a “radio access network” (or RAN).[[3]](#footnote-3) This demonstrates Congress’ clear understanding of the distinctiveness of each of those two components. The Act then defines a state’s options vis-à-vis those two components in clear binary terms: (i) a state may opt-in and “participate in the deployment of the nationwide, interoperable broadband network as proposed by [FirstNet]”, or (ii) a state may, if it satisfies certain interoperability requirements, technical standards, and network policies, opt-out and “conduct its own deployment of a radio access network in such State.”[[4]](#footnote-4) The Act simply does not provide that a state may opt-out and then deploy its own public safety core network.

Most importantly, Verizon’s proposed interpretation runs contrary to the overriding statutory purpose of the FirstNet framework and the important public goals being pursued: to ensure that the RAN elements of the NPSBN constructed by an opt-out state will be interoperable with the nationwide network. By limiting an opt-out state to deployment of RAN only, the statute ensures fundamental interoperability at the core. As FirstNet itself has acknowledged, this interpretation, in addition to being consistent with the Act, helps to ensure that public safety throughout the nation will have a truly interoperable network.

Verizon makes little effort to present a countervailing construction of the statutory text, or to explain why at this late date, after foregoing participation in the bidding process itself and in the Commission’s proceeding on interoperability, it has decided to engage. Instead, Verizon simply asserts that precluding an opt-out state from providing its own public safety core network would disable the state (or its commercial partner) from providing meaningful service, thereby unlawfully rendering the Spectrum Act’s opt-out option a nullity.

This claim is false. Congress made clear the optionality available to states considering an opt-out, and also made clear those states’ obligations to interconnect with the national core. Verizon’s assertions to the contrary fly in the face of the statute and the fundamental goal of the FirstNet framework -- to ensure that both FirstNet customers and first responders who may subscribe to an opt-out state RAN network have access to a single national, secure, interoperable, public safety network.

Pursuant to the Commission’s rules, a copy of this letter is being filed electronically in the above-referenced docket. Please do not hesitate to call me if you have questions.

Sincerely,



Joan Marsh

cc: Zenji Nakazawa

Erin McGrath

Daudeline Meme

David L. Furth

1. Letter dated July 24, 2017 from William H. Johnson, Verizon, to Marlene Dortch, FCC, PS Docket No. 16-269 (“Verizon ex parte letter”). [↑](#footnote-ref-1)
2. Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457) (“Public Safety Spectrum Act” or “Spectrum Act” or “Act”). [↑](#footnote-ref-2)
3. 47 U.S.C. § 1422(b). [↑](#footnote-ref-3)
4. 47 U.S.C. § 1442(e)(2)(emphasis added). [↑](#footnote-ref-4)