

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network	)	PS Docket No. 16-269
	)	
Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012	)	PS Docket No. 12-94
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	

**REPLY COMMENTS OF APCO**

The Association of Public-Safety Communications Officials-International, Inc. (APCO) hereby submits the following reply comments in response to the Commission’s Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding.<sup>1</sup>

Founded in 1935, APCO is the nation’s oldest and largest organization of public safety communications professionals. APCO is a non-profit association with over 26,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including 9-1-1 Public Safety Answering Points (PSAPs), radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies. APCO’s members are the public safety communications professionals that will be among the primary users of the nationwide public safety broadband network (NPSBN).

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<sup>1</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 (rel. Aug. 26, 2016) (Notice).

Based on the initial comments in this proceeding, APCO is concerned that some parties are seeking impermissible flexibility and raising issues outside the scope of the Commission's authority.<sup>2</sup> The Commission's role is simply to approve or disapprove a state plan, and APCO agrees with the Commission that "the statute provides a two-pronged standard by which the Commission must evaluate a state's submission,"<sup>3</sup> and "Congress intended the scope of [its] review to be limited solely to these two factors."<sup>4</sup> This proceeding should not be viewed as an opportunity to rewrite the law or subvert the rigorous process Congress put in place to ensure interoperability and long-term sustainability for the nationwide public safety broadband network.

APCO continues to support the positions described in its initial comments<sup>5</sup> and strongly agrees with the Commission that the law "closely circumscribes the review that the Commission is to undertake with respect to States that choose to 'opt out' of the nationwide network and build their own state-wide RAN."<sup>6</sup> Below, APCO provides additional explanation for why a completed RFP must entail an awarded and signed contract and states should not be permitted to amend or supplement the alternative plans.

APCO reiterates that completing an RFP means that a final contract has been awarded and signed.<sup>7</sup> Alternative state plans must be based on enforceable contractual agreements, not proposals. As FirstNet rightly points out, Congress clearly intended for a state or territory to have a contract in

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<sup>2</sup> For example, Southern Linc asserts that states that choose to opt out should not be limited to building a RAN. ("Allowing states or their network partners to operate their own core networks... is fully consistent with the Spectrum Act." Comments of Southern Linc at 1.) The Commission should remain focused on its closely circumscribed role to approve or disapprove state plans based solely on the two-pronged standard provided by law. Furthermore, and specific to Southern Linc's comment, the statute is clear that FirstNet is responsible for constructing a nationwide core network (*See* Spectrum Act, Section 6202), even states that choose to build their own RAN must pay user fees associated with such state's use of the core network (*Id.*, Section 6302(f)), and FirstNet has indicated local "back-up" core networks potentially create interoperability problems and network security risks (*See* FirstNet's Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, Analysis of and Responses to Comments to Conclusions that State Radio Access Networks Must Use the FirstNet Core Network).

<sup>3</sup> Notice at para. 58.

<sup>4</sup> *Id.* at para. 60.

<sup>5</sup> Comments of APCO International, Docket No. 16-269 (filed Oct. 21, 2016).

<sup>6</sup> Notice at para. 58.

<sup>7</sup> Comments of APCO at 5.

place with a vendor prior to submitting an alternative plan to the Commission.<sup>8</sup> It would be extremely difficult and potentially a waste of the Commission's time to review alternative plans that lack final determinations for essential information such as the equipment choice and implementation methodology. Absent a signed contract for the alternative plan, the Commission would lack sufficient assurance that its interoperability review is worthwhile and that the state's vendor will comply with all necessary rules and policies.

In addition to requiring states to have completed an RFP by having an awarded and signed contract in place, the Commission should not permit amendments or supplements to the alternative plans. As APCO pointed out in its comments, the statute does not include a provision for amending or supplementing state plans as part of the opt-out process.<sup>9</sup> Not only would permitting amendments or supplements be inconsistent with Congress' intent, it would delay the statutory process for states to submit alternative RAN plans and undermine the need for a swift deployment of the network. Time is of the essence for this much-needed network. The Commission must avoid creating a process that could result in further delay.

As APCO has said before, there is no rescue plan in the Spectrum Act for a failed opt-out RAN.<sup>10</sup> Congress clearly intended that if a state cannot provide a complete alternative plan within the statutory timeframe, it should not take on responsibility for the RAN.

Respectfully submitted,

APCO INTERNATIONAL

By: /s/

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<sup>8</sup> Comments of FirstNet at 6.

<sup>9</sup> Comments of APCO at 6.

<sup>10</sup> *Id.* at 3. APCO would seriously question the ability of a state to take on the critical obligation of building a RAN if it cannot even be prepared at this first stage to have a signed contract in place with a final plan that meets the interoperability criteria at the time of submission.

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