

FirstNet: Looking Forward to 2013 and Beyond



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Created through the Middle Class Tax Relief and Job Creation Act of 2012 (the “Act”)¹ as an independent authority within the National Telecommunications and Information Administration (“NTIA”), the First Responder Network Authority, or “FirstNet”, is charged with designing, constructing, deploying, and operating a Nationwide Public Safety Broadband Network (“NPSBN”) using Long Term Evolution (“LTE”) wireless technology.

The chair of FirstNet’s Board, Samuel Ginn, described the project as “one of the most complex telecommunications projects in the history of the United States.”² It has been less than a year since the passage of the Act, and FirstNet and the NPSBN are still in their early stages. In the coming months and even years, FirstNet will face complex decisions in all aspects of the project – decisions that could have significant implications for state and local governments, the public safety community, private industry, and the public generally.

This article provides a brief overview of FirstNet, summarizes the progress FirstNet has made to this point, and details the next steps FirstNet has planned for 2013. We also examine some of the key issues we expect FirstNet to address in the future as it works to

¹ Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156 (2012).

² National Telecommunications & Information Administration, Transcript of the Meeting of the First Responder Network Authority (FirstNet) (Dec. 12, 2012) (“FirstNet December Meeting Transcript”).

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fulfill the goal of the Act to build and operate a nationwide interoperable emergency communications network.

Overview of FirstNet

FirstNet's responsibilities under the Act include:

- Ensuring nationwide standards for use of and access to the NPSBN;
- Issuing open, transparent, and competitive Requests for Proposals ("RFPs") to build, operate, and maintain the NPSBN;
- Encouraging the leveraging, to the maximum extent economically desirable, of existing commercial wireless infrastructure to speed deployment of the network; and
- Overseeing contracts with non-federal entities to build, operate, and maintain the network.³

To achieve its goals, FirstNet has been granted broad powers to obtain and spend funds, as well as take any other actions it deems appropriate in carrying out its duties. The Act sets aside \$7 billion for the operation and creation of the NPSBN through fiscal year 2022, with the cost intended to be paid for by future spectrum auction proceeds.⁴ In the long term, the NPSBN is expected to be self-sustaining through fees charged for using the network.

Although we have distilled FirstNet's responsibilities into a few bullet points, this unprecedented undertaking that will span many years and cost billions of dollars is anything but simple. FirstNet faces multi-faceted challenges in planning, deploying, and operating the NPSBN.

Progress in 2012

In the few months since passage of the Act on February 22, NTIA and FirstNet have made significant progress towards planning and ultimately implementing the NPSBN. Some of the major milestones for FirstNet and NPSBN developments over 2012 include:

■ **Technical Advisory Board on Interoperability**

On March 23, the Federal Communications Commission ("FCC") established a Technical Advisory Board, as required by the Act, to develop minimum technical requirements to ensure a nationwide level of interoperability for the NPSBN. The Technical Advisory Board issued a report recommending those standards on May

³ 47 U.S.C. § 1426(b)(1).

⁴ 47 U.S.C. § 1457(b). The Act also includes provisions giving the FCC authority to hold an incentive auction of Broadcast Television Spectrum, where by current licensees of the spectrum (i.e., television stations) may voluntarily choose to sell their spectrum, which would then be auctioned off for wireless broadband service. 47 U.S.C. § 152. The exact mechanics of the auction remained to be worked out, but the FCC has issued a Notice of Proposed Rulemaking on the process and is targeting a 2014 date for the auction itself. *In re Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012).

22, 2012, and the FCC approved the report on June 21, 2012.⁵

■ **FirstNet Board**

On August 20, the Secretary of Commerce appointed the FirstNet Board, consisting of three permanent members (the Secretary of the Department of Homeland Security, the Attorney General of the United States, and the Director of the Office of Management and Budget) and twelve individuals appointed by the Secretary of Commerce. Samuel Ginn, a veteran telecommunications executive, was appointed chairman of the Board. The Board held its first public meeting on September 25 and its second public meeting on December 11.

■ **Public Safety Advisory Committee**

In late 2012, the FirstNet Board also appointed a Public Safety Advisory Committee ("PSAC") to help promote a continuing dialogue between FirstNet and governmental and first responder leaders. A subgroup of SAFECOM, an emergency communications program within the Department of Homeland Security, formed the basis of PSAC, and public-safety communications advocate Harlin McEwen was appointed PSAC's Chairman.

■ **State and Local Implementation Grant Fund**

The Act provided for up to \$135 million in grants to assist state, regional, tribal, and local governmental authorities with planning and implementing the NPSBN in their jurisdiction.⁶ On May 16 NTIA published a Request for Information asking for public input on the grant program, and on August 21, 2012, NTIA issued general requirements for the program.⁷ NTIA and FirstNet are still working on final requirements and application materials for the grants.

■ **Notice of Inquiry on the First Nationwide Network Proposal**

At the FirstNet Board's first public meeting on September 25, F. Craig Farrill, a Board member (and subsequently appointed Acting General Manager), presented what he termed the First Nationwide Network or "FNN", as a possible blueprint for the NPSBN. The FNN concept "would leverage the significant investments and combined efforts of the public sector and the commercial wireless industry to achieve the major elements of the nationwide wireless network called for un-

⁵ *In re Recommendations of the Technical Advisory Board for First Responder Interoperability*, Order of Transmittal, 27 FCC Rcd. 7733 (2012). Having served its purpose, the Technical Advisory Board was then officially terminated. See 47 U.S.C. § 1423(f).

⁶ 47 U.S.C. § 1441.

⁷ See National Telecommunications & Information Administration, *Development of Programmatic Requirements for the State and Local Implementation Grant Program To Assist in Planning for the Nationwide Public Safety Broadband Network*, Notice, 77 Fed. Reg. 50481 (Aug. 21, 2012).

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der the Act. . . .”⁸ On October 4, 2012, NTIA published a Notice of Inquiry (“NOI”) asking for public comment on the FNN concept, as well as the development of applications designed specifically for public safety users on the NPSBN.⁹ More than 125 comments were filed in response to the Notice of Inquiry. The diversity of Commenters, which included governmental entities, first responders, commercial wireless companies, utilities, systems integrators, equipment manufacturers, and national associations, demonstrated the variety of interests at stake in the NPSBN.

■ Meetings with BTOP Grantees

Prior to the Act and the establishment of FirstNet, NTIA awarded grants, through the Broadband Technology Opportunities Program (“BTOP”), to certain local jurisdictions to implement or create local public safety broadband networks. Soon after FirstNet’s creation, NTIA suspended these grants to ensure that future work done with BTOP funds would be compatible with the NPSBN project. In 2012, members of FirstNet’s Board began meeting with representatives from these local projects, including grantees in Charlotte, North Carolina; Adams County, Colorado; and Mississippi.

Looking to 2013 and Beyond

Building on the initial but significant progress made in 2012, we expect FirstNet to undertake the following activities in the early months of 2013:

■ Create a Detailed Business Plan

At the Dec. 11, 2012 Board meeting, FirstNet’s Board allocated \$10 million to develop a comprehensive financial and operating plan. The business plan will include a financial plan, a projection of potential users for the network, software tools and software service, a network proof of concept, a plan for both the core network and the radio access network, and procurement and acquisitions. The plan is scheduled to be completed and delivered to the Board in April 2013.¹⁰

■ Issue Requirements for State and Local Planning Grants

FirstNet and NTIA plan to award grants from the State and Local Implementation Grant Fund no later than June 1, 2013. Accordingly, in the first half of 2013, NTIA will need to issue application and reporting requirements to potential applicants, applicants will need to prepare and submit their applications, and NTIA will need to review the applications and make the awards.¹¹

■ Resolve the Status of BTOP Grantees

FirstNet Board members have stated an intent to meet with the BTOP grantees they have not yet visited. After completing the site visits, FirstNet intends to resolve any existing compatibility and interoperability is-

ues so that the suspended BTOP grants can be released and work can go forward.¹²

■ Continue to Hire Staff, Including a General Manager

Although FirstNet began hiring in 2012, many positions have been filled with temporary appointments or employees detailed from other government entities. Board members have identified hiring permanent staff, including a General Manager, as an area of immediate focus. FirstNet has solicited and received applications for the permanent General Manager position, and the Board is expected to decide on the position in early 2013.¹³

Although the above activities will certainly help move the NPSBN project forward, significant, and in many cases fundamental, issues remain that must be resolved before the network is up and running. These issues include:

■ Developing the Network Architecture and Technical Standards for the NPSBN

As noted above, FirstNet has issued an NOI on a possible network architecture for the NPSBN and has received detailed comments in response. Research work undoubtedly continues, and creating a technical blueprint for the network that is both feasible and resilient enough for first responders is a fundamental first step towards deployment.

■ Addressing Security Issues

As it plans and deploys the network, FirstNet will need to consider a variety of security-related issues. Standards for resiliency and security must be established and updated over time, and a determination of which agencies have responsibility for various aspects of NPSBN security will need to be made. FirstNet will also need to address issues related to law enforcement and national security access to FirstNet communications and data, as well as possible foreign ownership of elements of the NPSBN.

■ Determining How Much to Use and Rely Upon Commercial Networks

The Act directs FirstNet to encourage “the leveraging, to the maximum extent economically desirable, of existing commercial wireless infrastructure to speed deployment of the network.”¹⁴ It is clear that existing commercial networks and other infrastructure will be essential to the creation and operation of the NPSBN. Determining the appropriate extent of this involvement, including whether and how to permit use of the network by private parties, will require FirstNet to balance the interests of existing infrastructure owners, the desire for rapid and cost-effective deployment, and the need for secure and hardened networks.

■ Promoting Device and Application Development

The FirstNet Board has made application development an area of focus since its formation, and we expect it to remain a major priority. Beyond the structure and deployment of the network, there will need to be devices and applications that run on the network. In addition to voice communication, FirstNet envisions many other innovative uses that take advantage of LTE capa-

⁸ National Telecommunications & Information Administration, *Development of the Nationwide Interoperable Public Safety Broadband Network*, Notice of Inquiry, 77 Fed. Reg. 60680, 60681 (Oct. 4, 2012).

⁹ *Id.*

¹⁰ FirstNet December Meeting Transcript.

¹¹ On December 31, 2012, NTIA published a request for emergency review by the Office of Management and Budget of proposed application and reporting requirements in order to meet the June 1, 2013 deadline. National Telecommunications & Information Administration, Submission for OMB Review; Comment Request, 77 Fed. Reg. 77015 (Dec. 31, 2012).

¹² FirstNet December Meeting Transcript.

¹³ *Id.*

¹⁴ 47 U.S.C. § 1426(b)(1).

bilities, including database access and live streaming video, among others. Promoting the development of innovative applications and devices while keeping costs under control, will be a delicate balance for FirstNet.

■ Resolving Local Concerns With the Need for a National, Interoperable Network

Different jurisdictions will need different things from the network and use it for different purposes. The requirements of first responders in New York City are inevitably going to be different from the requirements of first responders in North Dakota. Moreover, local jurisdictions are likely going to want to have a certain level of control over aspects of the network, such as who has access to the network at any given moment. How FirstNet reconciles these concerns with the need for a national, interoperable network that works seamlessly across jurisdictions must be determined as the NPSBN moves toward deployment.

■ Monetizing the Network

As noted above, FirstNet and the NPSBN are funded with \$7 billion through 2022, with the expectation that the project will eventually be self-sustaining. Some commenters have suggested that the initial investment could require far beyond \$7 billion.¹⁵ FirstNet will examine ways to monetize the network, whether through fees for users on the network, the sale of capacity to existing wireless carriers, the leasing of space on FirstNet-owned towers, or other schemes.

■ Possibility of States Opting Out

The Act provides that individual states may opt out of deployment of the NPSBN, provided that they reject FirstNet's plan for their state and then put forward their

¹⁵ See, e.g., John Hendel, *FirstNet Likely Will Require More Than the \$7 Billion*, *Communications Daily*, July 25, 2012, at 19.

own plan that is subsequently approved by the FCC.¹⁶ Although any alternative plan put forward by a state must be interoperable with the NPSBN, there are worries that too many states pursuing the opt-out option may undermine the goal of a seamless, national network. The extent of states' interests in pursuing alternative plans is unknown at this point, but FirstNet will likely work closely with states to ensure that deployment plans reflect states' needs and goals.

■ Rural Coverage

Providing substantial rural coverage will be a priority of FirstNet, as the Act requires that the deployment of the NPSBN include "deployment phases with substantial rural coverage milestones as part of each phase of the construction and deployment of the network."¹⁷ However, deploying networks in rural areas can be economically challenging, due to the extent of the areas to be covered, the limited existing communications infrastructure, and lower expected usage fees.¹⁸ FirstNet will need to consider cost effective ways to extend the NPSBN to these areas.

These are only a few of the many complex decisions FirstNet will make as it implements "one of the most complex telecommunications projects in the history of the United States."¹⁹ Planning, deploying, and running the NPSBN will be a decade-long, multi-billion dollar venture.

¹⁶ 47 U.S.C. § 1442(e).

¹⁷ 47 U.S.C. § 1426(b)(3).

¹⁸ See, e.g., Federal Communications Commission, *Connecting America: The National Broadband Plan*, 136 (2010) (discussing the difficulty service providers face in recouping costs in low population density areas).

¹⁹ National Telecommunications & Information Administration, Transcript of the Meeting of the First Responder Network Authority (FirstNet) at 5 (Dec. 12, 2012).