



Testimony of  
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before a hearing of the  
Committee on Commerce, Science, and Transportation  
Subcommittee on Communications, Technology, Innovation  
and the Internet

United States Senate

***Ongoing Activities and Challenges Facing the First Responder  
Network Authority in their Establishment of a Nationwide Public  
Safety Broadband Network***

June 21, 2016

Chairman Wicker, Ranking Member Schatz, and Members of the Subcommittee:

We appreciate the opportunity to testify about the current status of, and challenges encountered by, the First Responder Network Authority (FirstNet). Our testimony today—more than 4 years after the passage of the Middle Class Tax Relief and Job Creation Act of 2012<sup>1</sup> (the Act) that established FirstNet—will focus on (1) the history of the organization and its work to date; (2) the Office of Inspector General’s (OIG’s) oversight efforts; and (3) ongoing risks FirstNet faces in their efforts to ensure implementation of a nationwide, interoperable, wireless broadband network for the public safety community.

## **I. Introduction to FirstNet**

### ***Establishment and purpose***

Signed into law on February 22, 2012, the Act established FirstNet as an independent authority within the Department of Commerce’s National Telecommunications and Information Administration (NTIA). The Act authorized up to \$7 billion in funding for the establishment of an interoperable Nationwide Public Safety Broadband Network (NPSBN). The Act also provided \$135 million under the State and Local Implementation Grant Program (SLIGP) to promote state outreach, data collection efforts, and planning for the NPSBN.

The Federal Communications Commission (FCC) spectrum auction, completed in January 2015, raised about \$45 billion—enough to cover the \$7 billion targeted for FirstNet under the Act. FirstNet holds the single Public Safety Wireless Network License for use of the 700 MHz D block spectrum and a pre-existing block of public safety broadband spectrum.

### ***Organization and implementation***

FirstNet is governed by a 15-member Board consisting of the Attorney General of the United States, the Secretary of Homeland Security, the Director of the Office of Management and Budget, and 12 nonpermanent members, including representatives from state and local governments, the public safety community, and technical fields. For roughly the first year and a half of its existence, certain FirstNet Board members functioned in management roles. The Board eventually assembled a management team, which assumed all operational responsibilities. As of June 2016, a management team has been assembled to complete FirstNet’s mission, including a Chief Executive Officer, President, Chief Counsel, Chief Technology Officer, Chief Information Officer, Chief Administrative Officer, Chief Financial Officer, and Chief Procurement Officer, supported by a cadre of professionals.

So far, implementation of the NPSBN has occurred in the following areas:

- *Establishing an organizational structure.* FirstNet hired key leadership and support staff for its day-to-day operations; developed controls; established its headquarters in Reston, Virginia, and its technical headquarters in Boulder, Colorado; awarded contracts to obtain project management and planning support, professional and

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<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96.

subject matter support, and network and business plan development; and signed interagency agreements with other federal entities to provide key services.

- *Conducting initial consultation and outreach.* FirstNet launched a website, conducted conference calls and webinars with state single points of contact (SPOCs), coordinated with NTIA's SLIGP team, and established its Public Safety Advisory Committee (PSAC).<sup>2</sup> In July 2014, FirstNet began to hold a series of state and U.S. territory consultation meetings. As of May 31, 2016, initial state consultations and data had been received from nearly all the states and U.S. territories. Also, FirstNet has held consultations with tribal nations and federal users as well as held other discretionary outreach events (speaking engagements at conferences, expositions, town hall meetings and summits) in order to educate and engage stakeholders from the public safety community.
- *Implementing a network solution.* In January 2016, FirstNet issued a request for proposals (RFP) for the purpose of seeking a vendor to build and operate the NPSBN. Proposals were due by the end of May 2016. Prior to issuing the RFP, FirstNet sought input from vendors and other stakeholders, issuing multiple requests for information (RFIs), public notices and requests for comment seeking input regarding interpretations of FirstNet's enabling legislation, and a draft RFP. It also has spectrum lease agreements with four public-safety projects funded by grants awarded via NTIA's Broadband Technology Opportunities Program (BTOP) and with the State of Texas/Harris County to provide FirstNet with lessons learned.

FirstNet's expenditures have increased as it has moved toward building the NPSBN. FirstNet reported that it spent less than \$250,000 in fiscal year (FY) 2012. In FY 2013, it spent about \$17 million. In FY 2014, FirstNet incurred operating expenses of \$24 million, and \$49 million in FY 2015. FirstNet's current focus is on consultation and the acquisition/RFP processes.

## **2. OIG's FirstNet Oversight**

FirstNet's authorizing legislation and subsequent enacted appropriations did not contain an explicit provision for funding permanent, ongoing oversight to prevent and detect waste, fraud, and abuse for FirstNet. In May 2014, OIG entered into a memorandum of understanding (MOU) under the Economy Act with FirstNet to provide specific oversight services that FirstNet sought, such as conducting oversight of FirstNet acquisition processes. Specifically, the FirstNet Chairman of the Board had requested that OIG review ethics and procurement concerns raised by a FirstNet Board member. The agreement was amended in November 2014, providing additional funds and extending the MOU through September 30, 2016. On May 27, 2016, FirstNet moved to terminate the MOU, which we are now closing out over a subsequent 90-day period. This will end all FirstNet requests for OIG services. As a result of the cancelling of the MOU, future OIG audits of FirstNet

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<sup>2</sup> The Middle Class Tax Relief and Job Creation Act of 2012 required FirstNet to establish the PSAC. It was created in February 2013 and consists of 40 members representing all disciplines of public safety as well as state, territorial, tribal, and local governments. See "Public Safety Advisory Committee" at [www.firstnet.gov/about/publicsafety-advisory-committee](http://www.firstnet.gov/about/publicsafety-advisory-committee).

programs and operations will be conducted using OIG's direct appropriation for general oversight—and prioritized along with the Department of Commerce's other II bureaus and agencies.<sup>3</sup>

Building on OIG's experience with broadband and public safety programs (for example, the Public Safety Interoperable Communications (PSIC) grant program and BTOP), the team's initial audit and evaluation activities have included:

- tracking the progress of FirstNet by regularly interacting with staff members and covering agency proceedings, as well as monitoring FirstNet and NTIA for key actions taken to implement the network;
- developing an initial risk assessment in FY 2013 and routinely reassessing risk as part of annual Department-wide assessments;
- identifying FirstNet as a management challenge in our FYs 2013–2016 *Top Management Challenges* reports, noting challenges related to procurement, internal control, staffing, and stakeholder consultation; and
- providing an information memorandum for FirstNet in February 2014 to identify FirstNet's initial management challenges, including establishing an effective organization, fostering cooperation among various state and local public safety agencies, integrating existing grants to enhance public communications capabilities into FirstNet, and creating a nationwide long-term evolution network.

In December, 2014, we issued our first audit of FirstNet.<sup>4</sup> Our findings addressed financial disclosure, the monitoring of potential conflicts of interest, contracting practices, and oversight of hiring. We made nine recommendations. In our opinion, FirstNet took the findings seriously and has made progress towards implementing our recommendations. Subsequent audits covered FirstNet's hiring challenges, need for comprehensive planning and monitoring, and inconsistent implementation of controls,<sup>5</sup> and identified opportunities to improve the effectiveness of the federal consultation program, including strengthening accountability, and increasing federal input.<sup>6</sup>

In March 2015, we submitted written testimony to the United States Senate Committee on Commerce, Science, and Transportation, which contained information regarding FirstNet's

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<sup>3</sup> Commerce agencies and bureaus are made up of the Bureau of Industry and Security, Economic and Statistics Administration (includes the Bureau of Economic Analysis and U.S. Census Bureau), Economic Development Administration, International Trade Administration, Minority Business Development Agency, National Institute of Standards and Technology, National Technical Information Service, National Oceanic and Atmospheric Administration, U.S. Patent and Trademark Office, and NTIA.

<sup>4</sup> *FirstNet Must Strengthen Management of Financial Disclosures and Monitoring of Contracts* (OIG-15-013-A), December 5, 2014.

<sup>5</sup> *Audit of FirstNet's Workforce and Recruiting Challenges, Participation at Discretionary Outreach Events, and Internal Control* (OIG-15-036-A), August 14, 2015.

<sup>6</sup> *Audit of FirstNet's Efforts to Include Federal Agencies in its NPSBN* (OIG-16-017-A), February 8, 2016.

implementation of the NPSBN, the establishment of an OIG audit team dedicated to FirstNet oversight, and continuing challenges facing the program.<sup>7</sup>

In January 2016, we initiated an audit of FirstNet’s management of interagency agreements, which provide important services such as human resources, financial management, and procurement and accounted for approximately 30 percent of incurred FY 2015 expenses. Finally, we have also prepared a risk-based analysis of potential future audit areas.

### **3. Ongoing Risks Facing FirstNet**

More than 4 years since the passage of the Act, FirstNet faces a wide range of short- and long-term risks.

#### **A. FirstNet Must Effectively Manage its Acquisitions.**

*FirstNet’s award schedule is aggressive.* The May 31, 2016, deadline for bidders responding to FirstNet’s RFP has passed. FirstNet intends to make a final award as soon as November 2016. To meet a November goal, FirstNet must now have an approach to evaluate proposals received, including identifying qualified personnel to evaluate the proposals and ensuring that these personnel do not have conflicts of interest.

*The successful bid must meet the goals established by the RFP.* FirstNet adopted an objectives-based approach in its RFP—rather than a traditional requirements-driven model—to provide industry the maximum opportunity and flexibility in the development of innovative solutions for the NPSBN. According to FirstNet, providing this flexibility enables offerors to illustrate their intent in their proposals to meet or exceed the high-level objectives illustrated within the RFP.

As the RFP points out, FirstNet must provide services at competitive prices given constrained local, state, and federal budgets. It must also be self-sustaining. FirstNet must leverage existing infrastructure, obtain optimal value for excess network capacity, and optimize its pricing structure in order to deliver a high-quality, affordable broadband network and services to the nation’s first responders. In addition, local emergency communications needs are typically met by separate networks using different technologies, and each jurisdiction has its own laws and procedures for building, managing, and funding communications infrastructure. Among the challenges facing FirstNet is accommodating current emergency response systems of localities and their future needs without compromising the benefits of a national network. FirstNet officials have stated that the evaluation process will also include negotiations with potential contractors. Successfully managing the RFP—evaluating vendor proposals and avoiding conflicts of interest—is critical to the development and implementation of the NPSBN.

*FirstNet is a nationwide network with geographical challenges.* FirstNet has identified what it refers to as “the coverage challenge.” That is, the geography of the 56 jurisdictions is varied, with the bulk of the population residing in about 5 percent of the U.S. land mass.

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<sup>7</sup> First Responder Network Authority’s Progress and Challenges in Establishing a Public Safety Broadband Network (OIG-15-019-T), March 11, 2015.

The rest of the population resides in rural and wilderness settings. The 3.8 million square miles to be covered by the network will include urban, suburban, rural, and wilderness areas, as well as islands. FirstNet must offer public safety grade services at a cost that is competitive to all users and pay particular attention to coverage of rural areas, a subject specifically prioritized by the Act.

*Multiple federal government stakeholders must effectively coordinate.* The contract is complex and has a 25 year term. The RFP was issued by the Department of the Interior on behalf of FirstNet. For FirstNet to succeed, all parties at Commerce and Interior must collaborate harmoniously and efficiently over the course of a lengthy contract term.

## **B. Effective Consultation with States and Localities is Critical to FirstNet's Success.**

*FirstNet must continue its consultation efforts to identify public safety needs for the NPSBN.* The Act requires FirstNet to consult with a variety of stakeholders as it builds the network, including, but not limited to, federal, state, tribal, and local public safety entities. The Act also requires FirstNet to consult with SPOCs from each state and territory, and the Act authorizes the SLIGP, which provides resources to those states and territories to consult with FirstNet and plan for the NPSBN. NTIA administers SLIGP and awarded grants totaling \$116.56 million.<sup>8</sup> FirstNet must incorporate consultation input into an effective network design that meets public safety needs.

*FirstNet must use input from consultation in order to develop individual State Plans for each state and territory.* After the completion of the RFP award process, a key next step is for FirstNet to deliver these State Plans to each governor regarding FirstNet's plan to deploy the Radio Access Network (RAN) within the state or territory.<sup>9</sup> Each governor will decide whether it will opt-in to the delivered plan (that is, FirstNet takes on the responsibility of building the RAN) or opt-out (the state or territory takes on the responsibility to deploy, operate, and maintain the RAN within its jurisdiction.) Effective consultation and outreach will increase the likelihood that FirstNet (1) develops State Plans that meet the unique needs of the state or territory; (2) designs a nationwide network that receives adoption and support from the public safety community nationwide; and (3) provides effective guidance to opt-out states regarding RAN design and NPSBN requirements.

*FirstNet has made progress in its consultation efforts.* FirstNet established a state consultation process, completed initial consultation visits with 55 states and territories, and has begun to hold follow-up meetings. FirstNet received data from 54 states and territories to better understand their network public safety needs, including data on (1) network coverage, (2) users and operational areas, (3) network capacity, and (4) current services and procurement. FirstNet conducted outreach to the public safety community

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<sup>8</sup> The State of Mississippi did not receive SLIGP funds.

<sup>9</sup> FirstNet has estimated it will complete draft state plans around May 2017 and will finalize and deliver state plans by the end of 2017.

by, for example, attending conferences, speaking at tribal gatherings, attending national public safety association events and state-hosted outreach meetings, working with law enforcement leaders, and engaging social media. FirstNet also established a federal consultation process to seek input from federal agencies and departments across the country.

### **C. FirstNet Must Continue to Strengthen Its Internal Control.**

As FirstNet's administrative processes have evolved to meet continuing challenges, it has needed to balance expediency and accountability. In order to meet its goals, FirstNet has grown rapidly—Federal employees and contractors increased from 123 to 198 in FY 2015.<sup>10</sup> And adding to its many challenges, FirstNet is limited by the Act to a maximum of \$100 million for administrative costs over a 10 year period.

The Government Accountability Office (GAO) has defined internal control as "... a process effected by the entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of the entity will be achieved...."<sup>11</sup> GAO recognizes that internal control procedures can be operational-, reporting-, or compliance-based.

*OIG and independent audit firms have identified areas for improvement.* FirstNet continues to implement and strengthen internal control throughout the organization; however, opportunities for improvement remain. In each of our FirstNet audit reports, OIG has identified areas needing improvement, specifically in regards to processes and controls. These reports have resulted in numerous recommendations for improvement across FirstNet and the Department of Commerce. Similarly, independent auditing firms, as part of FirstNet's required yearly audit,<sup>12</sup> have identified areas where FirstNet controls needed strengthening. The Independent Auditor's report for FY 2014 and 2015 noted that Commerce's annual financial statement audit included findings regarding information system access and configuration management, which the auditor noted as a FirstNet significant deficiency due to its reliance on Commerce information systems. It recommended that FirstNet develop a general ledger transaction review processes to compensate for the deficiency. In all instances, FirstNet management responded appropriately, stating their plans to address the issues.

FirstNet has, in many instances, begun to implement changes to its process prior to issuance of the reports, and OIG has reviewed and accepted FirstNet's action plans addressing all report findings.

*FirstNet has taken steps to improve internal control.* At the March 16, 2016, meeting of the Board, FirstNet's Chief Financial Officer reported the actions FirstNet has taken to improve its internal control process included:

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<sup>10</sup> FirstNet, February 2016. *FY 2015: Annual Report to Congress*, p. 7.

<sup>11</sup> GAO, September 2014. *Standards for Internal Control in the Federal Government*, GAO-14-704G, OVI.01, p. 5.

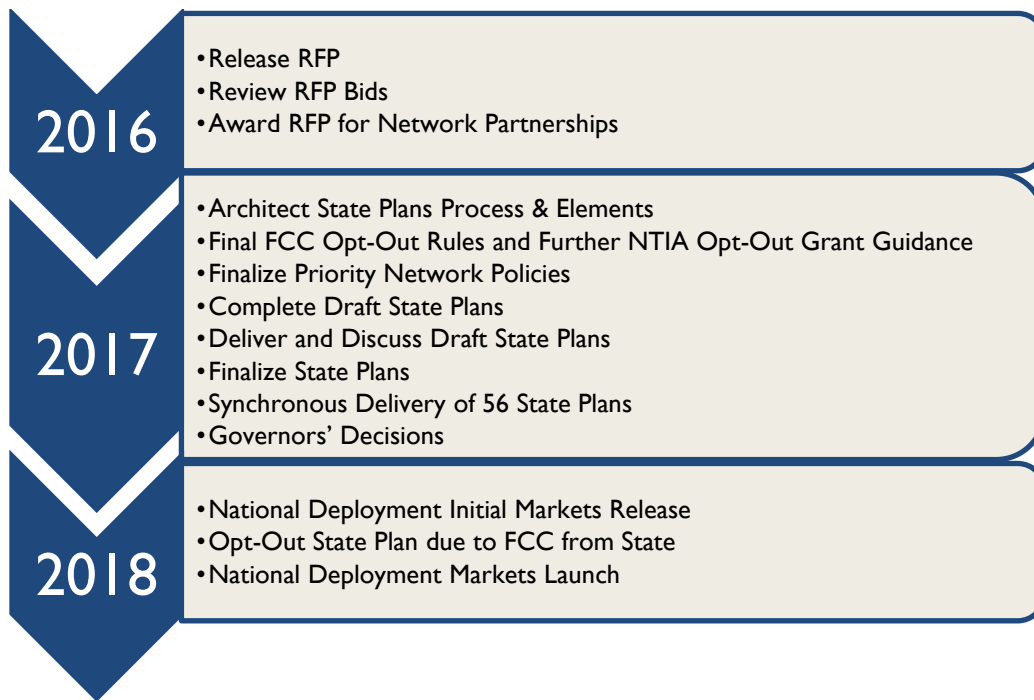
<sup>12</sup> See 47 U.S.C. § 1429.

- Adoption of an Internal Control Implementation Plan
- Completion of its first risk assessment
- Enhancement of FirstNet’s financial management procedures
- Development of a Core Assessment Team to evaluate internal controls

*FirstNet faces additional award challenges.* For example, FirstNet must prudently manage the Band 14 Incumbent Spectrum Relocation Grant Program, established to clear spectrum for the NPSBN. FirstNet has begun the process for awarding grant funds to public safety entities. In addition, as a fairly new organization requiring extensive travel and small purchases, travel and procurement card expenditures pose a risk.

FirstNet has noted several upcoming milestones for the deployment of the NPSBN. See figure 1. As FirstNet moves towards these next phases of implementing the NPSBN, continued improvement and oversight of FirstNet’s processes will be critical.

**Figure 1. Notable Milestones for the NPSBN**



Source: FirstNet, March 2016 Board Meeting

We will continue to keep the committee informed of FirstNet’s progress with respect to the challenges discussed here—and any others we identify through our audits and investigations.

I will be pleased to take your questions.

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