



January 30, 2020

**MEMORANDUM FOR:** Douglas Kinkoph  
Associate Administrator of the Office of Telecommunications and  
Information Applications, Performing the Non-Exclusive  
Functions and Duties of the Assistant Secretary of Commerce  
for Communications and Information  
National Telecommunications and Information Administration

Jeff Bratcher  
Chief Technology and Operations Officer, Performing the  
Executive Functions of the Chief Executive Officer  
First Responder Network Authority

  
Mark H. Zabarsky  
Principal Assistant Inspector General for Audit and Evaluation

**FROM:** Mark H. Zabarsky  
Principal Assistant Inspector General for Audit and Evaluation

**SUBJECT:** *NTIA and FirstNet Should Improve Controls to Strengthen  
the Fee Collection Process*  
Final Report No. OIG-20-015-A

This final report provides the results of our audit regarding the management of fee payments from AT&T Inc. (AT&T) to the First Responder Network Authority (FirstNet). Our audit objectives were to determine whether FirstNet's processes for setting, collecting, and managing fees, and the National Telecommunications and Information Administration's (NTIA's) processes for reviewing and approving fees, are consistent with legislative and contractual requirements.

As discussed at our September 23, 2019, exit conference, we identified control weaknesses regarding the fee review process used by NTIA and FirstNet. NTIA and FirstNet have developed the *National Telecommunications and Information Administration and First Responder Network Authority Standard Operating Procedures for Fee Review (Fee Review SOP)*. However, as part of that operating procedure, NTIA did not document its methodology for reviewing FirstNet's proposed fees, and NTIA and FirstNet did not adequately define controls to move fee payments placed in a suspense account to FirstNet's account after NTIA's approval. Additionally, FirstNet received interagency services without a signed agreement in place prior to the start of services.

This report includes recommendations to strengthen NTIA's and FirstNet's management controls. See appendix A for specific details on our objectives, scope, and methodology.

## Background

The Middle Class Tax Relief and Job Creation Act of 2012 (the Act) established FirstNet as an independent authority within NTIA of the U.S. Department of Commerce (the Department), with the duty and responsibility to deploy and operate the Nationwide Public Safety Broadband Network (NPSBN).<sup>1</sup> The Act authorizes FirstNet to enter into a public-private arrangement to construct, manage, and operate the NPSBN<sup>2</sup> as well as collect spectrum lease fees.<sup>3</sup> Per the Act, NTIA must review and approve the proposed fee payments.<sup>4</sup> FirstNet cannot access the funds until NTIA approves them.

On March 28, 2017, FirstNet<sup>5</sup> entered into a contract with AT&T (contractor) to provide a single, interoperable NPSBN. The 25-year public-private NPSBN contract is an indefinite-delivery, indefinite-quantity fixed price contract.<sup>6</sup> In addition to FirstNet payments to the contractor, the NPSBN contract assigns the Band 14<sup>7</sup> rights-of-use to the contractor and requires yearly spectrum lease payments from the contractor to FirstNet—\$18 billion over the life of the contract. With the exception of the first payment—which was scheduled and received in April 2018—the contract stipulates that payments to FirstNet are due 2 weeks prior to the start of the subsequent fiscal year. As of November 2019, FirstNet has received three contractor payments of \$120 million for fiscal years (FYs) 2018, 2019, and 2020 for a total of \$360 million. Per the Act, FirstNet is required to reinvest a portion of fees collected into the network to maintain and improve the NPSBN.<sup>8</sup> Before making a reinvestment decision, FirstNet focused on developing the investment roadmap, which includes FirstNet’s strategy for investing funds into the NPSBN. FirstNet made its first investment decision in September 2019.

## Findings and Recommendations

In addressing our audit objectives, we found that, while the processes for setting and collecting FirstNet fees met legislative and contractual requirements, NTIA’s process for reviewing and approving fees needs strengthening. Because FirstNet had neither finalized its process for reinvesting the fees nor used funds collected to upgrade the network, a complete assessment of FirstNet’s management of fees was not conducted. However, after completion of our fieldwork, the FirstNet Board of Directors approved two reinvestment recommendations on September

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<sup>1</sup> Pub. L. No. 112-96, *Middle Class Tax Relief and Job Creation Act of 2012*, §§ 6204(a), 6206(b).

<sup>2</sup> *Id.* at § 6206(b)(4).

<sup>3</sup> *Id.* at § 6208(a)(2).

<sup>4</sup> *Id.* at § 6208(c).

<sup>5</sup> At the time of the awarding of the contract, FirstNet had an interagency agreement (IAA) with the U.S. Department of Interior (DOI) for acquisition services. DOI, on behalf of FirstNet and the Department, signed the contract. The management of the contract was transferred from DOI to FirstNet in December 2017.

<sup>6</sup> The Federal Acquisition Regulation (FAR), Part 16, Types of Contracts, states, in part, “[a]n indefinite quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period” (FAR § 16.504(a)), and “[a] firm-fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract” (FAR § 16.202-1). The FAR is codified in Title 48 of the Code of Federal Regulations.

<sup>7</sup> Band 14 refers to the 700 megahertz D block spectrum used for public safety.

<sup>8</sup> Pub. L. No. 112-96, § 6208(d).

18, 2019. In the future, we plan to continue our oversight of FirstNet’s reinvestment efforts, including all Board-approved reinvestment decisions.

During fieldwork, we confirmed that, contrary to the Act, FirstNet spectrum lease fees due by September 15, 2018, were collected prior to NTIA’s approval. To avoid a repeat of this issue, NTIA and FirstNet subsequently developed the joint *Fee Review SOP*, dated February 27, 2019. The *Fee Review SOP* outlines the responsibilities of each agency, lists documents FirstNet must submit to NTIA, and specifies the timeframe for the submission of FirstNet’s fee proposal and NTIA’s review.

Although NTIA and FirstNet developed procedures to address control weaknesses, we identified opportunities to strengthen the *Fee Review SOP*. We found that the *Fee Review SOP* did not include NTIA’s internal procedures for reviewing FirstNet fee proposals or a process governing the transfer of funds from a suspense account to FirstNet following NTIA’s approval. Further, FirstNet received financial services in FYs 2018 and 2019—for a period of approximately 6 and 8 months, respectively—without having a formal written agreement with the National Institute of Standards and Technology (NIST).<sup>9</sup>

## I. The NTIA and FirstNet *Fee Review SOP* Is Incomplete

The February 27, 2019, *Fee Review SOP* does not include complete internal procedures. For example, the *Fee Review SOP* identifies the documentation that FirstNet must submit to NTIA; however, it lacks detailed procedures describing how NTIA will review and reconcile submitted documentation. Further, the *Fee Review SOP* includes procedures for placing fees that have been received, but have not been approved, in a suspense account held by NIST.<sup>10</sup> However, the *Fee Review SOP* does not include procedures for transferring funds out of the account subsequent to NTIA approval of the fees. The Government Accountability Office’s (GAO’s) *Standards for Internal Control in the Federal Government* states that management is responsible for developing, maintaining, and clearly documenting internal controls, which, in part, communicates the “who, what, when, where, and why of internal control execution to personnel.”<sup>11</sup> Additionally, a documented procedure “provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel.”<sup>12</sup>

NTIA stated it had not developed internal procedures because the current staff is familiar with the required financial documents and experienced in reconciling them. However, without comprehensive procedures for reviewing fee proposals, NTIA risks loss of institutional knowledge and delays in the fee review process should staff turnover occur. Additionally, the lack of assigned responsibilities for authorizing the transfer of funds from

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<sup>9</sup> NIST is the accounting services provider for NTIA and FirstNet.

<sup>10</sup> The NPSBN contract requires the contractor to make yearly payments per the payment schedule. The contractor submits the fee payment to FirstNet regardless of whether NTIA has approved the fees. While the fees are in the suspense account, FirstNet cannot access the funds.

<sup>11</sup> U.S. Government Accountability Office, September 2014. *Standards for Internal Control in the Federal Government*, GAO-14-704G. Washington, DC: GAO, principle 3.9–3.10.

<sup>12</sup> *Id.* at principle 3.10.

the suspense account could delay FirstNet's access to the funds and affect FirstNet's ability to reinvest in NPSBN projects in a timely manner. In June 2019 and based on our discussions, NTIA developed and signed an internal SOP<sup>13</sup> to complement the *Fee Review SOP*. The internal NTIA SOP defines its fee review procedures to include roles, responsibilities, and reconciliation processes; however, processes to move funds out of suspense have not been addressed.

## II. FirstNet Received Approximately \$830K in Interagency Services Without a Signed Agreement

FirstNet did not have approved IAAs for the financial services it received from NIST for significant periods in FYs 2018 and 2019. Specifically, FirstNet did not have a financial services agreement, signed by both parties, in place with NIST from October 1, 2017, to March 26, 2018 (6 months), as well as October 1, 2018, to May 23, 2019, (8 months) despite receiving services. FirstNet's previous IAAs with NIST neither (1) provided for potential continuation of services after the period of performance nor (2) specified that services could be continued after the period of performance based upon an oral agreement. The Department's *Agreements Handbook* states that agreements must be developed and appropriately approved to obtain services from another federal entity.<sup>14</sup> NIST services provided on behalf of FirstNet include (1) collecting and recording fees from the NPSBN contractor, (2) processing travel orders and vouchers, (3) recording FirstNet transactions, and (4) preparing external reports.

FirstNet officials reported that the lapse in having approved IAAs in place was due to disagreements between FirstNet and NIST concerning the lack of cost methodology transparency. Additionally, FirstNet reported that it did not receive (1) the draft FY 2018 IAA for review from NIST until several weeks into FY 2018 and (2) the draft FY 2019 IAA until January 2019.<sup>15</sup> FirstNet stated the FY 2019 IAA was further delayed because the Department's Office of General Counsel requested clarification during the FY 2019 IAA approval process. FirstNet stated it entered into oral agreements with NIST to continue receiving financial services until the IAAs were finalized. However, the Department's *Agreements Handbook* states that services should not begin until both parties have signed the IAA, and an oral agreement does not meet that criterion.

Without approved agreements in place, FirstNet could be vulnerable to significant risks including potential disputes over administrative responsibilities and the inefficient use of resources. Financial services that could be adversely impacted should disagreement occur regarding the scope and quality of services provided by NIST during an IAA lapse include, but are not limited to, FirstNet fee collections from the contractor, availability of funds for reinvestment, and financial reporting.

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<sup>13</sup> U.S. Department of Commerce National Telecommunications and Information Administration, June 25, 2019. *Fee Review Standard Operating Procedures*, Version 1.0. Washington, DC: DOC NTIA.

<sup>14</sup> DOC, November 2011. *Agreements Handbook*. Washington, DC: DOC, 2 & 4.

<sup>15</sup> OIG notes that while a federal government shutdown occurred from December 22, 2018, to January 25, 2019, the lapse in time between the start of FY 2019 and FirstNet receiving the draft FY 2019 IAA was still extensive.

## Recommendations

We recommend that the NTIA Assistant Secretary for Communications and Information do the following:

1. Develop comprehensive procedures for reviewing and reconciling FirstNet fee proposal data.
2. Coordinate with FirstNet's Office of the Chief Financial Officer to develop procedures for the transfer of funds out of the suspense account.

We recommend that the FirstNet Chief Executive Officer do the following:

3. Coordinate with NIST and other appropriate parties to develop controls to ensure FirstNet and NIST meet the requirements of the Department's *Agreements Handbook*.

## Summary of Agency Response and OIG Comments

On December 19, 2019, we received NTIA and FirstNet's response to the draft report's findings and recommendations, which we include within this final report as appendix B. NTIA and FirstNet concurred with our recommendations. This final report will be posted on OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 & 8M).

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.

We appreciate the cooperation and courtesies extended to us by your staff during our audit. If you have any questions or concerns about this report or our process, please contact me at (202) 482-3884 or Chris Rose, Supervisory Auditor, at (202) 482-5558.

cc: Edward Parkinson, Executive Director of External Affairs, Performing the Non-Executive Functions of the Chief Executive Officer, FirstNet  
Lisa Casias, Deputy Chief Executive Officer, FirstNet  
Kim Farington, Chief Financial Officer, FirstNet  
Erin Greten, Chief Counsel Officer, FirstNet  
Uzoma Onyeije, Audit Liaison, FirstNet  
Marsha MacBride, Associate Administrator of the Office of Public Safety Communications, NTIA  
Kathy Smith, Chief Counsel, NTIA  
Milton Brown, Deputy Chief Counsel and Audit Liaison, NTIA

## Appendix A. Objectives, Scope, and Methodology

The objectives of our audit were to determine whether FirstNet's processes for setting, collecting, and managing fees, and NTIA's processes for reviewing and approving the fees, are consistent with legislative and contractual requirements. To accomplish our objectives, we did the following:

- Reviewed the following policies and guidance:
  - GAO's *Standards for Internal Control in the Federal Government*<sup>16</sup> to assess management controls.
  - Code of Federal Regulations, *Review and Approval of Fees Proposed by the First Responder Network Authority (FirstNet) (47 C.F.R. Part 500)* to identify NTIA regulations to review the fee proposals.
  - U.S. Department of Commerce's *Agreements Handbook* to identify requirements for IAAs.
- Reviewed FirstNet's FYs 2018 and 2019 IAAs with NIST to understand NIST's role in the fee collection, recording, and fund management processes.
- Obtained and reviewed the NPSBN contract<sup>17</sup> to identify fee payment schedule and collection information.
- Obtained and reviewed FirstNet's and NTIA's internal policies and procedures to determine whether FirstNet and NTIA have adequate procedures in place to manage and review the fee payments.
- Interviewed FirstNet personnel responsible for administering and monitoring the contract and NTIA personnel responsible for reviewing and approving fees to understand their responsibilities for contract management and reviewing and approving the fee proposals.
- Reviewed FirstNet's draft *Investment Strategy and Roadmap* to obtain an understanding of its planned reinvestment processes and controls.
- Reviewed two<sup>18</sup> fee payments received in 2018 to assess whether the fee amounts were in accordance with the contract.

Because FirstNet had not yet finalized its reinvestment plan and fees had not yet been invested into the network at the time of our fieldwork, we did not review FirstNet's implementation of its reinvestment process. FirstNet made its first investment decisions in September 2019.

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<sup>16</sup> GAO-14-704G.

<sup>17</sup> Task Order Number 4 of the AT&T contract includes the fee payment schedule and due dates.

<sup>18</sup> A non-statistical sample was used because only two fee payments had been received at the time of our fieldwork.

Further, we gained an understanding of internal control processes significant within the context of the audit objectives by interviewing FirstNet and NTIA personnel and reviewing documentation for evidence of internal control procedures. In satisfying our audit objectives, we did not rely on computer-processed data. Instead, we reviewed documentation submitted by FirstNet and NTIA; therefore, we did not test the reliability of FirstNet's or NTIA's information technology systems. We identified weaknesses in internal control related to internal procedures as noted in the findings and recommendations section of this report. We found no indications of fraud, waste, or abuse.

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

We conducted fieldwork from March 2019 through July 2019 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. App.), and Department Organization Order 10-13, dated April 26, 2013. We performed our work at FirstNet headquarters in Reston, Virginia; Department headquarters in Washington, DC; and the OIG regional office in Denver, Colorado.

## Appendix B. Agency Response

DEC 19 2019



UNITED STATES DEPARTMENT OF  
COMMERCE  
National Telecommunications and  
Information Administration  
Washington, DC 20230

**MEMORANDUM FOR:** Carol N. Rice  
Assistant Inspector General for Audit and Evaluation

**FROM:** Douglas W. Kinkoph *DWK*  
Associate Administrator, Office of Telecommunications and  
Information Applications, Performing the Non-Exclusive  
Functions and Duties of the Assistant Secretary of Commerce for  
Communications and Information

Jeff Bratcher  
Chief Technology and Operations Officer, Performing the  
Executive Functions of the Chief Executive Officer

**SUBJECT:** NTIA and FirstNet Authority Response to the OIG Draft Report on  
the Fee Collection Process

Digitally signed by Jeffrey Bratcher  
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Date: 2019.12.19 14:07:37 -0700



The National Telecommunications and Information Administration (NTIA) and the First Responder Network Authority (FirstNet Authority) appreciate the efforts of you and your staff at the Department of Commerce's Office of Inspector General (OIG) in reviewing the management of Nationwide Public Safety Broadband Network (NPSBN) fee payments to the FirstNet Authority. Thank you also for the opportunity to comment on the OIG's draft report, *NTIA and FirstNet Should Improve Controls to Strengthen the Fee Collection Process*. NTIA agrees with the OIG's two recommendations assigned to the Assistant Secretary for Communications and Information and the FirstNet Authority agrees with the one recommendation assigned to the FirstNet Authority Chief Executive Officer.

Should you have any questions or require additional information regarding the NTIA recommendations, please contact Mike Dame with the NTIA Office of Public Safety Communications at 202-482-1181 or [mdame@ntia.doc.gov](mailto:mdame@ntia.doc.gov). Should you have any questions or require additional information regarding the FirstNet Authority recommendation, please contact Uzoma Onyeije with the FirstNet Authority Office of Chief Counsel at 571-665-6142 or [Uzoma.onyeije@firstnet.gov](mailto:Uzoma.onyeije@firstnet.gov).

cc: Milton Brown, NTIA Audit Liaison

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