



FirstNet[®]

FirstNet Network Funding and Revenue Reinvestment Provisions

Mission: The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) (“the Act”) established the First Responder Network Authority (“FirstNet”) to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (“NPSBN”).

Funding Source: To fulfill its mission, Congress provided FirstNet with funding sources to offset the massive costs of the nationwide network deployment and the self-sustainability requirements under the Act, including:

- Up to \$7 billion in cash;
- Network user (subscriber) fees;
- Fees from FirstNet’s partner(s) under a covered leasing agreement (“CLA”) that permits the partner(s) to access excess network capacity on a secondary basis for non-public safety services in exchange for constructing, managing, or operating all or part of the NPSBN; and
- Fees from opt-out States for use of elements of the core network; including any and all interoperability costs.

The Act’s Authorities: The Act states that fees must be reinvested to construct, maintain, operate, or improve the nationwide network:

- **FirstNet’s Use of Revenue:** “The First Responder Network Authority shall reinvest amounts received from the assessment of [network user fees, CLA fees, or network equipment or infrastructure lease fees] under [47 U.S.C. § 1428(a)] in the nationwide public safety interoperable broadband network by using such funds only for constructing, maintaining, operating, or improving the network.” 47 U.S.C. § 1428(d).
- **Opt-Out State’s Use of Revenue:** “[a]ny revenue gained by the State from such leasing agreement shall be used only for constructing, maintaining, operating, or improving the radio access network of the State.” 47 U.S.C. § 1442(g)(2).

Final Interpretations: FirstNet is exempt from most Administrative Procedure Act requirements, which governs how agencies generally promulgate official rules. Nevertheless, FirstNet wanted to ensure the public had a chance to inform FirstNet’s legal interpretations of the Act and released public notices for comment to help guide FirstNet’s efforts in achieving its mission. After review and analysis of the comments and to satisfy its statutory duty to establish a sustainable nationwide network (including in rural areas), FirstNet concluded:

- The Act provides FirstNet with the authority to require opt-out States to reinvest revenues (subscriber fees and revenue from CLAs/public-private partnerships), beyond reasonable RAN costs, in the nationwide network.
 - **Approximately 75% of Respondents to the public notices, including local, state, federal and private sector entities, agreed with or remained neutral regarding this interpretation**
- The Act allows FirstNet to take funding considerations into account when negotiating a spectrum lease with an opt-out State and thus to impose a revenue reinvestment restriction within the terms of such a lease.
 - **Approximately 74% of Respondents to the public notices, including local, state, federal and private sector entities, agreed with or remained neutral regarding this interpretation**

Achieving Sustainability: Congress mandated that FirstNet deploy a self-sustaining, nationwide network, irrespective of if a State opts-in or opts-out. Given the finite funding sources and Congress’ mandate that FirstNet meet substantial rural milestones, it is critical that FirstNet leverages the high-density, high-revenue-generating areas of all States. This nationwide solution achieves expeditious delivery of dedicated, wireless broadband services to public safety in all areas of the country.