

THE BALLER HERBST LAW GROUP, PC
2014 P STREET, N.W.
WASHINGTON, DC 20036
(202) 833-5300
FAX: (202) 833-1180
www.Baller.com

CTC TECHNOLOGY AND ENERGY
10613 CONCORD STREET
KENSINGTON, 20895
(301) 933-1488
FAX: (301) 933-3340
www.CTCNET.US

FirstNet: State and Local Implementation Grant Program: Four Reasons Stakeholders Should Work-Together to Support the Development of Their State's SLIGP Application

The federal government recently announced a grant opportunity for states and territories to support planning processes related to establishment of a nationwide public safety broadband network (PSBN). For states, localities, tribes, and non-traditional deployers of infrastructure, the stakes are high with respect to the outcome of this planning process and these stakeholder groups should act now to protect their interests in the development of a comprehensive grant application.¹

The First Responder Network Authority (FirstNet) –the entity charged by Congress with establishing the PSBN -- will draw key inputs from both the grant applications and the data developed through the grant-funded planning processes.

These inputs are likely to contribute to the record upon which important FirstNet decisions will be based—including the degree to which state and local assets are utilized and compensated in deployment and operations of the network.

Significantly, some national telecommunications carriers are promoting a carrier-centric deployment approach that would rely heavily on their existing wireless services and supporting infrastructure. This approach would have the benefit of speeding FirstNet deployment but would also serve to limit the extent to which state and local infrastructure is used to support FirstNet. The approach may be a concern for two reasons: 1) it would reduce, for many states and localities, the revenues generated by the use of their infrastructure, revenues that could serve to offset the long-term fees for use of FirstNet and 2) a carrier-centric deployment carries the risk of replicating the weaknesses of carrier infrastructure, which in many areas is not public safety-grade and is not optimized for public safety use.

A carrier-centric approach could easily become the default model for the PSBN unless SLIGP grant applicants step forward now to present alternative approaches that not only meet, but exceed, SLIGP requirements and timelines. Such presentations could well persuade federal decision-makers to opt for approaches that take maximum advantage of state-of-the-art middle-

¹ The Federal Funding Opportunity (FFO) was announced on February 6 and grant applications are due on March 19. <http://www.ntia.doc.gov/other-publication/2013/slignp-federal-funding-opportunity>.

mile or last-mile fiber networks, including those developed by states and localities, private entities, and cooperatives. Not only would the use of such existing fiber infrastructure speed deployment but it would also reduce the need for new construction and thereby allow for the use of scarce network funds to be utilized for antennae and radio technologies. In contrast, applications that set forth fragmented visions or indistinct plans for the development of governance structures and/or MOUs, could serve to reinforce the impression that there are unlikely to be workable alternatives to a PSBN deployment that primarily leverages the existing assets of national providers.

Given the stakes associated with the SLIGP applications, four stakeholder groups, in particular, should consider dedicating the resources necessary to ensure that their State's application for SLIGP funds is as comprehensive and inclusive of their needs and capabilities as possible. One key stakeholder group is state government officials. The state's designated entity will undoubtedly participate, but the funding opportunity should also be of great interest to those state agencies and officials that deal extensively with public infrastructure, public safety, or broadband networking.

A second key stakeholder group is local, regional, and tribal government officials. Included in this group are local government representatives to Statewide Governing Bodies or Statewide Interoperability Executive Committees and telecommunications officers and advisors to local governments, as well as offices of public safety and unified communications.

A third key stakeholder group is alternative infrastructure providers. This group might include representatives of telecommunications cooperatives, utility companies, municipal networks, BTOP or BIP funded networks and other intra-state carriers or critical infrastructure providers.

The fourth key stakeholder group includes communities that currently have inadequate broadband coverage that may desire to develop, or use excess capacity on, facilities established to support the PSBN.

Background: The Middle Class Tax Relief and Job Creation Act of 2012 became law on February 22, 2012. The Act authorizes the National Telecommunications and Information Administration (NTIA) to establish the First Responder Network Authority. FirstNet, an independent authority within NTIA, is directed to establish a national public safety broadband network based on a single, national network architecture. The Act provides up to \$7 billion to fund the network through proceeds of spectrum auctions.

As envisioned by the Act, the main difference between the NPSBN and the commercial broadband wireless network is that the NPSBN will create separate infrastructure operated by public safety and specifically authorized classes of users such as utilities, transit authorities, and other emergency support entities. The network is intended to be able to allocate capacity among users and ensure that capacity is allocated so that routine and emergency public safety and first responder functions will always have access to a network, and to enable interoperable communications between and among multiple public safety user groups.

As directed by the Act, FirstNet will consult with regional, State, tribal, and local jurisdictions regarding the distribution and expenditures required to carry out its responsibilities. These responsibilities include:

- Construction or access to the core network and any radio access network build out;
- Placement of towers;
- Coverage areas of the network;
- Adequacy of hardening, security, reliability, and resiliency requirements;
- Assignment of priority to local users;
- Assignment of priority and selection of entities seeking access to or use of the nationwide interoperable PSBN; and
- Training local users.

Following its consultations with regional, State, tribal and local jurisdictions, FirstNet will issue one or more Requests for Proposals for the construction, operations, maintenance, and improvements of the nationwide PSBN and will notify the Governor of each State with the details of the plan and the funding levels by State.

State and Local Implementation Grant Program: The Act directs NTIA to establish a grant program to assist state, regional, tribal, and local jurisdictions with identifying, planning and implementing the most efficient means to use and integrate the infrastructure, equipment and other architecture associated with the nationwide PSBN. The Act provides that up to \$135 million is available for the Implementation grant program. Federal grant funds will pay for no more than 80 percent of the costs pertaining to activities carried out under the program with each state providing a 20 percent matching grant unless NTIA's Administrator grants a waiver.

Pursuant to this direction, on February 6 NTIA released the Federal Funding Opportunity (FFO) for the State and Local Implementation Grant Program (SLIGP). The FFO made \$121.5 million available to 56 states and territories to support planning for the establishment of the PSBN. SLIGP will cover a narrowly defined set of planning activities to include the development of: effective governance structures, procedures to ensure outreach to local and tribal jurisdictions, and proposed Memoranda of Understanding (MOUs) to facilitate the use of existing infrastructure.

Under the FFO, NTIA will distribute SLIGP funding to the 56 eligible states and territories in two distinct phases. Fifty percent of the funds will be available during the first phase to support activities to be undertaken prior to a state's or territory's consultation with FirstNet. The remaining funds will become available after the initial consultation with FirstNet. Notably, the FFO states that the second phase will "fund data collection activities provided that FirstNet has determined that it needs standardized asset and infrastructure inventories from the States in designing the nationwide public safety broadband network."

The FFO also identifies seven programmatic priorities for the recipients of funds under SLIGP:

- Establish a governance structure to consult with FirstNet;
- Develop procedures to ensure local and tribal representation and participation in the consultation process with FirstNet;
- Create a process for education and outreach about the PSBN to key stakeholders;
- Identify potential public safety users of the public safety broadband network;
- Develop a standard MOU to facilitate the use of existing infrastructure;
- Develop staffing plans that include local and tribal representation to participate in the public safety governance structure and to prepare for data collection activities in consultation with FirstNet; and
- Prepare a comprehensive plan describing the public safety needs that they expect FirstNet to address in its design of the nationwide public safety broadband network

Taken together, these priorities will facilitate intra-state collaboration to establish the foundation that will support subsequent network deployment. NTIA has by design deferred consideration of the key network-oriented issues posed by the Act until a later stage of the SLIGP process, including defining coverage needs, user requirements, and network hardening and resiliency requirements. NTIA has similarly invited States, local and tribal jurisdictions, and territories to set aside the complex intricacies of the actual operation of the PSBN and to focus instead on establishing workable structures and procedures. Narrowly tailoring the grant-funded activities also allows FirstNet to more rapidly assess the likelihood that collaborative efforts will be fruitful.

The Most Effective SLIGP Applications Will Engage Four Key Stakeholder Groups.

Among NTIA's criteria for evaluation of the grant applications is the requirement that the submitting entity endeavor to develop applications that demonstrate efforts to engage key stakeholder groups. Evaluators will score outreach to the following stakeholders:

- State government officials with responsibility for, or oversight over, either public safety or not exclusively public safety broadband networks;
- Local, regional, and tribal government officials, including local government representatives to Statewide Governing Bodies or Statewide Interoperability Executive Committees and telecommunications officers and advisors to local government;
- Alternative infrastructure providers, including representatives of telecommunications cooperatives, utility companies, municipal networks, BTOP or BIP funded networks and other intra-state carriers or critical infrastructure providers; and
- Representatives of communities that currently have inadequate broadband coverage.

To the greatest degree possible, a State's designated entity should seek to include in their grant applications letters of endorsement from these key stakeholders. Inclusion of endorsement letters from the following stakeholders is likely to be particularly meaningful: 1) The Chair and/or Members of a State's Statewide Interoperability Governing Body (SIGB), or its equivalent; 2) Local government or tribal government leaders from geographic areas not completely served by sufficiently high-performance broadband and/or LTE technology; 3) Representatives within State

Government, who though not the designated entity for their State, are a PSBN stakeholder and 4) Potential secondary users of the PSBN in a given state. Endorsement letters that include references to specific collaborative efforts (either on-going or as part of a funded SLIGP proposal) between the State's designated entity and a key stakeholder will allow NTIA evaluators to more easily assess an application's likelihood to meet critical SLIGP objectives.

Four Reasons Stakeholders Should Work-Together to Support the Development of Their State's SLIGP Application.

Each state and territory is permitted to submit only one application, and NTIA has already identified the total amount of grant funding each state/territory stands to receive. Why, then, should designated state entities and other key stakeholder groups invest time and resources in the development of comprehensive, well-devised SLIGP applications?

1. FirstNet is likely to draw key inputs from both SLIGP applications and the execution of the grant funded projects. Whatever decisions FirstNet makes with respect to the network architecture and business plan that undergird the PSBN's eventual deployment, FirstNet will want to point to demonstrable facts that support its decisions. The SLIGP will create the record upon which FirstNet's decisions are made and justified.

2. Failure to invest resources necessary to develop and execute comprehensive SLIGP applications is likely to lend support to a conclusion that there exists no alternative to the deployment plans favored by large, national providers. Members of the FirstNet Board of Directors will seek to implement the PSBN as quickly and as effectively as possible. The fact that the very first meeting of the FirstNet Board included a review of a conceptual network architecture provides evidence that the Board will seek to conduct its work and make decisions with a sense of urgency. Apparently recognizing this, commercial telecommunications provider Verizon has indicated to NTIA that that meaningful deployment of the PSBN could commence within the next 12-24 months *if implemented in a manner consistent with the approach outlined in Verizon's White Paper*² Such an approach that would rely on carrier infrastructure wherever possible and would place less emphasis on much of the public fiber and other public infrastructure that has been deployed with great effort over the past two decades. If there is a case to be made that there are workable alternatives to this carrier-centric model that FirstNet should consider, efforts to make this case must start with SLIPG grant applications. Similarly, if particular public or alternative infrastructure is to be included in long-term FirstNet plans, now is the time for the stakeholders to make that case and provide related information through the grant-funded planning process.

3. The programmatic priorities of the SLIGP, while not easily accomplished, are relatively narrowly defined and are achievable. The pressing application submission deadline of March

² Verizon's Comments, at p 3 in response to NITA's NOI on the Development of the Nationwide Interoperable Public Safety Broadband Network, Docket No. 120928505-2505-01.
http://www.ntia.doc.gov/files/ntia/verizon_firstnet_comments_11-9-2012.pdf

19, 2013 can serve as a catalyst, encouraging stakeholders to get together and develop a clear, stakeholder-endorsed pathway that a State will follow to achieve the objectives of the SLIGP. With the State's designated entity providing stewardship and other key stakeholder groups demonstrating a commitment to pursue collaborative approaches, the applications can exceed the requirements of the SLIGP and send a powerful message to FirstNet. Moreover, starting a workable collaborative approach early will also pave the way for the data collection efforts of stage two which to be successful will necessarily require a strong working relationship and channels of communications amongst all stakeholders.

4. The SLIGP is an opportunity for state, local and tribal jurisdictions, along with owners and operators of alternative infrastructure assets, to highlight the strengths and capabilities they possess. Local and regional network resources can provide models upon which effective governance structures, MOUs, and outreach efforts can be developed. Examples such as the National Capital Region Network (NCRnet) and One Maryland Broadband Network (OMBN) help showcase that multi-use and multi-user networks can be operated and deployed throughout the country. NCRnet, interconnecting 19 jurisdictions in the Washington, DC metropolitan area, is a dedicated multi-functional fiber optic network optimized for public safety communications and other interjurisdictional communications. OMBN was granted \$115 million under the Recovery Act's Broadband Technology Opportunities Program ("BTOP") to build a high-speed fiber optic network that will directly connect 1,000 community anchor institutions and span 4,200 square miles touching every county in the State of Maryland. Stakeholders involved in the successful deployment of local and/or regional networks can help FirstNet identify examples of workable, multi-party networks and, in so doing, support a conclusion that inclusion of such assets in the PSBN has the potential to speed deployment.

Conclusion: The very process of preparing applications for the Implementation grant funding presents States an opportunity to reach out to regional, local, and tribal jurisdictions, as well as other infrastructure providers, and to jump-start collaborative efforts. There is no reason to wait until the completion of the grant to demonstrate to FirstNet that intra-state collaborative efforts are possible. To the contrary, given the time pressure on FirstNet to make decisions that will deliver results, State and local government stakeholders would benefit from efforts that help make the case that approaches seeking to leverage state and local strengths and capabilities will allow PSBN deployment to commence quickly and effectively. Even if such collaborative efforts cannot be completed by March 19, 2013, the fact that they are under way could help pave the way for constructive, long-term relationships among all concerned, including NTIA and FirstNet.

* * *

This paper is solely for general educational purposes. It is not intended to be consulting or legal advice and should not be treated or cited as such. For legal advice, please consult your own legal counsel or contact us.

If you have questions or need additional information, please contact:

Baller Herbst Law Group (www.baller.com)

Jim Baller (202) 833-1144 jim@baller.com

Sean Stokes (202) 833-0166 sstokes@baller.com

Columbia Telecommunications Corp. (www.CTCnet.us)

Joanne Hovis (301) 933-1488 jhovis@CTCnet.us

Andrew Afflerbach (301) 933-1488 aafflerbach@CTCnet.us

William Maguire³ (202) 487-7595 william.maguire@gmail.com

³ William Maguire, a consultant working with the Baller Herbst Law Group and CTC Technology and Energy, recently served as Chief of Staff to the Broadband Technology Opportunities Program (BTOP) at the US Department of Commerce.