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 THE FIRSTNET COLORADO GOVERNING BODY

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SUMMARY

The FirstNet Colorado Governing Body (FNCGB) appreciates the opportunity to submit these Reply Comments with the Federal Communications Commission (FCC or "the Commission") in this important proceeding. The FNCGB filed comments to the Commission on October 21, 2016 urging it to interpret the Middle Class Tax Relief and Job Creation Act of 2012 ("the Spectrum Act") in a way that allows the Commission to develop an opt-out process that is fair, equitable and does not artificially hinder the ability for states to exercise their statutory rights to 'opt-out' of First Responder Network Authority (FirstNet) Radio Access Network (RAN) and develop their own alternative RANs. The FNCGB has reviewed all filed Comments in the proceeding and believes that the Commission must conclude:

(1) A governor's designee should be able to deliver the opt-out decision to the FCC, NTIA, and FirstNet.

(2) FirstNet's interpretation of the 180-day deadline contained within the Spectrum Act is incorrect and self-serving. The FCC should take a position that having a state alternative plan and releasing a state Request for Proposal (RFP) satisfies the 180-day deadline required by the Spectrum Act.

(3) The FCC should impose a 90-day review 'shot clock.'

(4) FirstNet must expeditiously allow real access to its network policies.

(5) The FCC should allow self-certification of interoperability demonstrations.

TABLE OF CONTENTS

Page

SUMMARY i

TABLE OF CONTENTS ii

I. INTRODUCTION 1

II. THE FNCGB DISAGREES WITH THE KEY COMMENTS MADE BY FIRSTNET 2
- A. The Governor's Designee Should be Able to Provide Notice of Opt-Out 2
- B. FirstNet's Interpretation of the 180-Day RFP Deadline is Impractical and Self-Serving 2
- C. FirstNet's Proposal of a Firm 60-Day Review Deadline is Another Attempt to Limit the State's Right to Propose the Best Alternative Network Possible 4
- D. The Spectrum Act Allows the Commission to Consider Alternative Plan Amendments Before a Final Decision on a State Alternative Plan is Rendered 5
- E. A State or Territory Cannon Comply with FirstNet's Network Policies if it Doesn't Have Access to Those Policies 6
- F. The FNCGB Agrees with FirstNet that No Third-Party Certification of State Alternative Plans is necessary 6

III. THE FNCGB SUPPORTS THE COMMENTS OF RIVADA NETWORKS ("RIVADA") 7

IV. THE FNCGB STRONGLY OPPOSES THE COMMENTS OF ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-INTERNATIONAL, INC. (APCO) 7

V. THE FNCGB SUPPORTS THE COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC. D/B/A SOUTHERN LINC ("SOUTHERN LINC") ON STATE ADMINISTERED CORE NETWORKS 8

VI. THE FNCGB SUPPORTS THE COMMENTS OF THE STATE OF NEVADA 9

VII. THE FNCGB SUPPORTS THE COMMENTS OF THE STATE OF ALABAMA 9

TABLE OF CONTENTS

Page

VIII. THE FNCGB GENERALLY SUPPORTS THE COMMENTS OF THE STATE OF FLORIDA 9

IX. CONCLUSION 9

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THE FIRSTNET COLORADO GOVERNING BODY

These Reply Comments are filed by the FirstNet Colorado Governing Body (FNCGB), in response to the Notice of Proposed Rulemaking ("NPRM"), released August 26, 2016, and the Comments previously filed in this proceeding.[1]

I. INTRODUCTION

In drafting the Spectrum Act, Congress intended to provide the nation's first responders the best public safety broadband network (PSBN) possible. In doing so, Congress realized that local needs and concerns may predominate the development process of the PSBN at the RAN

[1] Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Service rules for the 698-746, 747-672 and 777-792 MHz Bands, PS Docket Nos. 16-269 Report and Order and Notice of Proposed Rulemaking, 16-269, 12-94, 06-150 (rel. Aug. 26, 2016) (hereinafter "NPRM".)

level. In light of this concern, Congress made the clear choice to give states and territories real opportunity to 'opt-out' of FirstNet developed state RAN plans and develop their own RANs which better meet the local needs and concerns of first responders.

The FNCGB supports the comments of parties who seek to support the statutory right of states and territories to develop their own alternative RANs. In contrast, the FNCGB vehemently opposes the comments of parties that seek to frustrate, confuse, or otherwise limit the ability of states and territories to exercise their statutory rights. The FNCGB would also like to emphasize that the ultimate users of this network will be local and state first responders and the underlying value in the national public safety broadband network (NPSBN) is the impact the network has on these communities.

II. THE FNCGB DISAGREES WITH THE KEY COMMENTS MADE BY FIRSTNET

A. The Governor's Designee Should be Able to Provide Notice of Opt-Out.

In its comments to the FCC, FirstNet interprets the Spectrum Act to only allow the Governor to provide notice to the FCC, NTIA, and FirstNet of the state or territory's "decision to opt-out." This interpretation is unsupported by the Spectrum Act and serves no practical purpose. While the Governor may be a signatory to the letter or communication indicating the decision to opt-out, the single point of contact (SPOC) or other designees should be allowed to transmit the decision. This interpretation will decrease the administrative burden on opt-out states while having no negative effect on the overall opt-out process.

B. FirstNet's Interpretation of the 180-Day RFP Deadline is Impractical and Self-Serving.

The core principle expressed in the FNCGB's October 21st Comments was that the Commission must develop a process that is fair, equitable and does not artificially hinder the

ability for states to exercise their statutory rights given to them by Congress to develop an alternative RAN. FirstNet's interpretation of the 180-day deadline frustrates these goals and statutory rights.

First, the ability for a state to submit an alternative RAN plan "is as comprehensive and robust as the State Plan that FirstNet presents to the state or territory" is entirely dependent on FirstNet providing access to its network policies, the technical, operational and business parameters, as well the interoperability compliance matrix as soon as possible.[2] So far, FirstNet has not provided access to this information, nor has it given states adequate assurances that it will provide access in a timely fashion. Simply stating that FirstNet will provide access as "expeditiously as possible" is not enough.[3] It is the FNCGB's strong belief that access must be provided *at least 90 days* before delivery of the state plan for opt-out states to have any hope of meeting the requirement that alternative RAN plans are as comprehensive and robust as the State Plan that FirstNet presents to the state or territory.

Second, FirstNet's expectation that a contract for RAN deployment be in place during the 180-day deadline and prior to submitting the alternative plan to the Commission puts an unfair and unreasonable burden on opt-out states. Moreover, this issue is not as clearly defined in the statute as FirstNet purports. The Spectrum Act only provides that an opt-out state must 'develop and complete' an RFP within 180 days.[4] The phrase 'develop and complete' is undefined by the statute and ambiguous. When a statute is silent or ambiguous with respect to specific language in

[2] Comments of the First Responder Network Authority pg. 6.
[3] Richard Reed, FirstNet Chief Customer Officer, *FirstNet Outlines Key Steps for Development of State Plans, Interoperability Requirement* (July 8, 2016) available at http://firstnet.gov/newsroom/blog/firstnet-outlines-keysteps-development-state-plans-interoperability-requirements.
[4] 47 U.S.C. 1442(e)(3)(B).

a statute, it is up to the administrative agency to effectuate Congressional intent.[5] It was Congress's clear intent to allow states real (as opposed to illusory) opportunities to opt-out of the FirstNet RAN and develop state alternative plans that maximize public safety benefits for their stakeholders and citizens. If adopted by the Commission, FirstNet's interpretation would contravene the Congressional intent to allow states the opportunity to opt-out because it is simply impractical for a state to have a contract for RAN deployment in place by the 180-day deadline.

Proof of the impracticality of FirstNet's interpretation is its own RFP process. FirstNet is still completing its procurement, having gone through various requests for information (RFI) processes, drafted RFP public comment processes, and RFP clarifications. FirstNet has just recently extended their award announcement and still must negotiate a 25-year contract with their selected vendor. By suggesting that opt-out states should not have similar consideration in their RFP process, FirstNet undermines a state's right to build an alternative RAN if that course of action is in the state's best interest.

The FNCGB urges the Commission to reject FirstNet's self-serving interpretation of 'develop and complete.' Instead, the FCC should adopt an interpretation where 'complete' means to publish an RFP. States should then be allowed a period equivalent to the time FirstNet received in order to receive and evaluate bids: roughly 300 days.

C. <u>FirstNet's Proposal of a Firm 60-day Review Deadline is Another Attempt to Limit the State's Right to Propose the Best Alternative Network Possible.</u>

The FNCGB believes that a full 90-day review period is needed for the FCC to adequately complete its review of state alternative plans. FirstNet takes the position that only a 60-day

[5] *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc*., 467 U.S. 837, 843 (1984).

review period is needed. FirstNet states in its Comments, "[t]he Act makes numerous references to the need for a timely network deployment, and any delay in the Commission's review of the alternative plans would be inconsistent with that directive."[6] However, FirstNet's stated concern with timely network deployment is in direct conflict with its actions. The date FirstNet filed comments with the Commission (10/21/16) marks the 1,704th day (or 4 years 8 months exactly) since the legislation was signed. Public safety still does not have a network, nor does it know who FirstNet's partner will be. It is at best disingenuous for FirstNet to take as long as it has to reach this stage of the process, and still demand a 60- day review period for state alternative plans. Each state is equally dedicated to assuring its first responders access to the best PSBN possible. Allowing for an additional 30 days of FCC review to ensure adequate time for a comprehensive and cooperative review process is hardly wasteful. If FirstNet does not have to adhere to the 'timely network deployment' it cannot require states to do to the same.

D. <u>The Spectrum Act Allows the Commission to Consider Alternative Plan Amendments Before a Final Decision on a State Alternative Plan is Rendered.</u>

The FNCGB agrees that if the Commission renders a *final* decision disproving a state or territory's alternative RAN plan then the Spectrum Act requires that the state or territory "proceed in accordance with the plan proposed by [FirstNet]."[7] However, nothing in the statute prohibits the Commission from entertaining amendments, supplements, and alternative plan elements before a final decision on plan approval or disapproval is rendered. An opt-out state should have the opportunity to propose changes to its alternative plan based on a dialogue with the Commission to ensure all alternative plan requirements are satisfied. As the FNCGB stated in its

[6] Comments of the First Responder Network Authority pg. 7.
[7] 47 U.S.C. § 1442(e)(3)(iv).

Comments, the concept of amending and supplementing applications before the Commission renders its final decision is not foreign to the FCC.[8] Furthermore, it is important to note that if the Commission is clear on the requirements for state alternative plans, opt-out states will have fewer reasons to supplement or amend their applications.

Additionally, any specifics regarding the future relationship between a state and vendor as to how the plan will adhere to network policies can be done through the state's RFP. Indeed, FirstNet has often referred to its RFP as the template for how its network will work without having an actual contract.[9] A state that has clear expectations outlined in their RFP with proper technical parameters should constitute adherence to the policies as these policies will continue to shift and develop during the implementation process making any reference to specific fixed implementation 'requirements' moot.

E. A State or Territory Cannot Comply with FirstNet's Network Policies if it Doesn't Have Access to Those Policies.

The FNCGB agrees that a state alternative plan must adhere to FirstNet's network policies; however, FirstNet should not unreasonably withhold those network policies. As explained in Section II(B), states do not currently have access to the network policies, not even in draft form. Furthermore, FirstNet has not made a real commitment to providing these policies. Giving states the opportunity to access FirstNet's network policies as early and as often as possible is essential to ensuring the success of state alternative plans and mandated by Congress to offer states a real choice to opt-out. Finally, the decision on whether state alternative plans

[8] *See* Comments of the FirstNet Colorado Governing Body pg. 8. (Noting that the FCC process that managed the 'waiver recipients' allowed supplements and amendments to applicant 'interoperability showings'.)
[9] FirstNet made numerous comments to this effect at the Governance Body meeting of May 19th, 2016.

comply with FirstNet's network policies is a decision that must be made by the FCC alone and does not include FirstNet input.[10]

F. The FNCGB Agrees with FirstNet that No Third-Party Certification of State Alternative Plans is Necessary.

The FNCGB agrees with FirstNet that third-party certification of interoperability of state alternative plans is unnecessary. In addition to reasons stated in FirstNet's Comments, third party certification is unwise because it would add significant administrative burden to the opt-out process. The FNCGB strongly believes that there is no statutory or practical reason why states and territories cannot self-certify their compliance with interoperability demonstrations.

III. THE FNCGB SUPPORTS THE COMMENTS OF RIVADA NETWORKS ("RIVADA").

The FNCGB fully agrees and supports all of Rivada's Comments. In particular, the FNCGB agrees with Rivada's position that states should be able to amend or supplement alternative plans to correct for "minor ambiguities and deficiencies" and that the FCC should work cooperatively with opt-out states.[11]

IV. THE FNCGB STRONGLY OPPOSES THE COMMENTS OF ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-INTERNATIONAL, INC. (APCO).

The FNCGB strongly opposes the comments APCO. The FNCGB also notes that APCO is an interest group and has no authority to speak on behalf of states. The Spectrum Act provides that states are the statutorily designated points of contact for the implementation NPSBN and to

[10] *See* Comments oft the First Responders Network Authority pg. 7 ("The Commission's statutory requirement is to either 'approve' or 'disapprove' an alternative plan, and there is no need for that decision to involve an entity other than the FCC, an opt-out state/territory, and FirstNet".)

[11] Comments of Rivada Networks pg. 1.

the extent the APCO attempts to argue otherwise subverts Congressional intent. Congress also intended to give states a real choice to create astate alternative RAN and APCO's comments are completely dismissive of that statutory right.[12] APCO's clear indifference to the language of the Spectrum Act and Congressional intent are reflected in its Comments, which largely seek to undermine the ability of states and territories to opt-out. Furthermore, APCO's comments show a lack of understanding of state specific needs and should in no way be attributed to states.

V. THE FNCGB SUPPORTS THE COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC. D/B/A SOUTHERN LINC ("SOUTHERN LINC") ON STATE ADMINISTERED CORE NETWORKS.

The FNCGB agrees with and supports Southern Linc's position that Opt-Out states should be able to build their own core network, which is interoperable with the FirstNet core network. In addition to off-loading some network traffic and keeping it local to the state (except for provisioning and user authentication services), this arrangement could provide the additional benefit of creating additional redundancy for FirstNet's network architecture. Colorado has a unique perspective on this issue because the Adams County 911 Center (ADCOM 911) PSBN is fully operational. If Colorado were allowed to incorporate the ADCOM 911 PSBN into a Colorado opt-out network, the resulting synergy could present significant cost savings and increased reliability for the overall network. Through the efforts of ADCOM 911 and other test networks Colorado has proven the technical viability of core-to-core communications as it relates to interoperability.

[12] *See* Comments of the Association of Public-Safety Communications Officials-Int'l, Inc. pg. 2. ("Opt-out is a False Choice.")

VI. THE FNCGB SUPPORTS THE COMMENTS OF THE STATE OF NEVADA.

The FNCGB fully agrees and supports all of Nevada's Comments. The FNCGB notes that its positions on the 180-day statutory deadline, 90-day shot clock, two-prong test, self-certification are nearly identical to those of the State of Nevada.

VII. THE FNCGB SUPPORTS THE COMMENTS OF THE STATE OF ALABAMA.

The FNCGB fully agrees and supports all of Alabama's Comments.

VIII. THE FNCGB GENERALLY SUPPORTS THE COMMENTS OF THE STATE OF FLORIDA.

The FNCGB agrees and supports the vast majority of Florida's Comments. In particular, the FNCGB agrees with Florida's interpretation of the 180-day deadline and the principle that FirstNet and NTIA should only be allowed to comment on state plans (if at all) "to the degree that states are afforded the opportunity to amend their plans in response to the feedback received from those agencies."[13] The FNCGB disagrees with Florida's suggested 30-day shot clock because we believe it will not give the Commission adequate time to comprehensively review state alternative plans.[14] The FNCGB agrees in principle, however, that supplements and amendments to a state alterative plan may require the extension of a shot clock under certain conditions such as a very short shot clock period.

IX. CONCLUSION

The Commission must adopt rules in this proceeding that fairly reflect the intent of Congress in the Spectrum Act. In drafting the Spectrum Act, Congress intended to create the best possible PSBN for the nation's first responders. Congress recognized that in order to create the

[13] Comments of the State of Florida Pg. 7.
[14] *Id*. at pg. 7.

best possible PSBN, the local needs of first responders must be addressed and that those local needs might be inconsistent with roll out FirstNet developed RAN plans. Thus, Congress gave states the option to either be part of the FirstNet RAN or to opt-out and deploy and operate a state-developed RAN. To realize Congress's intent to give states and territories options on RAN deployment, the Spectrum Act contemplates that the FCC establish processes to determine whether a state will opt-in or opt-out of the FirstNet RAN.

The clear message from FirstNet's Comments in this proceeding is that FirstNet is looking to the Commission to establish a set of rules for states and territories seeking to opt-out that are different and less advantageous than the rules that apply to itself. FirstNet can take all the time it needs to develop the NPSBN and State RANs, but opt-out states and territories are given impractical amount of time to develop a RAN. FirstNet can provide details about its network policies whenever it is ready to do so, but the states and territories that are required to analyze, understand, plan its network and act in accordance with those policies, and must do so in an unreasonably short period of time.

Congress intended to create a fair process for both FirstNet and the states and territories, regardless of whether they opt-in or opt-out. Congress did not intend for the Commission to hamstring states by adopting rules far more restrictive than those FirstNet operates under when exercising its duties under the Spectrum Act. The recommendations of the FNCGB as described in its Comments and these Reply Comments are reasonable and appropriate. We urge the Commission to adopt them.

Respectfully submitted,

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