

# FirstNet Authority Did Not Ensure the Nation's First Responders' Needs Were Continuing to Be Met Timely When Modifying Key Objectives of the NPSBN Contract

FINAL REPORT NO. OIG-24-024-A

MAY 30, 2024



U.S. Department of Commerce  
Office of Inspector General  
Office of Audit and Evaluation



May 30, 2024

**MEMORANDUM FOR:** Jeremy Pelter, Deputy Assistant Secretary for Administration,  
performing the non-exclusive functions and duties of the Chief  
Financial Officer and Assistant Secretary for Administration  
U.S. Department of Commerce

Alan Davidson  
Assistant Secretary of Commerce for Communications and  
Information and NTIA Administrator  
National Telecommunications and Information Administration

Joseph M. Wassel  
Chief Executive Officer  
First Responder Network Authority

**FROM:**



Arthur L. Scott, Jr.  
Assistant Inspector General for Audit and Evaluation

**SUBJECT:**

*FirstNet Authority Did Not Ensure the Nation's First Responders' Needs  
Were Continuing to Be Met Timely When Modifying Key Objectives  
of the NPSBN Contract*  
Final Report No. OIG-24-024-A

Attached is our final report on our audit of the First Responder Network Authority's (FirstNet Authority's) oversight of the Nationwide Public Safety Broadband Network (NPSBN) contract's device connection targets. We announced two concurrent audits with the following objectives: (1) to determine whether FirstNet Authority is ensuring that AT&T is achieving the desired results for device connection targets for each state and territory and (2) to determine whether FirstNet Authority is ensuring that AT&T is achieving the desired results for network coverage for each state and territory.

We separated these objectives into three different components that include (1) the evolution of the desired results for device connection targets and network coverage as executed through contract modifications, (2) oversight of device connection targets, and (3) oversight of network coverage. This report focuses on the first component: FirstNet Authority's modifications to the contract, to include the rationale behind those changes and whether FirstNet Authority had an effective process for documenting decisions it made concerning those modifications.

We found that FirstNet Authority did not consistently adhere to federal and U.S. Department of Commerce (Departmental) regulations or demonstrate it received adequate value in return when it changed NPSBN contract requirements. These actions by FirstNet Authority put the NPSBN program at risk of failing to meet the needs of our nation's first responders.

On April 2, 2024, we received the Department's and the National Telecommunications and Information Administration's (NTIA's) responses to our draft report. In response to our draft report, the Department and NTIA concurred with eight of our nine recommendations and described actions they intend to take to address them. The Department did not concur with one of our recommendations. Within its response, NTIA provided an addendum with FirstNet Authority's response to the draft report. Additionally, FirstNet Authority provided technical comments. We considered these comments and made changes in the final report where appropriate. Per requests made by FirstNet Authority, we have redacted certain business sensitive information and/or information otherwise protected from disclosure from the public version of this report. We have included the Department's and NTIA's formal responses and FirstNet Authority's response within the final report as appendix C. At AT&T's request, we met with AT&T representatives on May 9, 2024, for a listening session regarding their concerns about the issues reflected in this report.

Pursuant to Department Administrative Order 213-5, please submit to us an action plan that addresses the recommendations in this report within 60 calendar days. This final report will be posted on our website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. §§ 404 & 420).

Pursuant to Pub. L. No. 117-263, Section 5274, non-governmental organizations and business entities specifically identified in this report have the opportunity to submit a written response for the purpose of clarifying or providing additional context to any specific reference. Any response must be submitted to Analee Striner-Brown, Division Director, at [astriner-brown@oig.doc.gov](mailto:astriner-brown@oig.doc.gov) and [OAE\\_Projecttracking@oig.doc.gov](mailto:OAE_Projecttracking@oig.doc.gov) within 30 days of the report's publication date. The response will be posted on our public website at <https://www.oig.doc.gov/Pages/Audits-Evaluations.aspx>. If the response contains any classified or other non-public information, those portions should be identified as needing redaction in the response and a legal basis for the proposed redaction should be provided.

We appreciate the cooperation and courtesies extended to us by your staff during this audit. If you have any questions or concerns about this report, please contact me at (202) 577-9547 or Analee Striner-Brown, Director of Telecommunications, at (202) 893-8759.

Attachment

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# Report in Brief

May 30, 2024

## Background

The First Responder Network Authority (FirstNet Authority) was established to ensure the building, deployment, and operation of the Nationwide Public Safety Broadband Network (NPSBN) dedicated to first responders. On March 28, 2017, FirstNet Authority entered into a contract with AT&T for the construction and operation of the NPSBN. The contract and a later task order originally included coverage/capacity and device connection target requirements that AT&T had to meet with six different milestones through the buildout of the network. All milestones have payments associated with them. We identified multiple significant modifications to both the contract and task order regarding coverage and device connection targets that changed the original requirements.

The NPSBN contract is a high-profile, mission-critical program. Because the modifications were no-cost and FirstNet Authority lacked adequate policies and procedures, it did not always hold acquisition review boards, which allow for an additional layer of review by the U.S. Department of Commerce's (the Department's) Senior Procurement Executive.

## Why We Did This Review

We announced two concurrent audits to determine whether FirstNet Authority is ensuring that AT&T is achieving the desired results for (1) device connection targets for each state and territory and (2) network coverage for each state and territory. We separated these objectives into three components that include (1) the evolution of the desired results for device connection targets and network coverage as executed through contract modifications, (2) oversight of device connection targets, and (3) oversight of network coverage. This report focuses on the first component: FirstNet Authority's modifications to the contract, to include the rationale behind those changes and whether FirstNet Authority had an effective process for documenting decisions it made concerning those modifications.

## FIRST RESPONDER NETWORK AUTHORITY

### FirstNet Authority Did Not Ensure the Nation's First Responders' Needs Were Continuing to Be Met Timely When Modifying Key Objectives of the NPSBN Contract

OIG-24-024-A

## WHAT WE FOUND

We found that FirstNet Authority did not consistently adhere to federal and Departmental regulations or demonstrate it received adequate value in return when it changed NPSBN contract requirements. FirstNet Authority

- accepted AT&T's proposed nationwide coverage metrics and changed connection target requirements, which made it easier for AT&T to achieve milestone compliance and payments;
- delayed and reduced coverage and connection target requirements due to AT&T's nonperformance; and
- modified the payment method in order to pay AT&T early for coverage completion, despite AT&T's history of coverage problems.

## WHAT WE RECOMMENDED

We recommended that the Department's Senior Procurement Executive and Director of Acquisition Management

1. Conduct an acquisition management review to assess the FirstNet Authority acquisition functions and determine if adequate contract files exist to properly support decisions.
2. Review the actions taken to execute the contract and task order modifications identified in this report and determine whether, under law, Federal Acquisition Regulation (FAR) and/or Department policy, actions should be taken to review, revoke, or revise the warrants used to execute the modifications.
3. Determine whether, in order to comply with applicable federal and Department regulations, FirstNet Authority should be required to submit all future contract awards and modifications to the Department for review prior to award.

We recommended that the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator direct FirstNet Authority's Chief Executive Officer to

4. Ensure the required justification and pricing analysis are conducted and documented for all contract modifications to ensure compliance with FAR section 43.1.
5. Ensure compliance with FAR section 32.104 by determining if (1) AT&T will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 6 months) and (2) the expenses for contract performance during the predelivery period will have a significant impact on AT&T's working capital when using contract financing.
6. Ensure compliance with *Commerce Acquisition Manual* 1301.71 and obtain legal reviews from the Department's Contract Law Division for all contract modifications when the services are materially changing.
7. Leverage the remediation options in the contract to hold AT&T accountable and take the necessary actions to address deficiencies when AT&T is either not on track to meet or not meeting contract terms.
8. Revise FirstNet Authority's *Acquisition Review Board Review Process and Procedures* to define what is considered a "significant modification" and to ensure results of ARB meetings are documented in compliance with FAR section 4.803.
9. Ensure the Chief Procurement Officer provides oversight to verify that contract modifications are sufficiently supported, justified, in compliance with the FAR, and in the best interests of the government and first responders.

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*Cover: Herbert C. Hoover Building main entrance at 14th Street Northwest in Washington, DC. Completed in 1932, the building is named after the former Secretary of Commerce and 31st President of the United States.*

## Background

The Middle Class Tax Relief and Job Creation Act of 2012 (the Act)<sup>1</sup> established the First Responder Network Authority (FirstNet Authority) as an independent authority within the National Telecommunications and Information Administration (NTIA) to ensure the building, deployment, and operation of the Nationwide Public Safety Broadband Network (NPSBN) dedicated to first responders.

On March 28, 2017, FirstNet Authority<sup>2</sup> entered into a 25-year indefinite-delivery, indefinite-quantity (IDIQ) contract with AT&T for the construction and operation of the NPSBN. The contract uses a statement of objectives to identify desired results and describe performance objectives. Two of these objectives are (1) building, deploying, and operating the NPSBN and (2) ensuring public safety user adoption of the NPSBN.

To meet these objectives, FirstNet Authority executed Task Order 4 (TO 4), valued at \$ [REDACTED] billion, on March 30, 2018, to deploy the NPSBN Radio Access Network (RAN). The RAN, as required by the Act,<sup>3</sup> consists of all cell site equipment, antennas, and backhaul equipment that are required to enable wireless communications with devices using the public safety broadband spectrum,<sup>4</sup> which will provide coverage to all 56 states and territories.

The contract and TO 4 originally included coverage/capacity and device connection target requirements<sup>5</sup> that AT&T had to meet with six different milestones,<sup>6</sup> or initial operational capabilities (IOCs), through the buildout of the network with full operational capability (FOC) to be achieved 5 years after signing TO 4.<sup>7</sup> All milestones, to include FOC, have payments associated with them. For some milestones, AT&T has to meet specific coverage and device connection requirements to receive payment. For others, AT&T has to meet a specific coverage requirement to receive payment and must also meet a compliance requirement for device connections before moving to the next milestone.

We identified multiple significant modifications to both the contract and TO 4<sup>8</sup> regarding coverage and device connection targets that changed the original requirements. The Federal

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<sup>1</sup> See Pub. L. No. 112-96, *Middle Class Tax Relief and Job Creation Act of 2012*, §§ 6204(a), 6206(b), codified at 47 U.S.C. §§ 1424(a), 1426(b).

<sup>2</sup> The U.S. Department of the Interior signed the contract on behalf of the U.S. Department of Commerce and FirstNet Authority. The U.S. Department of the Interior transferred management of the contract to FirstNet Authority in December 2017.

<sup>3</sup> See 47 U.S.C. § 1422(b).

<sup>4</sup> Spectrum is needed to support coverage.

<sup>5</sup> The contract dictates that AT&T must complete a specific percentage of rural and nonrural coverage and a specific amount of device connections at predetermined milestones to receive payment.

<sup>6</sup> The contract defines the payment milestones for TO 4. Milestones begin 6 months after execution of TO 4, and additional milestones occur in 1-year increments until FOC.

<sup>7</sup> TO 4 referenced the NPSBN IDIQ Contract, Section J-8 (for the IOC-FOC timelines).

<sup>8</sup> The contract and task order had coverage and device connection requirements; therefore, FirstNet Authority modified both the contract and task order simultaneously to reflect those changes.

Acquisition Regulation (FAR)<sup>9</sup> defines a contract modification as “any written change in the terms of a contract” and lists two types of modifications:<sup>10</sup> bilateral and unilateral. Bilateral modifications are signed by both parties. FirstNet Authority and AT&T used bilateral modifications for all the contract and TO 4 changes in this report. Additionally, our review of the contract and TO 4 modifications identified that all were no-cost modifications.<sup>11</sup>

The NPSBN contract is a high-profile, mission-critical program. Because the modifications were no-cost and FirstNet Authority lacked adequate policies and procedures, it did not always hold acquisition review boards (ARBs). ARBs are intended to provide an independent review of significant contract actions and allow for an additional layer of review by the U.S. Department of Commerce’s (the Department’s) Senior Procurement Executive (SPE).

### Why We Did This Review

We audited FirstNet Authority’s modifications to determine whether (1) proper documentation was available to support the justification behind these modifications and (2) FirstNet Authority used its funding efficiently, effectively, and in the best interest of public safety. Additionally, in our October 2022 *Top Management and Performance Challenges Facing the Department of Commerce* report, we identified ensuring proper NPSBN adoption and coverage as a challenge facing FirstNet Authority.<sup>12</sup>

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<sup>9</sup> Federal Acquisition Regulation § 2.101.

<sup>10</sup> FAR § 43.103.

<sup>11</sup> FirstNet Authority modified the contract and TO 4, but the overall cost of the task order did not change.

<sup>12</sup> U.S. Department of Commerce Office of Inspector General, October 13, 2022. *Top Management and Performance Challenges Facing the Department of Commerce in Fiscal Year 2023*, OIG 23-001. Washington, DC: DOC OIG, 26–29.



## Objective, Finding, and Recommendations

We announced two concurrent audits with the following objectives: (1) to determine whether FirstNet Authority is ensuring that AT&T is achieving the desired results for device connection targets for each state and territory and (2) to determine whether FirstNet Authority is ensuring that AT&T is achieving the desired results for network coverage for each state and territory. We separated these objectives into three different components that include (1) the evolution of the desired results for device connection targets and network coverage as executed through contract modifications, (2) oversight of device connection targets, and (3) oversight of network coverage. This report focuses on the first component: FirstNet Authority's modifications to the contract, to include the rationale behind those changes and whether FirstNet Authority had an effective process for documenting decisions it made concerning those modifications. See appendix A for a more detailed description of our scope and methodology.

Overall, we found that FirstNet Authority did not ensure that AT&T achieved the desired results for both coverage and device connection targets for each state and territory. This occurred because FirstNet Authority changed (1) requirements for contract coverage and device connection targets and (2) its payment method without consistently adhering to federal and Departmental regulations or demonstrating it received adequate consideration (also known as value in return) for concessions it made within these contract modifications. Specifically, FirstNet Authority

- accepted AT&T's proposed nationwide coverage metrics and changed connection target requirements, which made it easier for AT&T to achieve milestone compliance and payments
- delayed and reduced coverage and connection target requirements due to AT&T's nonperformance
- modified the payment method in order to pay AT&T early for coverage completion, despite AT&T's history of coverage problems

Table I outlines the modifications we reviewed relating to coverage and connection targets and associated results.

**Table I. Contract Modifications**

Modification Name	Effective Date	FirstNet Authority Action	Result
IDIQ Mod 9/TO 4	March 30, 2018	Changed coverage requirement to accept AT&T's proposed nationwide coverage metrics	Easier for AT&T to achieve payment milestones
IDIQ Mod 13/TO 4 Mod 1	March 27, 2019, and March 15, 2019, respectively	Changed device connection targets requirement for IOC-3	Easier for AT&T to achieve milestone payment of \$ [REDACTED] billion
IDIQ Mod 17/TO 4 Mod 3	September 21, 2020	Changed device connection targets requirement for IOC-4	Easier for AT&T to achieve compliance milestone

Modification Name	Effective Date	FirstNet Authority Action	Result
IDIQ Mod 18/TO 4 Mod 4	September 7, 2021	Delayed the Plan of Record (POR) requirement for one year	Easier for AT&T to meet contract requirements
TO 4 Mod 5	October 18, 2021	Changed the payment method for IOC-5	Easier for FirstNet Authority to pay AT&T early for coverage, despite AT&T's history of coverage problems
IDIQ Mod 22/TO 4 Mod 6	March 30, 2022	Changed device connection targets requirement for IOC-5	Easier for AT&T to earn milestone payment of \$ million

Source: Office of Inspector General (OIG) review of contract modifications

Most of these modifications occurred because FirstNet Authority failed to pursue corrective action when AT&T reported performance deficiencies and/or wanted to avoid a breach of contract. Additionally, FirstNet Authority did not sufficiently price or document modifications. As a result, AT&T collected payments totaling \$ billion that it otherwise would not have received until later. The modifications also allowed AT&T to build out the NPSBN at its discretion and may have discouraged its achievement of network use and adoption goals, as AT&T no longer had to meet coverage and device connection targets uniformly across all states and territories. These actions by FirstNet Authority put the NPSBN program at risk of failing to meet the needs of our nation's first responders.

### FirstNet Authority Did Not Consistently Adhere to Federal and Departmental Regulations or Demonstrate It Received Adequate Value in Return When It Changed NPSBN Contract Requirements

We found that FirstNet Authority changed coverage and device connection target requirements and its payment method by modifying the NPSBN contract and TO 4 without always adhering to federal regulations or preserving value to the government and first responders.

*FirstNet Authority accepted AT&T's proposed nationwide coverage metrics and changed device connection target requirements, which made it easier for AT&T to achieve milestone compliance and payments*

FirstNet Authority changed the coverage and device connection target requirements through four different modifications,<sup>13</sup> which made it easier for AT&T to meet its milestones and receive payments totaling \$ billion. These modifications included accepting AT&T's proposed nationwide coverage metrics, as well as repeatedly changing device connection target requirements from state-by-state to a less stringent nationwide basis.

<sup>13</sup> IDIQ Mod 9/TO 4; IDIQ Mod 13/TO 4 Mod 1; IDIQ Mod 17/TO 4 Mod 3; and IDIQ Mod 22/TO 4 Mod 6.

Specifically, in one modification<sup>14</sup> FirstNet Authority changed the coverage requirement from state-by-state to a less stringent nationwide basis, which made it easier for AT&T to achieve its milestones timely and receive payment. FirstNet Authority stated that this change was to reflect a discrepancy between the contract and AT&T's proposal, which was accepted and incorporated into the contract by reference. FirstNet Authority's original request for proposal (RFP) identified the need for coverage metrics to be met on a state-by-state basis. In AT&T's response to this solicitation, it proposed a nationwide metric. However, the requirement codified in the contract was a state-by-state metric. The change to a nationwide metric required AT&T to meet a percentage of the overall coverage regardless of location, while the state-by-state metric would have required AT&T to meet a specific percentage for each of the states at each milestone. [REDACTED]

[REDACTED]. We have concerns with this because it allowed AT&T, rather than FirstNet Authority, to dictate how it would meet the coverage milestones—to include how and when it provided services. Additionally, it could have left states underserved until FOC because AT&T could achieve coverage milestone requirements regardless of the progress it made in each state's buildout. For example, at IOC-5, which required 95 percent rural coverage completion, we identified that [REDACTED] was only at [REDACTED] percent. The original RFP language provided AT&T an incentive to achieve the state-by-state coverage requirements at each milestone. However, although FirstNet Authority ultimately accepted the proposed coverage requirements, it did not adjust the payment structure to account for this change. Consequently, this change gave AT&T the ability to achieve payment milestones for \$[REDACTED] billion of \$[REDACTED] billion without meeting any state-by-state requirements.

Additionally, FirstNet Authority changed device connection target requirements, which made it easier for AT&T to meet its milestones for IOCs -3, -4, and -5 and receive payments. For example, FirstNet Authority changed the device connection target requirements for IOC-3 from a state-by-state to a prorated nationwide basis, which allowed AT&T to receive a payment totaling \$[REDACTED] billion.

Per the original contract, AT&T was required to achieve 50 percent of the IOC-5 public safety device connections in each state and territory to receive payment for IOC-3.<sup>15</sup> This equated to [REDACTED] device connections nationwide. Despite being aware that AT&T was not on track to meet the state-by-state device connection targets, FirstNet Authority issued a modification allowing AT&T to achieve the IOC-3 milestone with approximately [REDACTED] device connections nationwide.<sup>16</sup> FirstNet Authority stated that it asked AT&T to stop

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<sup>14</sup> IDIQ Mod 9/TO 4.

<sup>15</sup> These device connection targets were established in the NPSBN contract, Section J, Attachment J-2, which represented AT&T's number of committed device connections for primary user groups and other public safety users (extended primary users) in each of the 56 states and territories. However, the contract did not include device connection target requirements for [REDACTED]

<sup>16</sup> This modification established prorated monthly nationwide device connection targets leading up to IOC-3. The applicable prorated nationwide device connection target was determined by when AT&T achieved the IOC-3

reporting device connections because it was too early in the buildout of the network to expect AT&T to meet the targets. Based on the AT&T reports we reviewed, AT&T already had approximately [REDACTED] reported nationwide device connections to the NPSBN before the modification was executed.

When we reviewed AT&T’s reported device connection targets at IOC-3, we found that without the modification, AT&T would not have met the originally contracted state-by-state requirement for 34 states and one territory (figure 1). By changing the target to a number AT&T had already achieved, this modification guaranteed that AT&T would meet the revised nationwide IOC-3 device connection target requirement and receive payment it otherwise would not have received until later.

**Figure 1. Results of IOC-3 Device Connection Requirements Without Modification 13**



Source: OIG analysis of original J-2 device connection targets as compared to the user forecasting report<sup>17</sup>

According to FirstNet Authority’s memorandum for record (MFR), in exchange for these changes, AT&T would provide FirstNet Authority an additional [REDACTED] Band 14 sites.<sup>18</sup> When we requested the legal opinion for these modifications, the Department’s Contract Law Division (CLD) noted that the [REDACTED]

[REDACTED] Within its response, FirstNet Authority also provided a comment matrix that it completed as part of its internal reviews. The matrix showed that FirstNet Authority’s Business Development and Analysis (BDA) team assessed the impact of these changes as significantly more valuable to AT&T—at \$ [REDACTED] million—than to FirstNet

coverage and capacity solution milestone. AT&T reported that it achieved that milestone in [REDACTED] of [REDACTED], which corresponded with a nationwide target of approximately [REDACTED] device connections.

<sup>17</sup> A monthly report detailing actual numbers of device connections to the NPSBN.

<sup>18</sup> These sites add Band 14 cellular service at a cell site from which AT&T already offers cellular service on other spectrum bands.

Authority at \$ [REDACTED] million. FirstNet Authority could not provide pricing documentation to support how these values were derived, as they were not part of the contracting file.

We met with officials from FirstNet Authority who worked on the BDA team during this modification to determine how the team derived those values. When we asked for the figures supporting the team's analysis, one FirstNet Authority official responded that they "were sure the numbers were somewhere, but [they] didn't know where they would be." This official stated they would "dig it up;" however, we never received documentation to support the team's analysis. This contradicts FAR part 4, which requires the contents of the contract file to contain documents supporting modifications.<sup>19</sup> Despite the disparity within this analysis, the contracting officer (CO) still executed the modification.

See examples 1 and 2 in appendix B for additional modifications FirstNet Authority executed that made it easier for AT&T to achieve milestone compliance and payment.

*FirstNet Authority modified the contract due to AT&T's nonperformance without demonstrating it received adequate value in return*

When AT&T did not meet the requirement to develop a POR<sup>20</sup> for new site builds in a timely manner, FirstNet Authority modified the contract due to AT&T's nonperformance without demonstrating whether it received adequate value in return or seeking liquidated damages from AT&T. This modification, which was signed more than 5 months after the POR was due,<sup>21</sup> allowed AT&T to delay the requirement by 1 year and moved \$ [REDACTED] million from IOC-5 to FOC. FirstNet Authority personnel stated that they did this to [REDACTED]

AT&T received a partial payment of approximately \$ [REDACTED] million despite delivering the POR much later than the original contract required. As consideration, FirstNet Authority received a network metrics deliverable.<sup>22</sup> We determined that because FirstNet Authority did not complete an analysis showing how this was sufficient value in return for allowing AT&T to delay POR delivery, FirstNet Authority could not demonstrate if an equitable adjustment was owed to either the government or AT&T as result of the changes.

Additionally, FirstNet Authority elected not to leverage the liquidated damages clause—effectively waiving approximately \$38.4 million due from AT&T. The NPSBN contract contains a liquidated damages clause,<sup>23</sup> which states that if the contractor fails to deliver supplies or perform services within the time specified in the contract, the contractor shall pay to the government liquidated damages of \$238,233 per calendar day of delay (total

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<sup>19</sup> FAR § 4.803.

<sup>20</sup> The POR is the deployment plan for site builds in each state and territory.

<sup>21</sup> AT&T's requirement to develop a POR for new site builds within contract terms was originally due March 31, 2021; however, the modification that extended the POR due date wasn't signed until 161 days later, on September 7, 2021.

<sup>22</sup> A report that FirstNet Authority uses to oversee AT&T's performance metrics.

<sup>23</sup> See FAR § 52.211-11.

amount not to exceed \$86,955,057). This modification is another example of FirstNet Authority changing requirements rather than holding AT&T accountable for its failure to meet them, as AT&T can collect the same amount of money while also receiving an extra year to deliver the POR.

This modification also expanded the types of “internet of things”<sup>24</sup> devices that could count toward device connection targets.<sup>25</sup> We determined that FirstNet Authority did not complete any analysis to determine the impact to itself or AT&T from this change. It appears that increasing the type and thus the number of devices that count toward a target may allow AT&T to meet these targets more easily without FirstNet Authority receiving any value in return, such as an increase in connection targets. Without an analysis, FirstNet Authority could not demonstrate it received adequate value in return for public safety.

Additionally, we identified a modification that changed the device connection targets requirement at IOC-5 due to AT&T’s nonperformance. This modification reduced device connection targets in states that were not on track to meet target requirements, which allowed AT&T to earn payment of approximately \$[REDACTED] million it otherwise would not have received until later. See appendix B, example 2, for more information on this modification.

*FirstNet Authority changed the payment method in order to pay AT&T early for coverage completion despite AT&T’s history of coverage problems*

FirstNet Authority separated the valuation of coverage and device connections and created contract financing using performance-based payments to give itself the ability to pay AT&T early for coverage completion. The original payment method would have required AT&T to meet both coverage and device connection targets before receiving any of the IOC-5 payment.

FirstNet Authority based the coverage value on new site builds<sup>26</sup> and carrier adds,<sup>27</sup> as it determined these dollar amounts would be defensible. However, FirstNet Authority did not analyze or value device connections. Instead, it based the device connections valuation on the amount remaining after calculating the coverage valuation. FirstNet Authority concluded that the coverage valuation was approximately \$[REDACTED] million<sup>28</sup> and the device connections valuation was approximately \$[REDACTED] million.

Separating the coverage and connection requirements

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<sup>24</sup> “Internet of things” devices do not include phones, tablets, or computers, but do include other devices that enable the collection and exchange of data, such as alarm panels or environmental sensors.

<sup>25</sup> The contract does allow for an annual review of devices and types to be allowed on the network.

<sup>26</sup> This established Band 14 cellular service at a location from which AT&T did not previously offer cellular service.

<sup>27</sup> This established Band 14 cellular service at a cell site from which AT&T already offers cellular service on other spectrum bands.

<sup>28</sup> Total payment for IOC-5 is \$[REDACTED] (approximately \$[REDACTED] million for coverage, \$[REDACTED] million for connections, and \$[REDACTED] million for a required withholding for using performance-based payments).

- lessens AT&T's incentive to meet the connection requirements, as AT&T can now decide if the level of effort to achieve the device connections is worth the value FirstNet Authority has assigned to them.
- deviates from key objectives of the original contract, which placed equal emphasis on AT&T meeting both coverage and device connection requirements prior to this milestone's payment.

For performance-based payments, FAR part 32.104 states the CO may provide contract financing if (1) the contractor will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 6 months) and (2) the expenses for contract performance during the predelivery period will have a significant impact on the contractor's working capital. FirstNet Authority did not meet these requirements because (1) FirstNet Authority had already paid AT&T more than \$ billion since the task order was issued 3.5 years prior to this modification, and (2) it could not provide documentation to support that AT&T's expenses had this impact. Additionally, AT&T retained revenue from fees associated with public safety end users on the NPSBN.

CLD stated in its review of the modification that it thought

After this modification, FirstNet Authority accepted IOC-5 more than a year after it was due<sup>29</sup> for closure, as AT&T found and reported coverage measurement errors. FirstNet Authority justified these early payments because it viewed them as an immediate investment back into the NPSBN to enable and continue buildout of the network; however, according to a FirstNet Authority official, the contract does not require AT&T to use the money received from these payments for the network.

The above issue occurred because FirstNet Authority's CO did not execute the modification in accordance with the FAR, as described above.<sup>30</sup> FirstNet Authority also assumed a risk when it paid AT&T early despite knowing it previously had problems meeting coverage requirements. Additionally, this modification significantly changed the way in which IOC-5 would be paid and decreased AT&T's incentive to meet device connection requirements while deviating from the original intent of the contract.

## Causes

Most of the above-referenced modifications occurred because FirstNet Authority failed to pursue corrective action when AT&T reported performance deficiencies and/or wanted to avoid a breach of contract. As noted in appendix B, FirstNet Authority changed the device

<sup>29</sup> IOC-5 was originally due March 30, 2022.

<sup>30</sup> FAR § 32.104.

connection targets requirement at IOC-5 due to AT&T's nonperformance. According to FirstNet Authority officials, a breach of contract was not in the best interest of public safety because public safety personnel would be left without a network. FirstNet Authority had early warning signs that AT&T would not meet contract requirements, but it failed to take the necessary actions to hold AT&T accountable. We reviewed the key performance indicators for the quality assurance surveillance plan metrics for measuring public safety use and adoption and found FirstNet Authority did not issue corrective action reports for nine consecutive quarters leading up to IOC-5—indicating that device connections were not on track to meet targets. By modifying the contract as opposed to holding AT&T accountable, FirstNet Authority neglected its contract oversight responsibilities. As a result of the modification, AT&T still earned payment of nearly \$[REDACTED] million. These actions demonstrate that FirstNet Authority did not follow the FAR in terms of holding AT&T accountable for meeting contract requirements.

Additionally, FirstNet Authority did not price the modifications and issued them as no-cost modifications. FAR part 43 requires the government to price contract modifications before their execution if it does not adversely affect government interests.<sup>31</sup> Without documenting and pricing modifications, FirstNet Authority could not demonstrate the need for an equitable adjustment or if it received adequate value in return.

FirstNet Authority's contracting office also did not employ sound or effective contracting practices when making these modifications, given its knowledge that AT&T would not meet the contract terms. According to the Department's *Commerce Acquisition Manual (CAM)*, COs are responsible for "[u]sing sound business judgment and performing all necessary actions for effective contracting . . . [and] [e]nsuring compliance with the terms of the contract, and safeguarding the interests of the United States in all contractual relationships[.]"<sup>32</sup> Therefore, the Department should take appropriate action to ensure that COs always exercise sound judgment and business acumen when executing contract actions.

## Other Contributing Factors

The following factors also contributed to the issues discussed in our finding.

FirstNet Authority's Chief Procurement Officer (CPO) elected not to hold ARBs for most of the modifications we reviewed. According to its ARB standard operating procedure, FirstNet Authority must hold an ARB to review proposed acquisitions with a value exceeding \$1 million, for every NPSBN task order, or for any action deemed appropriate by the CPO (such as a significant modification to the NPSBN contract). Lastly, the procedure states that the CPO is responsible for inviting the Department's SPE to all required and optional ARBs. However, this procedure is vague and does not define what a "significant"

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<sup>31</sup> FAR § 43.102.

<sup>32</sup> DOC, December 2021. *Commerce Acquisition Manual I 301.6, Department of Commerce Contracting Certification and Warrant Program*, § 4.12.5, Washington, DC: DOC. Available online at [https://www.commerce.gov/sites/default/files/2022-01/CAM\\_I301.6 - December 2021vF.pdf](https://www.commerce.gov/sites/default/files/2022-01/CAM_I301.6_-_December_2021vF.pdf) (accessed December 20, 2023).



modification is. Because the procedure is open to individual interpretation, FirstNet Authority has not always used ARBs to provide independent reviews of proposed modifications prior to execution. Specifically,

- FirstNet Authority did not hold an ARB for five of the six modifications we reviewed but stated that it did brief FirstNet Authority senior leadership. However, electing not to hold an ARB circumvents the requirement to invite the SPE, which would allow for an additional layer of review and for potential recommendations to be brought forward and addressed before execution.
- FirstNet Authority did hold an ARB for one of the modifications we reviewed with the Department's SPE. However, FirstNet Authority could not provide a copy of the briefing's meeting minutes, so it is unclear if the SPE raised any concerns or recommendations regarding this modification.

This occurred because FirstNet Authority did not have sufficient policies and procedures in place that clearly defined when it was required to hold ARBs before executing modifications. Additionally, we deem the modifications in this report "significant" because they changed the quantity and timing of services being procured, resulting in a major restructuring of the program. Therefore, ARBs should have been required and conducted to allow for additional Department oversight.

The Department's Office of Acquisition Management (OAM) has not conducted an acquisition management review (AMR) of the FirstNet Authority contracting office since FirstNet Authority received full contracting authority in December 2017. This does not comply with the CAM, which states that all contracting offices will receive AMRs at least once every 36 months.<sup>33</sup> Per the CAM, AMRs must determine whether the processes, procedures, and decisions in the file indicate that sound procurement and business practices are being followed. If OAM had conducted an AMR, some of these modifications may have been mitigated or called into question. Further, this review would also provide the Department with an opportunity to oversee contract actions that were awarded despite concerns from CLD. Like ARBs, AMRs are especially important because the NPSBN program is a critical, high-profile program that warrants special management attention.

Also, FirstNet Authority did not always request a legal review from CLD. See appendix B, example I, for more information on this modification.

## Conclusion

Overall, FirstNet Authority did not ensure that AT&T achieved the desired results for both coverage and device connection targets for each state and territory. FirstNet Authority repeatedly changed the requirements for coverage and device connection targets in each state and territory by modifying the NPSBN contract and TO 4 without always adhering to

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<sup>33</sup> DOC, May 2010. *Commerce Acquisition Manual 1372, Department of Commerce Acquisition Management Review Procedures Guide*, § 1.4. Washington, DC: DOC. Available online at [https://www.commerce.gov/sites/default/files/oam/CAM\\_1372-000\\_Acquisition\\_Management\\_Review\\_Procedures.pdf](https://www.commerce.gov/sites/default/files/oam/CAM_1372-000_Acquisition_Management_Review_Procedures.pdf) (accessed May 10, 2023).

applicable regulations. These modifications allowed AT&T to build out the NPSBN at its discretion and may have discouraged AT&T from meeting network use and adoption goals, as it no longer had to meet coverage and device connection targets uniformly across all states and territories.

These changes resulted in AT&T collecting payments totaling \$■■■ billion that it otherwise would not have received until later. Further, FirstNet Authority did not hold AT&T accountable for deficiencies in performance as required by the contract. Until FirstNet Authority takes action to hold AT&T accountable to the terms and conditions of the contract and ensures the government and public safety receive value for changes made, FirstNet Authority will put the NPSBN program at risk of failing to provide first responders with timely and quality services.

## Recommendations

We recommend that the Department's Senior Procurement Executive and Director of Acquisition Management:

1. Conduct an AMR to assess the FirstNet Authority acquisition functions and determine if adequate contract files exist to properly support decisions.
2. Review the actions taken to execute the contract and task order modifications identified in this report and determine whether, under law, FAR and/or Department policy, actions should be taken to review, revoke, or revise the warrants used to execute the modifications.
3. Determine whether, in order to comply with applicable federal and Department regulations, FirstNet Authority should be required to submit all future contract awards and modifications to the Department for review prior to award.

We recommend that the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator direct FirstNet Authority's Chief Executive Officer to:

4. Ensure the required justification and pricing analysis are conducted and documented for all contract modifications to ensure compliance with FAR section 43.1.
5. Ensure compliance with FAR section 32.104 by determining if (1) AT&T will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 6 months) and (2) the expenses for contract performance during the predelivery period will have a significant impact on AT&T's working capital when using contract financing.
6. Ensure compliance with CAM 1301.71 and obtain legal reviews from the Department's CLD for all contract modifications when the services are materially changing.

7. Leverage the remediation options in the contract to hold AT&T accountable and take the necessary actions to address deficiencies when AT&T is either not on track to meet or not meeting contract terms.
8. Revise FirstNet Authority's *Acquisition Review Board Review Process and Procedures* to define what is considered a "significant modification" and to ensure results of ARB meetings are documented in compliance with FAR section 4.803.
9. Ensure the Chief Procurement Officer provides oversight to verify that contract modifications are sufficiently supported, justified, in compliance with the FAR, and in the best interests of the government and first responders.

# Summary of Agency Response and OIG Comments

On April 2, 2024, we received the Department's and NTIA's responses to our draft report. In response to our draft report, the Department and NTIA concurred with eight of our nine recommendations and described actions they intend to take to address them. The Department did not concur with one of the recommendations, which we address below. Within its response, NTIA provided an addendum with FirstNet Authority's response to the draft report. Additionally, FirstNet Authority provided technical comments. We considered these comments and made changes in the final report where appropriate. Per requests made by FirstNet Authority, we have redacted certain business sensitive information and/or information otherwise protected from disclosure from the public version of this report. The Department's and NTIA's formal responses and FirstNet Authority's response are included within this final report as Appendix C. At AT&T's request, we met with AT&T representatives on May 9, 2024, for a listening session regarding their concerns about the issues reflected in this report.

## *FirstNet Authority's Response and Our Comments*

The response from FirstNet Authority included statements that were misleading. To provide clarity and perspective, we have responded to FirstNet Authority's response below even though its comments do not change our conclusions and recommendations.

*FirstNet Authority Response:* "The evidence of this diligent oversight is in the results: the NPSBN was delivered on schedule, within the originally negotiated firm-fixed-price contract, and with performance capabilities that surpassed the ambitious objectives set at the project's inception five years earlier."

*OIG Comment:* We disagree with FirstNet Authority's assertion that the NPSBN was delivered on schedule. Our review found that AT&T would not have met the delivery of device connections at IOC-3, IOC-4, and IOC-5 with the originally negotiated contract requirements. Further, our review found that AT&T did not meet the delivery schedule for the POR, as it was provided more than a year after it was due. As we noted in the report, FirstNet Authority continuously modified the contract, which changed the delivery and timing of services for coverage and device connections. Ultimately, modifications made throughout the buildout allowed AT&T to meet revised requirements more easily.

We also disagree that "diligent oversight" was provided over coverage and device connection targets. We address oversight deficiencies relating to coverage<sup>34</sup> and device connection targets<sup>35</sup> in separate reports.

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<sup>34</sup> *FirstNet Authority's Lack of NPSBN Contract Oversight for Coverage Puts at Risk First Responders' Ability to Serve the Public Effectively* (draft report issued to FirstNet Authority on February 29, 2024).

<sup>35</sup> *FirstNet Authority's Lack of Contract Oversight for Device Connection Targets Puts the NPSBN at Risk of Impacting First Responders' Use of the Network* (draft report issued to FirstNet Authority on March 13, 2024).

*FirstNet Authority Response:* “The FirstNet Authority made careful and calculated decisions in modifying the NSPBN contract. These modifications accounted for the evolution of technology, and aligned adoption requirements with the build timeframes that supported it.”

*OIG Comment:* We disagree with FirstNet Authority’s assertion that it made careful and calculated decisions when modifying the NPSBN contract. Our review of FirstNet Authority’s documentation, or lack thereof, failed to demonstrate how it received adequate value in return for concessions made within these modifications. For example, FirstNet Authority’s BDA team assessed the impact of modification I3 and found it to be of significantly more value to AT&T—at \$ [REDACTED] million—than to FirstNet Authority at \$ [REDACTED] million. Without adequate documentation, FirstNet Authority cannot substantiate its claim to have made calculated decisions when modifying the contract.

In addition, we disagree with FirstNet Authority’s assertion that the modifications aligned adoption requirements with the build timeframes that supported them. Our review found that the original RFP contained coverage and device connection target requirements on a state-by-state basis. The contract required AT&T to achieve device connection targets, which it proposed for primary and extended primary user groups in each of the 56 states and territories to be met on a state-by-state basis. However, as we noted above, FirstNet Authority modified the coverage requirement to a nationwide basis. Changing the coverage requirement build timeframes to a nationwide basis may have had a causal effect on AT&T’s inability to meet device connection targets, as it later cited network coverage as one of the reasons for not being able to achieve the device connection targets.

*FirstNet Authority Response:* “Our contract actions ensured that the FirstNet Authority was in the position to properly protect public safety interests at every crucial checkpoint during the contract.”

*OIG Comment:* We disagree with FirstNet Authority’s assertion that its contract actions ensured that FirstNet Authority was in the position to properly protect public safety interests throughout the contract. As we discussed in our report, FirstNet Authority stated that it wanted to avoid a breach of contract because it was not in the best interest of public safety to leave first responders without a network. However, FirstNet Authority had early warning signs that AT&T would not meet contract requirements and failed to take the necessary actions to hold AT&T accountable. We found that FirstNet Authority instead changed requirements for contract coverage and device connection targets at multiple milestones without consistently demonstrating it received adequate value in return to support that the government protected public safety interests.

*FirstNet Authority Response:* “It is also worth noting that the Office of Inspector General’s field work for the audit report did not include the actual end results of the initial 5-year buildout (known as Full Operational Capability, or ‘FOC’).”

*OIG Comment:* We disagree with FirstNet Authority’s implication that the report should have included the actual end results of the initial 5-year buildout. As we noted in our report, we conducted the review from July 2022 through June 2023 with a focus on “FirstNet Authority’s

modifications to the contract, to include the rationale behind those changes and whether FirstNet Authority had an effective process for documenting decisions it made concerning those modifications.” Our audit therefore did not assess the results at FOC and instead focused on FirstNet Authority’s continuous modifications, which repeatedly changed the requirements leading up to FOC, and related impacts. Additionally, as we stated in the report, IOC-5 was originally due March 2022 but was accepted more than 1 year after it was due for closure, as AT&T found and reported coverage errors.<sup>36</sup> Therefore, FOC information would not have been available to review during the fieldwork portion of the audit.

While FirstNet Authority is highlighting the end results at FOC, it is important to note that AT&T was contractually required to meet coverage and device connection target requirements not only at FOC but throughout each of the 5 years during the buildout. As we noted throughout our report, FirstNet Authority modified the desired results at those interim milestones, which made it easier for AT&T to achieve milestone compliance and payment.

*Recommendation, Department’s Response, and Our Comment*

Recommendation 2: Review the actions taken to execute the contract and task order modifications identified in this report and determine whether, under law, FAR and/or Department policy, actions should be taken to review, revoke, or revise the warrants used to execute the modifications.

Department Response: “The Department does not concur with the recommendation, which appears to presuppose the result of the AMR that OAM will conduct in accordance with Recommendation #1 and to prescribe a punitive response targeted at specific individuals. OAM and the SPE will exercise independent judgment in determining the appropriate corrective actions to address any issues identified during the AMR.”

OIG Comment: The recommendation does not presuppose the result; rather, it recommends that the Department review FirstNet Authority’s contracting files—which the Department has not done since 2017—and determine whether actions need to be taken. Additionally, we do not agree with the statement that the recommendation prescribes a punitive response targeted at specific individuals. We note that the Department’s proposed action—where an AMR would be conducted and the Department would determine an appropriate corrective action to address any deficiencies identified—meets the intent of the recommendation. This recommendation is appropriate given the severity of the findings outlined in this report.

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<sup>36</sup> FirstNet Authority issued a final acceptance memorandum to AT&T for IOC-5 in June 2023.

# Appendix A: Objective, Scope, and Methodology

We announced two concurrent audits with the following objectives: (1) to determine whether FirstNet Authority is ensuring that AT&T is achieving the desired results for device connection targets for each state and territory and (2) to determine whether FirstNet Authority is ensuring that AT&T is achieving the desired results for network coverage for each state and territory. We separated these objectives into three different components that include (1) the evolution of the desired results for device connection targets and network coverage as executed through contract modifications, (2) oversight of device connection targets, and (3) oversight of network coverage. This report focuses on the first component: FirstNet Authority's modifications to the contract, to include the rationale behind those changes and whether FirstNet Authority had an effective process for documenting decisions it made concerning those modifications.

To accomplish our objective, we did the following:

- Reviewed the following policies, procedures, and guidance:
  - *Middle Class Tax Relief and Job Creation Act of 2012*, Public Law 112-96
  - FAR Part 2, *Definitions*
  - FAR Part 4, *Administrative and Information Matters*
  - FAR Part 32, *Contract Financing*
  - FAR Part 43, *Contract Modifications*
  - U.S. Government Accountability Office *Standards for Internal Control in the Federal Government*
  - Department Administrative Order 208-16, *Acquisition Project Management*
  - Department *Scalable Acquisition Project Management Guidebook*, version 1.2
  - *Commerce Acquisition Manual 1301.6, Department of Commerce Contracting Certification and Warrant Program*
  - *Commerce Acquisition Manual 1301.71, Legal Review of Acquisition-Related Actions*
  - *Commerce Acquisition Manual 1307.1, Acquisition Planning*
  - *Commerce Acquisition Manual 1372, Acquisition Management Review Procedures*
  - *FirstNet Authority Acquisition Manual*
  - *FirstNet Authority Contract Change Request and Modification Process*
  - *FirstNet Authority Acquisition Review Board Review Process and Procedures*
- Obtained and reviewed NPSBN and task order contract terms and conditions

- Obtained and reviewed FirstNet Authority documentation that supported the modifications, such as MFRs, business analyses, determination and findings, ARB briefing charts, and CLD reviews
- Obtained and analyzed device connection target data for each state and territory
- Interviewed FirstNet Authority officials involved in the negotiation and modification processes
- Interviewed NTIA and OAM officials to obtain an understanding of their roles and responsibilities regarding contract modifications and identify any applicable Departmental policies and procedures
- Interviewed CLD to determine the extent and substance of its legal advisory services and obtain clarification about previous reviews it completed

We gained an understanding of the internal controls significant within the context of the audit objective by reviewing policies and procedures and interviewing FirstNet Authority and Department personnel. We identified weaknesses in internal controls related to modifications, as noted in the Objective, Finding, and Recommendations section of the report.

In satisfying our audit objective, we did not rely solely on computer-processed data. However, based on electronic testing, we did not find any significant issues with the computer-processed data that we did use. Based on these efforts, we believe the information we obtained is sufficiently reliable for this report.

We conducted our review from July 2022 through June 2023 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. §§ 401-24), and Department Organization Order 10-13, dated October 21, 2020. We performed our fieldwork remotely.

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.



# Appendix B: Contract Modifications

Appendix B includes other examples of modifications that directly relate to our overall finding.

*Example 1: FirstNet Authority changed the device connection targets requirement for IOC-4, which made it easier for AT&T to achieve milestone compliance*

FirstNet Authority changed the device connection target requirement from state-by-state to nationwide for compliance purposes at IOC-4 and IOC-5,<sup>37</sup> which made it easier for AT&T to meet the milestone. The original contract required AT&T to demonstrate compliance with device connection targets at milestones but did not have payments associated with achieving those device connections (IOC-1, IOC-2, IOC-4, and FOC).

We reviewed AT&T's reported device connection targets and found that without the modification, AT&T would not have met the compliance requirement at IOC-4, as 31 states and territories<sup>38</sup> would not have achieved the preestablished device connection targets on a state-by-state basis (figure B-1).

**Figure B-1. Results of IOC-4 Device Connection Requirements Without Modification 17**



Source: OIG analysis of original J-2 device connection targets as compared to the user forecasting report

<sup>37</sup> For purposes of the payment gating milestone at IOC-5, AT&T was required to achieve device connection targets on a state-by-state basis in addition to the nationwide compliance requirement.

<sup>38</sup> The contract did not include device connection target requirements for [REDACTED]

This modification allowed AT&T to meet the compliance requirement for IOC-4 and move onto the IOC-5 payment gating milestone even though AT&T achieved preestablished targets in fewer than half of the states.<sup>39</sup>

Additionally, FirstNet Authority did not request a legal review from CLD or hold an ARB for this modification. FirstNet Authority personnel claimed these were not required because it deemed this modification as “mostly administrative in nature.” However, due to the significance of changing the device connections requirement and requiring AT&T to provide an additional deliverable, FirstNet Authority should have requested a legal review—as required for contract modifications that significantly change the characteristics of the supplies and services being procured.<sup>40</sup>

*Example 2: FirstNet Authority changed the device connection targets requirement at IOC-5 due to AT&T's nonperformance*

FirstNet Authority reduced device connection targets in states that were not on track to meet target requirements, which allowed AT&T to earn payment of \$[REDACTED] million it otherwise would not have received until later. The original contract required AT&T to achieve 100 percent of the IOC-5 device connections in each state and territory to receive payment for IOC-5. However, in January of 2022, two months before IOC-5 was due, AT&T provided written notice to FirstNet Authority that it was at risk of not meeting device connection targets for a series of states by the required timeframe. According to AT&T, some of the risks identified in not being able to achieve those device connection targets included, but were not limited to, network and sales coverage. FirstNet Authority and AT&T then engaged in conversations and agreed to execute this modification on the same day IOC-5 was originally due, which updated the device connection targets based on what AT&T could achieve at that time. We reviewed the revised targets and found this modification allowed AT&T to earn payment even though 29 states would not have met the original device connection targets requirement (figure B-2).

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<sup>39</sup> [REDACTED] was the [REDACTED] [REDACTED] with a device connection target requirement, and it would have met the requirement at IOC-4.

<sup>40</sup> DOC, March 2020. *Commerce Acquisition Manual 1301.71, Department of Commerce Legal Review of Acquisition-Related Actions*, § 3.2. Washington, DC: DOC. Available online at [https://www.commerce.gov/sites/default/files/oam/CAM%201301%2071%20Legal%20Review%20%2802\\_20%29.pdf](https://www.commerce.gov/sites/default/files/oam/CAM%201301%2071%20Legal%20Review%20%2802_20%29.pdf) (accessed August 23, 2022).

### Figure B-2. Results of IOC-5 Device Connection Requirements Without Modification 22



Source: OIG analysis of original J-2 device connection targets as compared to TO 4 IOC-5 verification report compliance addendum

In TO 4 modification 5, FirstNet Authority separated the value of network coverage and device connection targets, which significantly reduced the value of the device connection targets. As such, the total value assigned to device connection targets at IOC-5 was only \$ [REDACTED] million.<sup>41</sup> The CLD expressed concerns when reviewing this modification. The reviewing attorney noted that they [REDACTED] [REDACTED] Despite CLD's concerns, the CO continued with the modification.

According to FirstNet Authority's MFR, FirstNet Authority will recover those device connections 4 years after they were originally due and receive a 20 percent increase for all users, which is maintained throughout the life of the contract. However, as noted above, without this modification AT&T would not have earned payment of nearly \$ [REDACTED] million for IOC-5. As such, although FirstNet Authority agreed to receive an increase in users, AT&T may be less incentivized to achieve those increases in users because payments for achieving device connection targets have been disbursed and only disincentives<sup>42</sup> remain. Additionally, per the MFR, FirstNet Authority should have received an [REDACTED] percent increase in primary users and a [REDACTED] percent increase for all users at IOC-5 as consideration for realigning device connection targets. This percentage is misleading because the increase was in states already exceeding the

<sup>41</sup> As consideration, FirstNet Authority withheld \$ [REDACTED] million; however, according to FirstNet Authority's MFR, consideration will only be realized if AT&T fails to meet the revised requirements and the money is deobligated.

<sup>42</sup> AT&T is subject to disincentive payments that are based on its achievement of, or failure to achieve, the device connection targets.

preestablished targets. In fact, FirstNet Authority received less than a 1 percent increase in primary users—which it would have received at IOC-5 regardless of this modification.<sup>43</sup>

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<sup>43</sup> The updated nationwide targets required approximately [REDACTED] primary connections. We reviewed AT&T's reported device connection targets 1 month before the modifications were executed and found that AT&T had approximately [REDACTED] primary connections.

## Appendix C: Agency Response

NTIA's and the Department's responses to our draft report, along with FirstNet Authority's response, begin on page 24.




UNITED STATES DEPARTMENT OF COMMERCE  
Office of the Chief Financial Officer and  
Assistant Secretary for Administration  
Washington, D.C. 20230

April 2, 2024

TO: Arthur L. Scott Jr.  
Assistant Inspector General for Audit and Evaluation

THRU: MaryAnn Mausser  
Department of Commerce GAO/OIG Audit Liaison

FROM: Alan Davidson   
Assistant Secretary of Commerce for Communications and Information and NTIA  
Administrator

Olivia Bradley   
Department of Commerce Senior Procurement Executive and Director for  
Acquisition Management

OLIVIA BRADLEY  
Digitally signed by OLIVIA  
BRADLEY  
Date: 2024.04.01 18:26:37 -0400

SUBJECT: Draft Audit Report: *FirstNet Authority Did Not Ensure the Nation's First Responders' Needs Were Continuing to Be Met Timely When Modifying Key Objectives of the NPSBN Contract*

Report Date: February 28, 2024

Audited Entities: First Responder Network Authority (FirstNet Authority),  
National Telecommunications and Information Agency (NTIA), and  
Office of the Secretary

This memorandum contains the response from the Department of Commerce and the National Telecommunications and Information Administration (NTIA) to the Office of the Inspector General (OIG) draft report entitled *FirstNet Authority Did Not Ensure the Nation's First Responders' Needs Were Continuing to Be Met Timely When Modifying Key Objectives of the NPSBN Contract*. The Department and NTIA provides its responses to the recommendations in the draft report with the comments included below. We will prepare a formal action plan upon issuance of OIG's final report.

*The OIG recommends that the Department's Senior Procurement Executive and Director of Acquisition Management:*

**OIG's Recommendation #1:** Conduct an AMR to assess the FirstNet Authority acquisition functions and determine if adequate contract files exist to properly support decisions.

The Department concurs with the recommendation and the Office of Acquisition Management (OAM) will conduct an Acquisition Management Review (AMR).

**OIG's Recommendation #2:** Review the actions taken to execute the contract and task order modifications identified in this report and determine whether, under law, FAR and/or Department policy, actions should be taken to review, revoke, or revise the warrants used to execute the modifications.

The Department does not concur with the recommendation, which appears to presuppose the result of the AMR that OAM will conduct in accordance with Recommendation #1 and to prescribe a punitive response targeted at specific individuals. OAM and the SPE will exercise independent judgment in determining the appropriate corrective actions to address any issues identified during the AMR.

**OIG's Recommendation #3:** Determine whether, in order to comply with applicable federal and Department regulations, FirstNet Authority should be required to submit all future contract awards and modifications to the Department for review prior to award.

The Department concurs with the recommendation. As part of the AMR, OAM will assess whether FirstNet Authority has reliable procurement processes and internal controls in place to effectively execute its delegated procurement authority and consider what, if any, corrective actions, are appropriate to address identified issues.

*The OIG recommends that the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator direct FirstNet Authority's Chief Executive Officer to:*

**OIG's Recommendation #4:** Ensure the required justification and pricing analysis are conducted and documented for all contract modifications to ensure compliance with FAR 43.1.

NTIA concurs with the recommendation that FirstNet Authority should ensure continued compliance with applicable regulations and policy relevant to contract modifications and will take available steps in coordination with the Department to ensure compliance. As part of contract review pursuant to recommendation #1, OAM will assess whether FirstNet Authority has appropriately documented contract files as it pertains to contract modifications.

**OIG's Recommendation #5:** Ensure compliance with FAR 32.104 by determining if (1) AT&T will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 6 months) and (2) the expenses for contract performance during the predelivery period will have a significant impact on AT&T's working capital when using contract financing.

NTIA concurs with the recommendation that FirstNet Authority should ensure continued compliance with applicable regulations and policy relevant to contract payments and will take available steps in coordination with the Department to ensure compliance. As part of the contract review pursuant to recommendation #1, OAM will assess whether FirstNet Authority has appropriately documented contract files as it pertains to contract modifications.

**OIG’s Recommendation #6:** Ensure compliance with CAM 1301.71 and obtain legal reviews from the Department’s CLD for all contract modifications when the services are materially changing.

NTIA concurs with the recommendation that FirstNet Authority should obtain clearance from the Department’s Office of the General Counsel on contracting actions as required by the CAM and will take available steps in coordination with the Department to ensure compliance. As part of the contract review pursuant to recommendation #1, OAM will assess whether required legal reviews are occurring and whether additional Departmental oversight should be implemented.

**OIG’s Recommendation #7:** Leverage the remediation options in the contract to hold AT&T accountable and take the necessary actions to address deficiencies when AT&T is either not on track to meet or not meeting contract terms.

NTIA concurs with the recommendation that FirstNet Authority should continue to ensure contractor compliance with the terms and conditions of the contract and address any deficiencies, as appropriate, and will take available steps in coordination with the Department to ensure FirstNet Authority continues to do so. As part of the contract review pursuant to recommendation #1, OAM will assess whether FirstNet Authority has leveraged options to hold the contractor accountable.

**OIG’s Recommendation #8:** Revise FirstNet Authority’s Acquisition Review Board Review Process and Procedures to define what is considered a “significant modification” and to ensure results of ARB meetings are documented in compliance with FAR 4.803.

NTIA concurs with the recommendation. On March 1, 2024, FirstNet Authority revised its Acquisition Review Board Procedures to better align with CAM 1307.1, including the requirement to have a Bureau-level ARB for requirements that are considered highly sensitive, complex in nature, or those that require greater oversight due to exceptional circumstances. As a result of this revision, the “significant modification” term was removed from the FirstNet Authority Acquisition Review Board Procedures. As part of the AMR in recommendation #1, OAM will assess FirstNet Authority procurement policies, including those related to conducting a Bureau-level Acquisition Review Board (ARB) and ensuring the contract file contains the appropriate documents in accordance with FAR 4.803.

**OIG’s Recommendation #9:** Ensure the Chief Procurement Officer provides oversight to verify that contract modifications are sufficiently supported, justified, in compliance with the FAR, and in the best interests of the government and first responders.

NTIA concurs with the recommendation that FirstNet Authority should continue to provide conscientious oversight of contract modifications and will take available steps in coordination with the Department to ensure FirstNet Authority continues to do so.

We look forward to working with you as we continue to address the recommendations in this report. Should you have questions, please contact MaryAnn Mausser, Commerce GAO/OIG Audit Liaison at [mmausser@doc.gov](mailto:mmausser@doc.gov).



Addendum: FirstNet Authority Response



1 April 2024

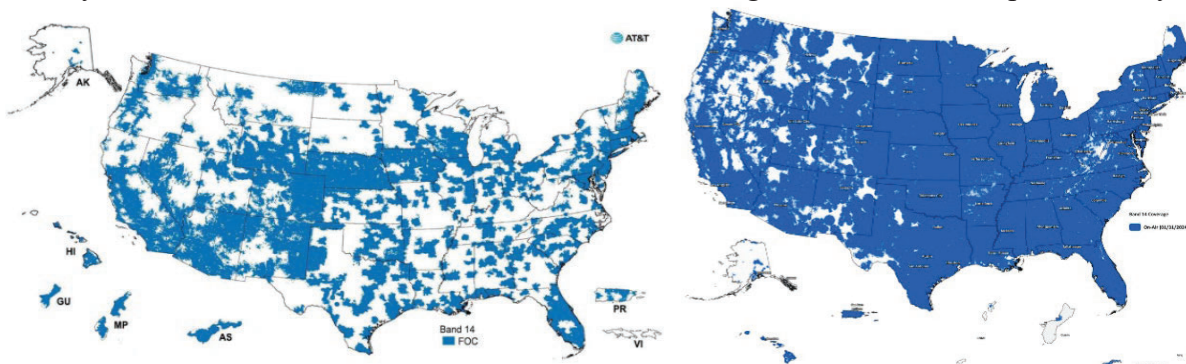
Arthur L. Scott, Jr.  
Assistant Inspector General for Audit and Evaluation  
Office of Inspector General  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, DC 20230

Dear Mr. Scott,

Re: Audit Report re Modifications to the NPSBN Contract

The Nationwide Public Safety Broadband Network (NPSBN) is a monumental leap forward in critical communications for first responders, enabled by a 25-year public-private partnership between the First Responder Network Authority (FirstNet Authority) and AT&T. This arrangement ensures the construction, operation, and maintenance of a telecommunications network that is vital for public safety.

The FirstNet Authority has exercised stringent oversight in its NPSBN Contract modifications. The evidence of this diligent oversight is in the results: the NPSBN was delivered on schedule, within the originally negotiated firm-fixed-price contract, and with performance capabilities that surpassed the ambitious objectives set at the project's inception five years earlier. As an example, the below map demonstrates the original coverage set forth in the contract and the coverage available under the NPSBN today. The enlarged coverage for public safety was achieved in large part thanks to our decisions to modify the NPSBN Contract to obtain more value for the government and the public safety community.



*Original LTE coverage projected at contract award on the left and the current LTE build ten months post-FOC*

The FirstNet Authority made careful and calculated decisions in modifying the NSPBN contract. These modifications accounted for the evolution of technology, and aligned adoption requirements with the build timeframes that supported it. More importantly, these modifications were used to reduce payments in interim capability milestones and move those payments to Final Operating Capability (FOC). Our focus was to ensure that at FOC all users would be able to exercise intended capabilities. For that reason, the FOC milestone encompassed full delivery of the Contractor’s Plan of Record (POR) for All Rural and Non-Rural coverage, including included New Site Builds (NSB) or “Greenfield Sites”, Carrier Additions, and Rural-specific sites, as well as completion of the coverage objectives within each of the State Plans. Our contract actions ensured that the FirstNet Authority was in the position to properly protect public safety interests at every crucial checkpoint during the contract.

Our contract modifications allowed public safety stakeholders in states with challenging build completions a direct seat at the table in advocating for their coverage needs. Additionally, the Government was able to obtain additional permanent and temporary coverage through enforcement of the contract at this period. What is notable is that in making all these changes, the contract objectives published in the FirstNet Authority’s original Request for Proposal in 2016 remain the same today. It is also worth noting that the Office of Inspector General’s field work for the audit report did not include the actual end results of the initial 5-year buildout (known as Full Operational Capability, or ‘FOC’). The maps referenced above show the current progress of the NPSBN.

Over the last two years, the FirstNet Authority has provided more than 1,600 documents and participated in over 20 meetings with the auditors in response to OIG inquiries. As an organization we always strive to improve our processes and will work with the Department to implement the OIG’s recommendations as we continue to make critical decisions in support of our nation’s first responders.

Sincerely,

**JOSEPH WASSEL**

Digitally signed by JOSEPH  
WASSEL  
Date: 2024.04.01 12:31:52 -04'00'

Joseph M. Wassel  
Executive Director and CEO

# REPORT

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