



Gary R. Herbert
Governor of Utah
Chair

Terry McAuliffe
Governor of Virginia
Vice Chair

Scott D. Pattison
Executive Director / CEO

**TESTIMONY OF
JEFFREY S. MCLEOD
DIRECTOR, HOMELAND SECURITY AND PUBLIC SAFETY DIVISION
NATIONAL GOVERNORS ASSOCIATION'S CENTER FOR BEST PRACTICES**

**ON
"FIRSTNET OVERSIGHT: AN UPDATE ON THE STATUS OF THE PUBLIC SAFETY
BROADBAND NETWORK"**

**BEFORE THE
SENATE COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, INNOVATION AND THE
INTERNET**

Overview

Chairman Wicker, Ranking Member Schatz and distinguished members of the subcommittee, my name is Jeffrey McLeod, Director of the National Governors Association's Center for Best Practices' Homeland Security and Public Safety Division. The National Governors Association (NGA) is the bipartisan organization of the nation's governors. Through NGA, governors share best practices, speak with a collective voice on national policy, and develop innovative solutions that improve state government and support the principles of federalism.

I appreciate the opportunity to appear before you today on the implementation of the First Responder Network Authority (FirstNet). NGA was a leading advocate of the public safety spectrum provisions in the legislation that led to the creation of FirstNet, and NGA remains dedicated to implementing those provisions. Over the last four years, NGA has continued to represent governors before Congress and FirstNet officials on key implementation issues and challenges facing states. My testimony today will focus on the remaining factors governors and states must consider before reaching their respective decisions on broadband deployment.

As you may already know, governors are engaged in efforts to develop and deploy a nationwide public safety broadband network. Pursuant to FirstNet's authorizing statute, the state planning process gives governors the decision to either participate in FirstNet's deployment or follow the necessary steps to provide an alternative plan for the construction, maintenance, operation and improvements of a state radio access network.¹ That decision affects the entire state, including all individual jurisdictions.

Each state has unique needs for network coverage, which requires extensive consultation with FirstNet and other stakeholders. Although states still await FirstNet's plan for deployment, they continue to engage with FirstNet on the development of network policies and their respective plans.

Throughout the last several years of planning, states have clearly identified potential obstacles and challenges surrounding the implementation of FirstNet, primarily issues of coverage, cost and consultation. For governors, these factors are critical considerations in developing a nationwide public safety broadband network that enhances emergency response and is sustainable over the long term. My testimony today will focus on these three issues. Before I go any further, however, I would like to provide some background on the development of state plans thus far.

State Plans and Governor Decision

As I alluded to earlier, governors are faced with the decision to opt in or opt out of the FirstNet network. In the lead up to that decision, FirstNet and states have been engaging in a data collection and consultation process to prepare individual state plans. After the request for proposals (RFP) process concludes with the selection of FirstNet's commercial vendor in late 2016, state plans will be presented to governors and their state single point of contact (SPOC).

This proposal will detail FirstNet and its commercial vendor's plan for the buildout of the radio access network (RAN) within a state. Its intention is to give the governor the information he or she needs to make the decision to opt in or opt out.

Upon receiving the final plan, governors have 90 days to notify FirstNet of their decision. If they choose to opt in, there is no additional action required. FirstNet and its commercial vendor will build out the network and bear the associated cost of constructing, operating, and upgrading it. State and local first responders will then pay a user fee to access the network.²

¹ See 47 U.S.C. 1442(e)(2).

² See 47 U.S.C. 1428(a)(1).

Alternatively, governors may choose to do nothing upon receiving the state plan, letting the 90-day deadline for a decision lapse without action. According to FirstNet, this is considered de facto opt-in. Even if governors do not affirmatively opt in, they will be automatically opted into having the RAN built by FirstNet and their commercial vendor in their state.³

As a third option, governors may also choose to opt out of FirstNet and its commercial vendor building the RAN. In that case, governors must notify FirstNet within 90 days of receiving the plan that they plan to opt-out. Then, within 180 days, they must complete an RFP, receive any necessary legislative approval, and submit an alternative plan to the FCC. States must then submit a plan to the National Telecommunications and Information Administration (NTIA) to lease spectrum and may apply for RAN construction grant funding. Opt-out states then have to negotiate a spectrum lease with FirstNet and, finally, build out their own RAN, all within the timeframes outlined in the statute. At any point in this process, FirstNet, NTIA, or the Federal Communications Commission (FCC) can deny the state's plan to build its own RAN.⁴

States that opt out are responsible for all building, maintenance, operation and upgrade costs associated with the state RAN. Additionally, state and local users will still have to pay a fee to connect to the core FirstNet network.⁵

For many states, the opt-out scenario is a false choice. Though there are a number of unknowns associated with opting in, very few states are in a position to consider taking on the unknowable and likely significant financial liabilities associated with building, operating, maintaining, and upgrading a full RAN in their states if they opt-out.

Coverage

Going back to my three points of focus for today—coverage, cost and consultation—a primary concern for governors is the network's ability to offer sufficient and reliable coverage statewide. Specifically, they are concerned with how extensive coverage will be in rural areas and how it will differ from commercial options. This is a particular concern in states with substantial rural areas and in those with challenging geography and topography. Questions that must be adequately answered in the state plan for governors to make a fully informed decision to opt in or opt out include:

- What service will be offered in rural areas?
- When will it be offered?
- What are estimates of the cost of that service?

During the data collection phase of consultation, states provided FirstNet extensive data and maps detailing their unique coverage needs and challenges, including areas of critical concern for state and local first responders. FirstNet has said it has a duty to protect excess fees generated from densely populated areas to fund the network's buildout in rural areas. According to FirstNet, this approach ensures resources are available to build out and maintain the network in rural areas, where fees generated from the user base would otherwise be insufficient.⁶ However, the financial needs of the network must be balanced with the needs of the public safety community in underserved areas.

Additionally, the FirstNet RFP outlines a number of rural buildout milestones that any commercial vendor must meet. The final milestone calls for achieving 100 percent of a vendor's proposed coverage in rural areas within

³ Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, *Federal Register* 80, no. 202 (Oct. 20, 2015): 63506.

⁴ Ibid.

⁵ Ibid.

⁶ Further Proposed Interpretations of the Parts of the Middle Class Tax Relief and Job Creation Act of 2012, *Federal Register* 80, no. 49 (Oct. 20, 2015): 13348.

five years of the contract award.⁷ Including these milestones in the RFP provides evidence of FirstNet's statutorily required consideration of rural needs; however, until states have a clear understanding of what the contractor's proposed coverage looks like, the milestones are essentially meaningless. Without additional information, the milestones offer no assurances of widespread and reliable coverage.

Many states have existing contracts with commercial communication providers that offer some coverage in these areas. In the state plans, FirstNet will need to show governors that their proposed coverage provides a value-add over existing commercial options, both in terms of user cost and coverage reliability.

Finally, states are concerned that the costs associated with building and maintaining a network with sufficient rural coverage will drive a significant increase in user fees, which will then have an impact on the rural communities that need this coverage. In building this network and structuring user fees, states must be assured that sufficient coverage will not lead to burdensome user fees for resource-scarce state and local first responders.

Costs

In addition to concerns about coverage, questions of cost top the agenda of many governors and state policymakers. Governors are concerned about (1) what the user fees to connect to the network will be; (2) whether the network can be built within existing cost models; and (3) what any long-term administrative management and operation costs may be. States understand that these questions cannot be answered at this time. However, they expect increased clarity from FirstNet and its commercial vendor before deciding whether to opt in.

Chief among states' concerns is the user fee structure. It is expected that FirstNet will reinvest user fees into maintaining and upgrading the national network. Given the size and scope of this network, supporting it will require significant financial investment throughout its lifecycle.

The financial models that underpin the network's long-term sustainability require a robust and diverse user base. If fees are too high and public safety users do not utilize the network, the financial success of the network could be in jeopardy. States remain concerned that this could lead to user fees in excess of the amount currently spent on public safety communications technology.

States and municipalities operate within constrained budgets, and user fees for this network remain largely unknown. Additionally, municipalities have vastly disparate budget requirements. In other words, what one city can afford may be far different from what another can. In particular, this affects rural communities, which frequently operate in a severely constrained budget environment.

There are also significant questions as to how the FirstNet user fees will compare with existing commercial user fees. Where commercial providers can offer a similar service at a lower cost, users will be less inclined to utilize FirstNet's services. Again, though states recognize these questions cannot be answered at this time, these concerns factor significantly into the governor's decision-making process.

Beyond user fees, governors seek further assurance that states will not incur unforeseen costs from FirstNet down the road. FirstNet has asserted that if states make the decision to opt in to the network, the costs associated with building and maintaining the network will be the sole responsibility of FirstNet and its commercial vendor. Given the unprecedented nature of building and maintaining a network of this size and complexity, states are concerned about the possibility of unforeseen costs being shifted to them. Though the costs of opting out of the network are almost certain to be greater than opting in, governors will have to consider this financial uncertainty as they weigh their decision to opt in or out.

⁷ FirstNet Solicitation No. D15PS00295 – Section J, Attachment J-8, IOC/FOC Target Timeline, (Jan. 13, 2016), 5.

Finally, states are also grappling with the difficulty of determining the operational and administrative costs that will be incurred by state communications agencies when operating on the FirstNet network. Operating a statewide communications network requires significant administrative and personnel costs, and this will certainly be the case when FirstNet is fully deployed. Costs may include purchasing new equipment or upgrading existing equipment to fully utilize the services offered on the network. States must consider how those costs compare with existing commercial solutions and current state systems.

Consultation and Partnership

That brings me to my last point: consultation. Throughout the mandated consultation and data collection process, FirstNet has engaged state leaders on the planned buildout of the nationwide network. However, states have had some concerns regarding the tone of this engagement. As NGA has previously emphasized, FirstNet must view states as partners in this endeavor. The reason for that is not only to meet the statutory requirements for state consultations, but more important to ensure that key information, processes and expertise within states can be appropriately brought to bear on the full range of FirstNet activities.⁸

Since 2013, FirstNet has engaged in extensive consultation with state, local, county and tribal leaders across the nation. However, some states have described this engagement as largely focused on satisfying the statutory consultation requirement, rather than developing genuine partnerships with states. Further, some states remain concerned they are viewed as mere customers of an eventual national broadband network. During the consultation process, FirstNet refers to states as “constituents.” Although this may appear to be mere word choice, it alters the tenor of the engagement and lessens the focus on partnership. For the network to succeed, states must be viewed as full-fledged partners.

Additionally, outreach to states must be done in a consistent fashion and should rely on the existing Single Point of Contact network that was developed at the outset of this process. Communication with senior state leaders outside of this framework may result in mixed messages and duplicative efforts within states. Using this network is the most effective way for FirstNet to reach governors and their senior staff. Going through these channels ensures that all the necessary information is available for governors to make their decision.

Finally, transition in gubernatorial administrations with the coming election cycles presents a communication and education challenge for FirstNet. Given the long-term timeline associated with building this network and delivering services, FirstNet should ensure it is prepared for eventual turnover in a number of governors’ offices, including key homeland security, public safety, and information technology staff during the 2016, 2017 and 2018 election cycles.

Conclusion

Governors appreciate the support of this committee in ensuring progress toward implementation of a nationwide public safety broadband network. If implemented in a manner that ensures maximum coverage at a reasonable, certain, and fair cost to states, and with a consultation process focused on establishing partnerships, FirstNet has the potential to enhance the ability of first responders to protect states and localities from harm and provide timely responses to requests for emergency assistance.

On behalf of the National Governors Association and our members, thank you for the opportunity to testify. Governors and NGA stand ready to work with this committee to ensure the successful implementation and deployment of a national public safety broadband network for first responders.

⁸ Governor Martin O’Malley and Governor Mary Fallin, “FirstNet Hearing Letter to Chairman Greg Walden and the Honorable Anna Eshoo,” (Mar. 13, 2013), available at: <http://www.nga.org/cms/home/federal-relations/nga-letters/homeland-security--public-safety/col2-content/main-content-list/march-13-2013-letter---firstnet.html>.