



FirstNet[®]



Second Notice Response Summary

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Acting Chief Counsel

June 2, 2015

Second Notice and Comment Process Overview



FirstNet initiated its second public notice and comment process seeking comments on certain legislative interpretations under the Act

- **Date of Release:** March 13, 2015
- **Who Could Comment:** Any individual or organization
- **Comment Deadline:** April 28, 2015
- **Comments Posted:** Publically available at www.regulations.gov

Second Public Notice



- The Second Public Notice sought comments on certain interpretations under the Act relating to key topics including:
 - Technical Requirements for Equipment Use on the Network
 - Network Policies
 - State Plan Implementation and Decision Process
 - Customer, Operational, and Funding Considerations Regarding State Assumption of Responsibility to Build and Operate a RAN
- Comments received inform the RFP process, interpretations of the Act, and network policies
- We have made no final interpretations
- Numbers and positions of commenters are approximations



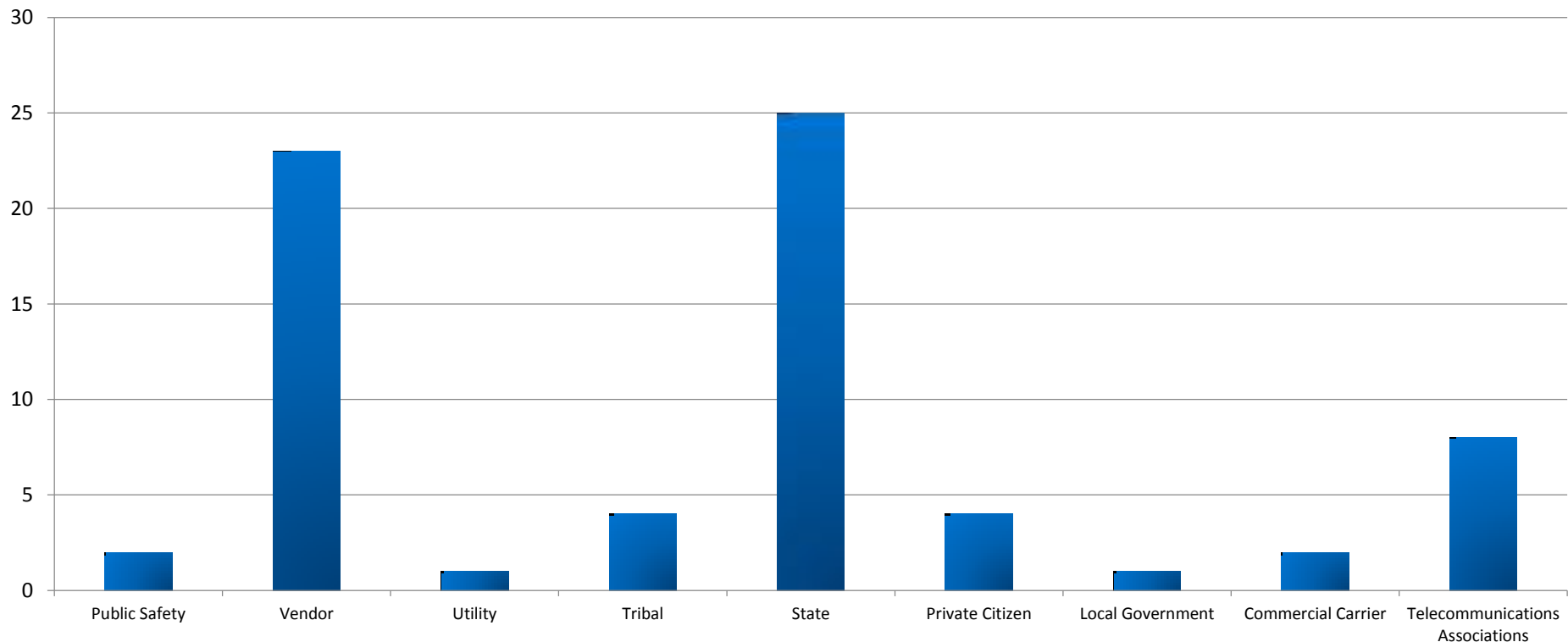
Second Public Notice

March 2015

Overview: Second Notice Responses



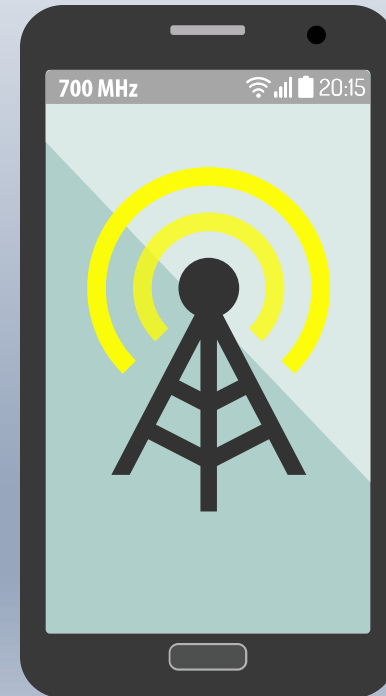
Summary of Responses Totals
by Organization Type



A total of **70** responses were received from various groups, including State, local and Tribal governments, commercial carriers and vendors, and associations.

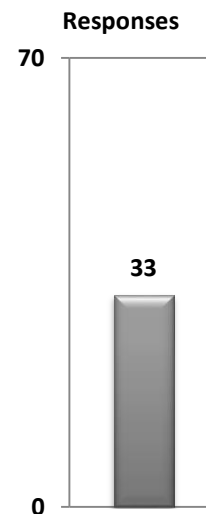
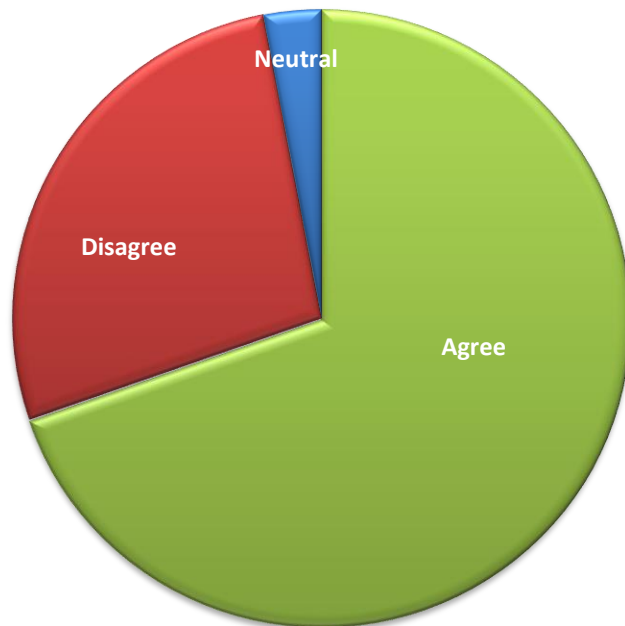
Technical Requirements Ensure Interoperability While Preserving Innovation

FirstNet must **promote competition** in the equipment market place by requiring, among other things, **devices used on the network** be built to open, non-proprietary, commercially available standards....



Technical Requirements for Equipment Use on Network

Notice Interpretation: Section 6206(b)(2)(B) applies to any equipment, including end user devices, used “on” (i.e., to use or access) the network, but does not include any equipment that is used to constitute the network

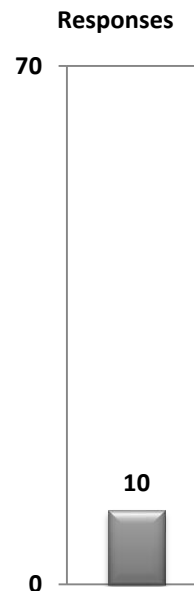
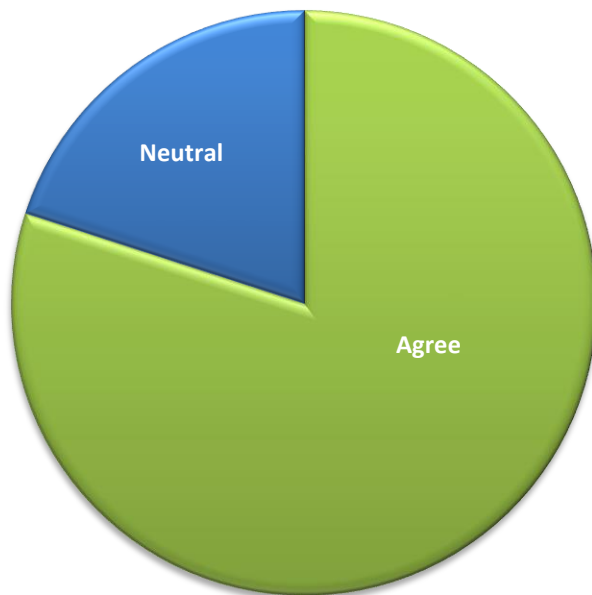


- **Agree:** the interpretation meets the standard established by the Act and should be supported by network policies
- **Disagree:** the requirement should apply more broadly to all network equipment and network elements to more fully ensure interoperability
- **Neutral:** discusses the characterization of satellite equipment under this provision

Technical Requirements for Equipment Use on Network



Notice Interpretation: Technical requirements apply whether or not the equipment is to access or use the NPSBN via a RAN in a State that has chosen to assume responsibility for RAN deployment

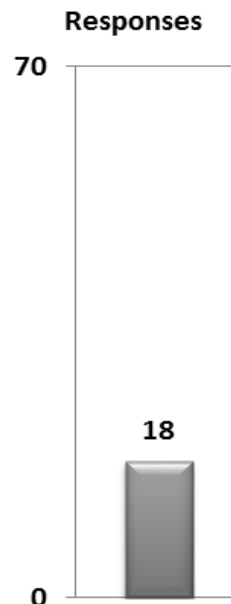
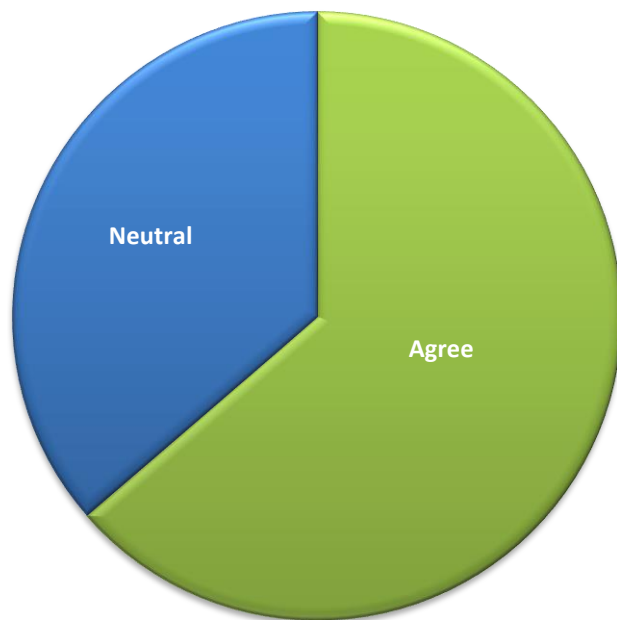


- **Agree:** meets the interoperability goals of the Act and ensures seamless operation across the network
- **Disagree:** no responses
- **Neutral:** suggested expanding the application of this provision beyond just equipment

Technical Requirements for Equipment Use on Network



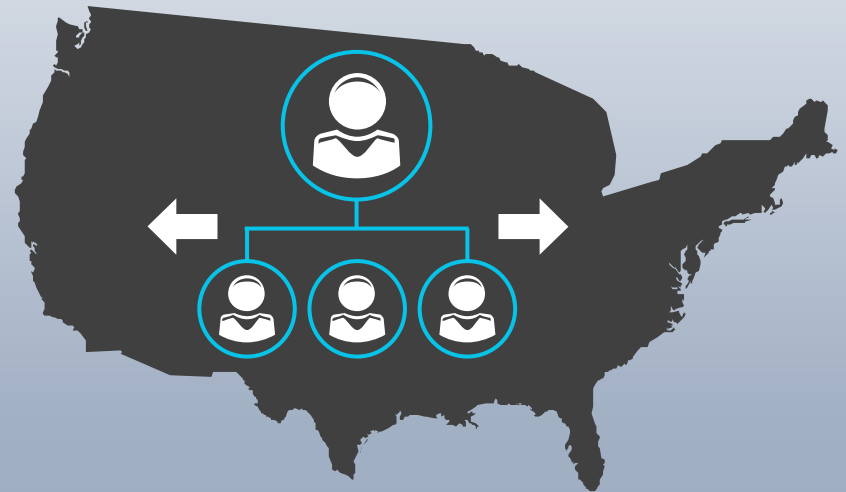
Notice Interpretation: the Act's goal of "promoting competition in the equipment market" would still be served by applying these requirements to only those parameters necessary to maintain interoperability or "with the NPSBN – that is, "connectivity" – and which are included in the Interoperability Board Report or otherwise in FirstNet network policies



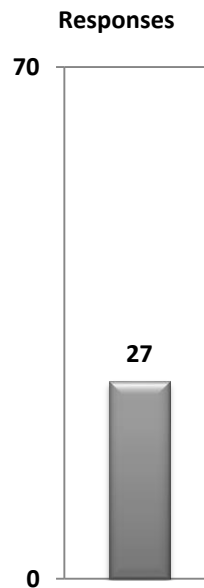
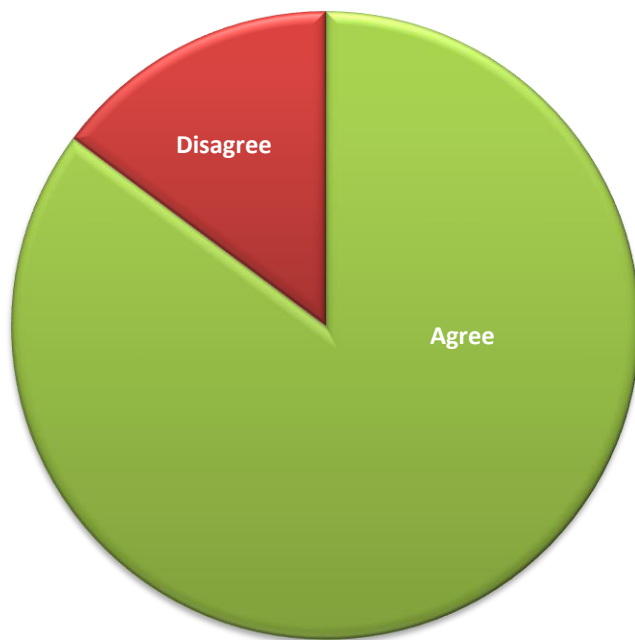
- **Agree:** "connectivity" is the key to maintaining interoperability with the NPSBN and "permitting" multiple operating systems will help promote competition
- **Disagree:** no responses
- **Neutral:** seeks more clarification on the meaning of "connectivity" so interested parties can better evaluate the scope of these requirements

Network Policies Ensure the Interoperability of the Network

FirstNet must **establish network policies** in carrying out its duties and responsibilities to deploy the network

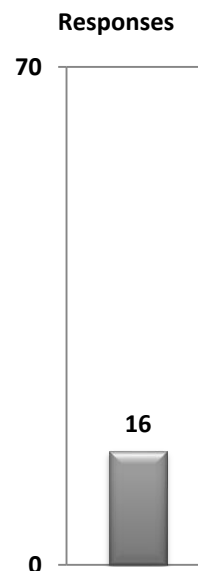
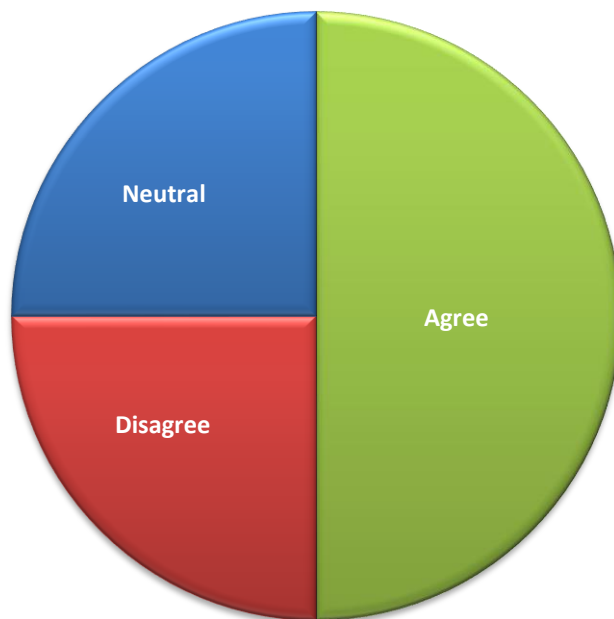


Notice Interpretation: Policies developed under Section 6206(c) apply either directly or indirectly to States that seek to conduct their own RAN deployment



- **Agree:** network policies are relevant to and must apply across all of the network to ensure network interoperability and security
- **Disagree:** the policies specifically apply to FirstNet and are not applicable to states conducting RAN deployment
- **Neutral:** no responses

Notice Interpretation: FirstNet could require compliance with network policies essential to the deployment and interoperable operation of the network for public safety in all States as a condition of entering into a spectrum capacity lease



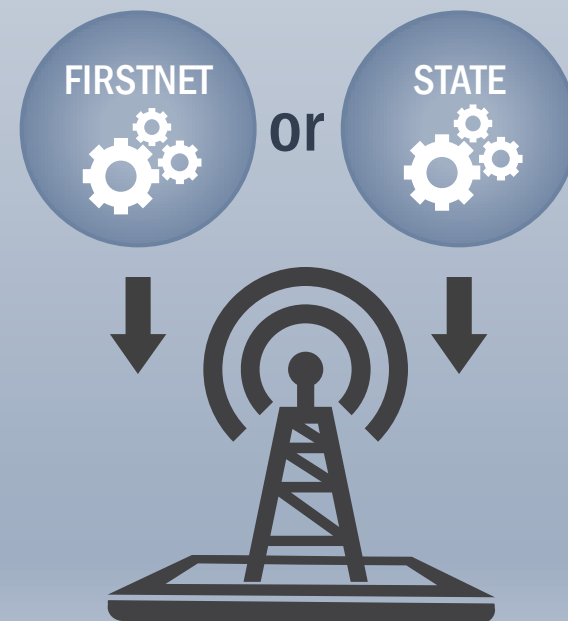
- **Agree:** interoperability of the network must be as simple as possible for the users, and multiple sets of rules and technical requirements would cause inconsistencies with the operation of the network
- **Disagree:** the Act does not permit FirstNet to leverage its control of the spectrum to deny States the benefits of exercising the statutory right to build its own network
- **Neutral:** there is a certain ambiguity as to the definition of “essential” policy, that could impinge upon the State decision in the absence of additional clarity

A State's Opportunity to Assume Responsibility for Radio Access Network Deployment and Operation

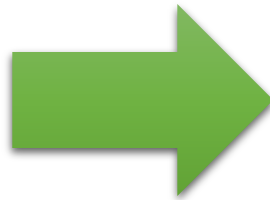
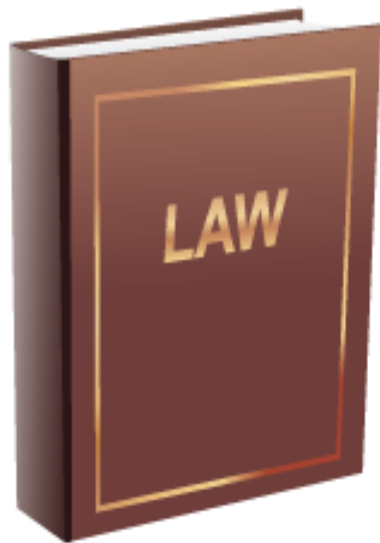


**Provide Certainty of
Process for Nationwide
and State RAN
Deployment– so as Not to
Unreasonably Delay
Service to Public Safety**

The Act describes the **process** for determining whether FirstNet or the State will conduct the deployment of the radio access network



Middle Class Tax Relief and Job Creation Act of 2012



“Upon the completion of the request for proposal process...the First Responder Network Authority shall provide to the Governor of each State, or his designee—

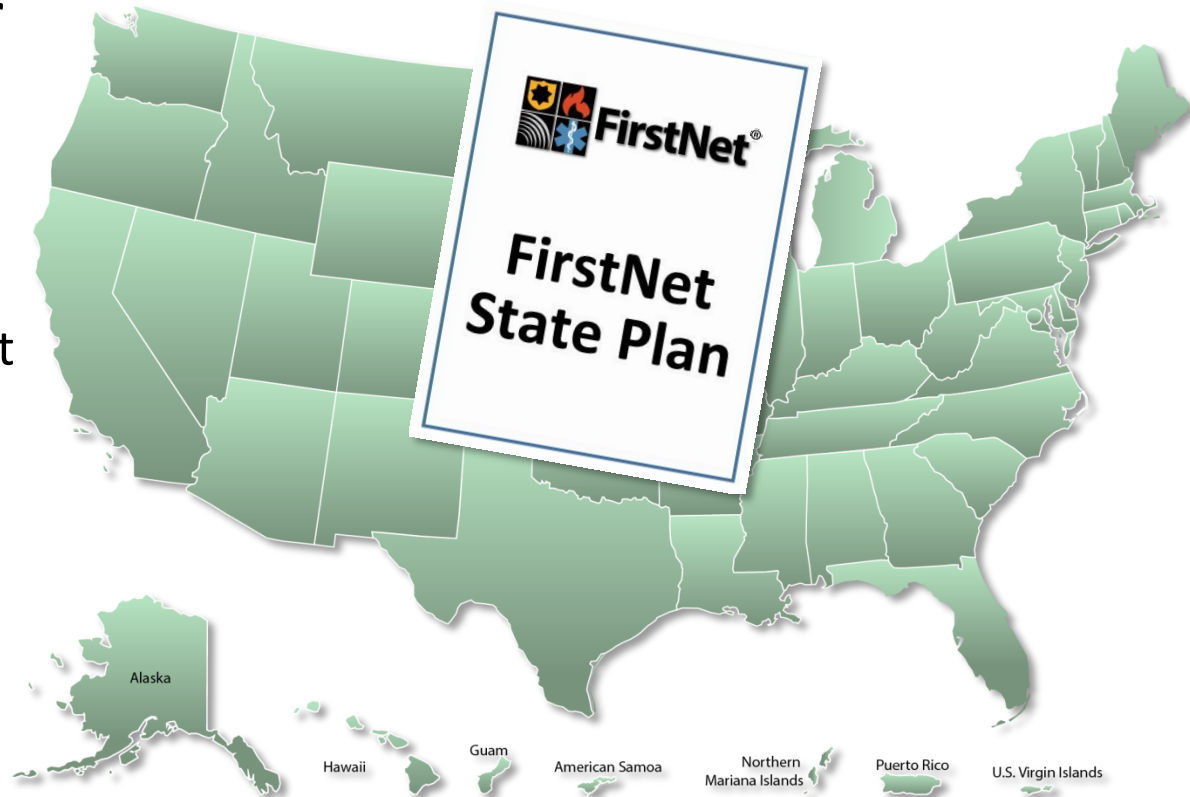
- (A) notice of the completion of the request for proposal process;
- (B) details of the proposed plan for buildout of the nationwide, interoperable broadband network in such State (“State Plan”); and
- (C) the funding level for the State as determined by the NTIA.”

State Plan Process



Under the Act, the Governor has 90 days to choose whether to

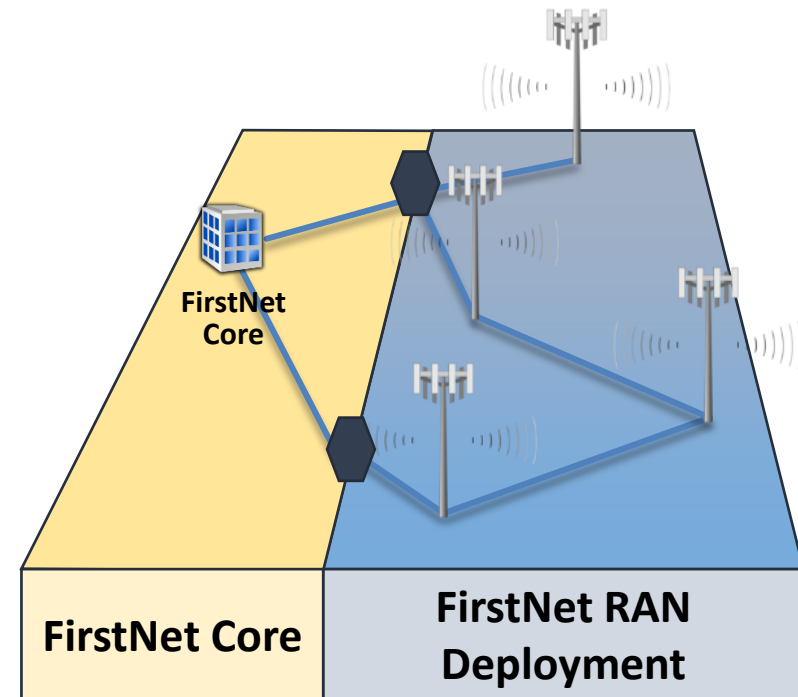
1. Participate in the FirstNet proposed radio access network (RAN) deployment or
2. Assume responsibility to conduct its own state RAN deployment



State Participation in FirstNet Proposed RAN



- Governor chooses to accept the deployment of the RAN as proposed by FirstNet
- FirstNet is responsible for RAN deployment, including the building, operation, and maintenance of the State RAN
- The State's public safety entities will be responsible for paying user fees for the FirstNet service, if they adopt the service



State Conducted RAN Deployment



The state must notify FirstNet, NTIA, and FCC of its decision to deploy a RAN and then:

Complete RFPs within 180 days

- For statewide RAN construction, maintenance, and operation

Submit alternative State plan for RAN deployment to FCC

- Must meet minimal interoperability requirements

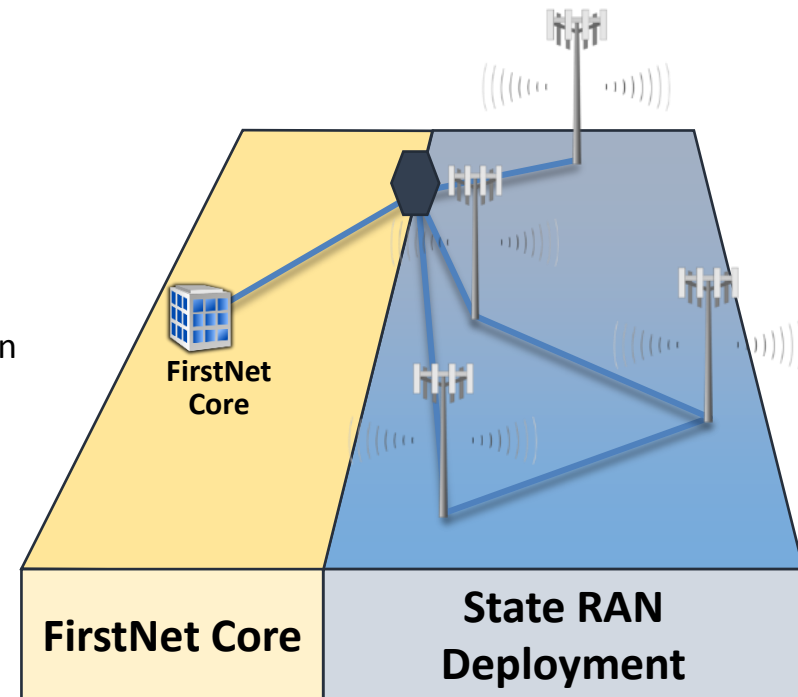
FCC reviews alternative State plan

- Disapproved – Network deployment follows FirstNet proposed plan
- Approved– State *may* apply to NTIA for a grant for RAN construction, but *must* apply to lease spectrum capacity

If approved by FCC, apply to NTIA to lease spectrum capacity from FirstNet

- Must demonstrate “cost-effectiveness” of state plan
- Must show comparable completion timelines, security, coverage, and quality of service to that of the nationwide
- Negotiate spectrum lease with FirstNet public safety broadband network (NPSBN)
- Enter into lease with FirstNet

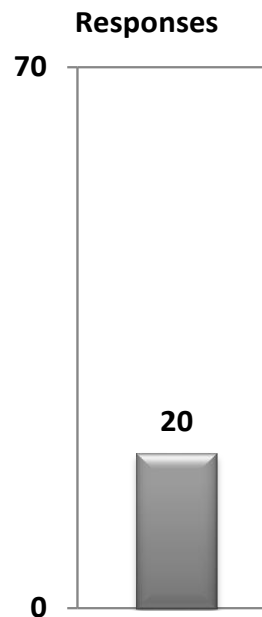
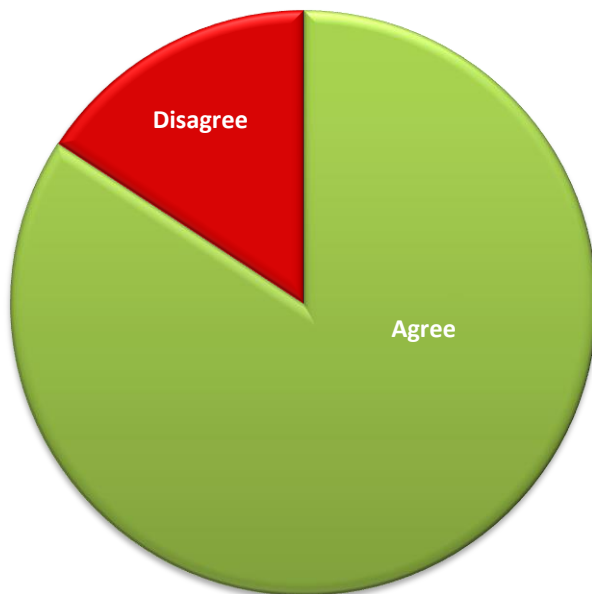
Pay fees to use FirstNet core



Presentation of State Plan



Notice Interpretation: FirstNet interprets subsection 6302(e) to require completion of the request for proposal process for the State in question, rather than the nation as a whole, prior to presentation of the plan to the State

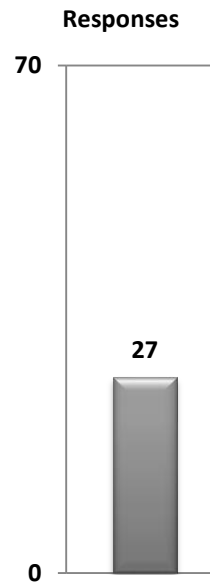
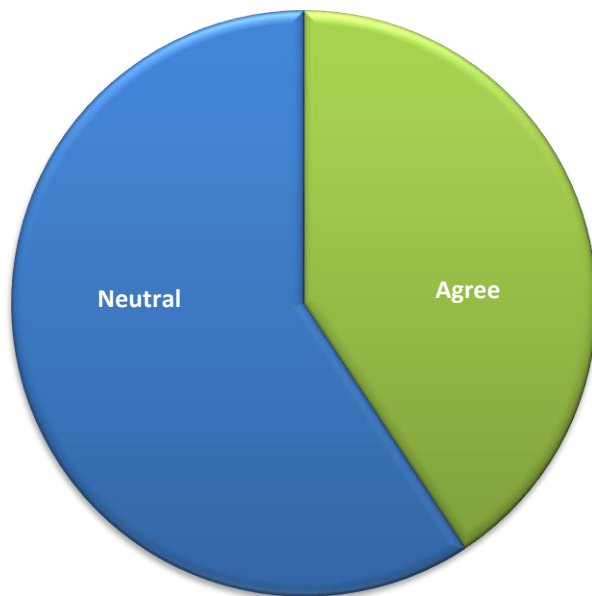


- **Agree:** a “wait for all” approach could substantially delay network implementation.
- **Disagree:** this interpretation could limit potential partners and diminish spectrum value
- **Neutral:** no responses

Content of the State Plan



Notice Interpretation: The FirstNet plan (in combination with FirstNet network policies) must provide the State with sufficient information to enable NTIA to make comparisons of cost-effectiveness, security, coverage, and quality of service

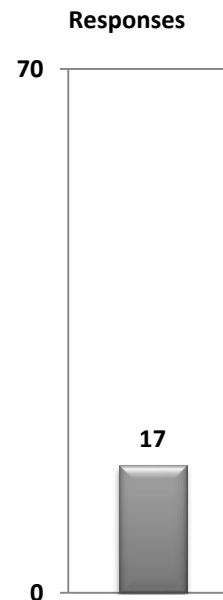
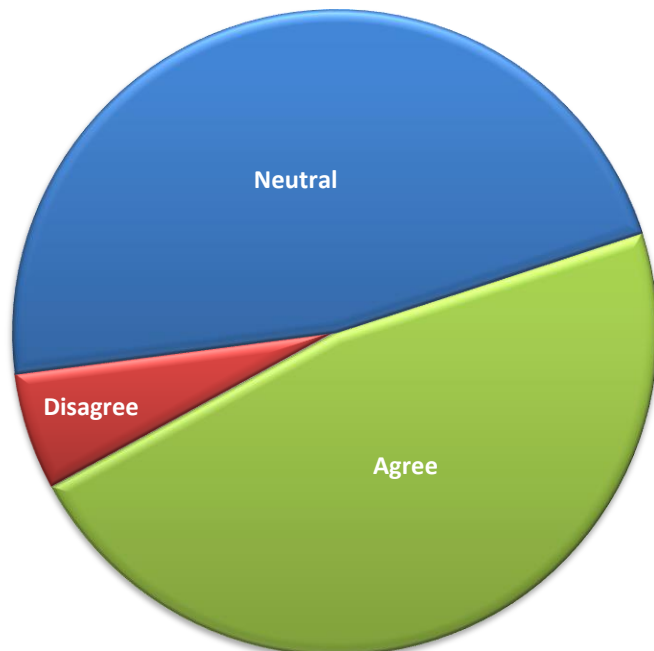


- **Agree:** the criteria discussed in the Act are sufficient to inform a State's decision relating to a network
- **Disagree:** no responses
- **Neutral:** more specific information about the details of the comparison criteria needs to be provided to assist State evaluation of the plan

Governor's Role in the State Plan Process



Notice Interpretation: The decision of the Governor relating to the RAN is binding on all jurisdictions within such State

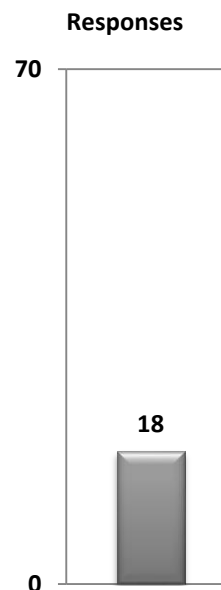
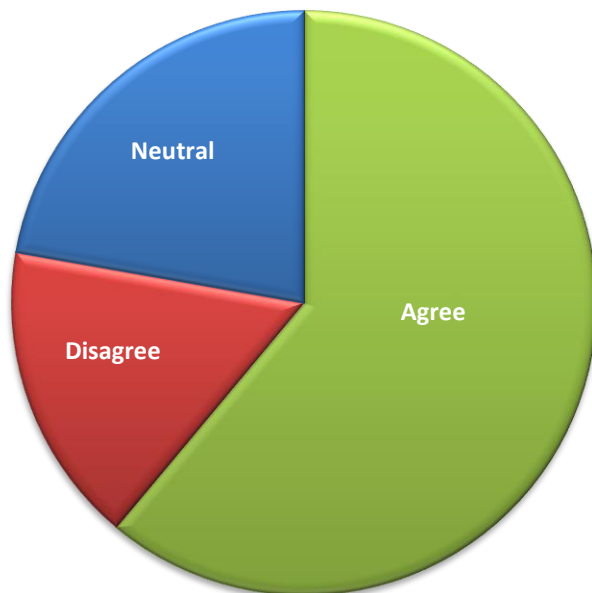


- **Agree:** decision should be binding on local jurisdictions within a state
- **Disagree:** a sub-state level locality is within its rights to make its own decision to operate its own RAN
- **Neutral:** requesting more clarification on the scope of this interpretation

Timing of State Decision



Notice Interpretation: Section 6302(e)(2) requires that the Governor make a decision “not later than 90 days after the date on which the Governor of a State receives notice under [Section 6302(e)(1)].” We preliminarily conclude that the Governor must await such notice and presentation of the FirstNet plan prior to making the decision under Section 6302(e)(2)

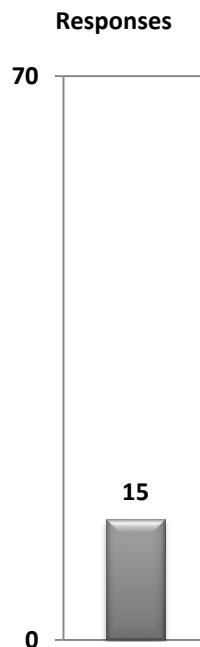
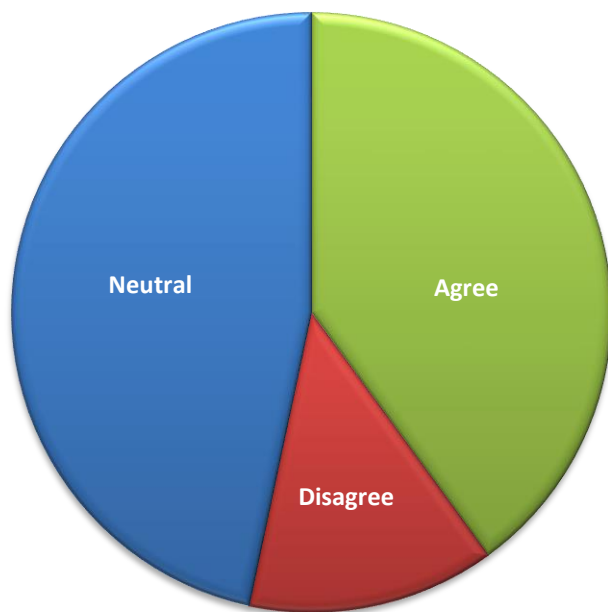


- **Agree:** Governor should wait until all material data, costs, design, service and demand considerations have been presented in order to have sufficient information to make reasonable decision
- **Disagree:** FirstNet should work with States when early opportunities for network deployment exist
- **Neutral:** the statutory time is insufficient for a Governor to make a decision absent robust sharing of information prior to plan presentation

Notification of State Decision



Notice Interpretation: The State decision to participate in the FirstNet proposed deployment of the network in such State may be manifested by a State providing either (1) actual notice in writing to FirstNet within the 90-day decision period or (2) no notice within the 90-day period established under Section 6302(e)(2)

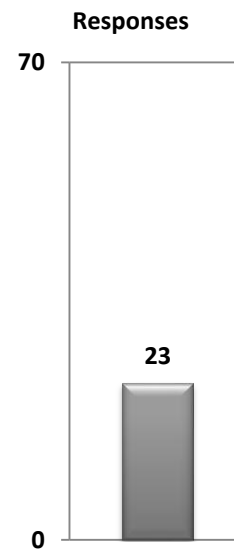


- **Agree:** speed to network deployment is vital and there must be definable timelines and milestones that make up this schedule of events
- **Disagree:** the 90 day timeframe is insufficient to make a decision and there should be no sanctions for States' failure to inform FirstNet of its decision within that time period
- **Neutral:** broad range of options, ranging from full acceptance of FirstNet's plan to the full opt-out decision by the State should be allowed

Nature of State Decision



Notice Interpretation: The presentation of the plan does not present or result in a contractual relationship between FirstNet and the States

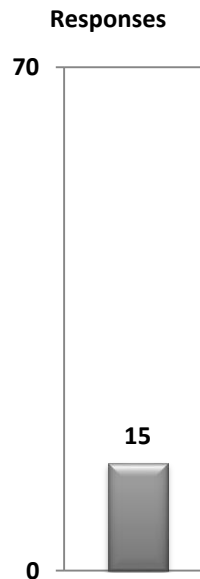
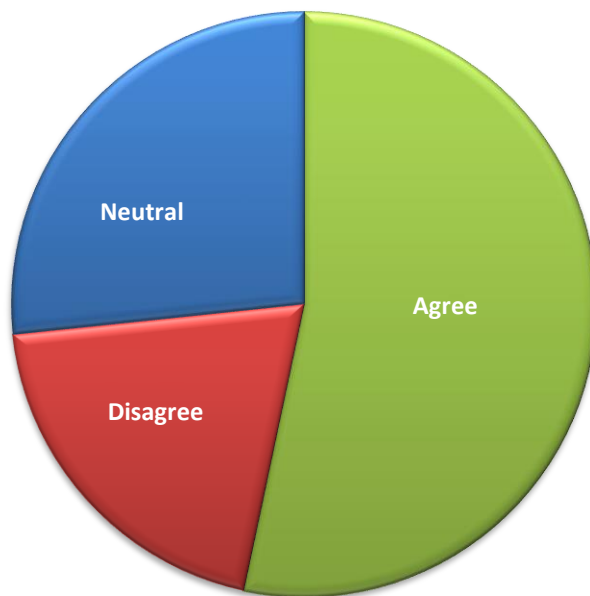


- **Agree:** state plan presented to the Governor for build out in that State and the Governor's decision to participate in the build out does not constitute the necessary legal elements to create a contract
- **Disagree:** the State plan process has the necessary legal elements of a contract – commitment by FirstNet is necessary
- **Neutral:** questions raised over the lack of commitment associated with the FirstNet plan

State Development of an Alternative Plan



Notice Interpretation: A State that fails to “complete” its request for proposal process in the 180-day period under the Act would forfeit its ability to submit an alternative plan and would result in the construction, maintenance, operations, and improvements of the network within the State proceeding in accordance with the FirstNet plan

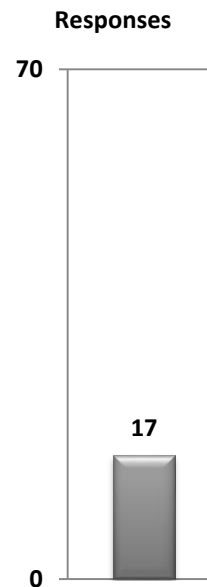
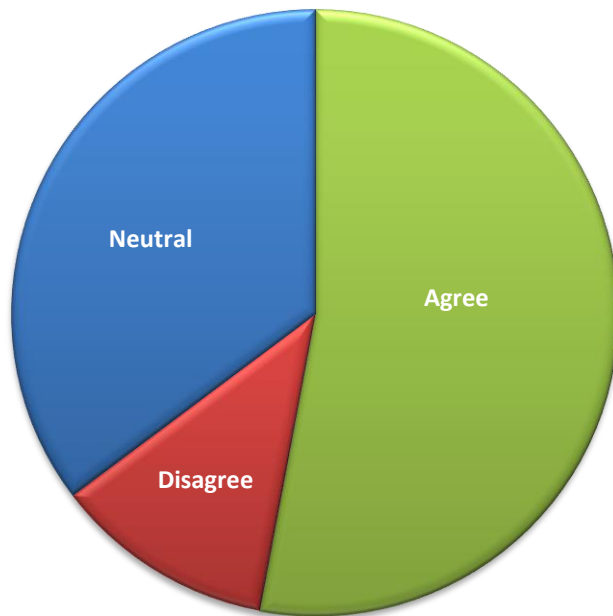


- **Agree:** the Act set aggressive timelines to ensure deployment is not delayed
- **Disagree:** the 180-day frame is insufficient to provide a feasible alternative plan
- **Neutral:** FirstNet should consider how far along in the RFP process a State is at the 180 days, rather than automatically foreclosing the State’s opportunity to submit an alternative plan

States Responsibilities After Alternative Plan Approval



Notice Interpretation: The approval by the FCC of an alternative State plan results in that State being solely responsible for the construction, operation, maintenance, and improvement of the RAN in such State in accordance with the State's approved plan, and extinguishing any obligation of FirstNet to construct, operate, maintain, or improve the RAN in such State

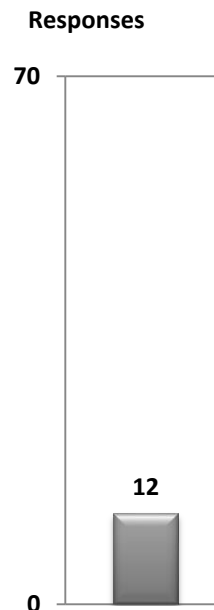
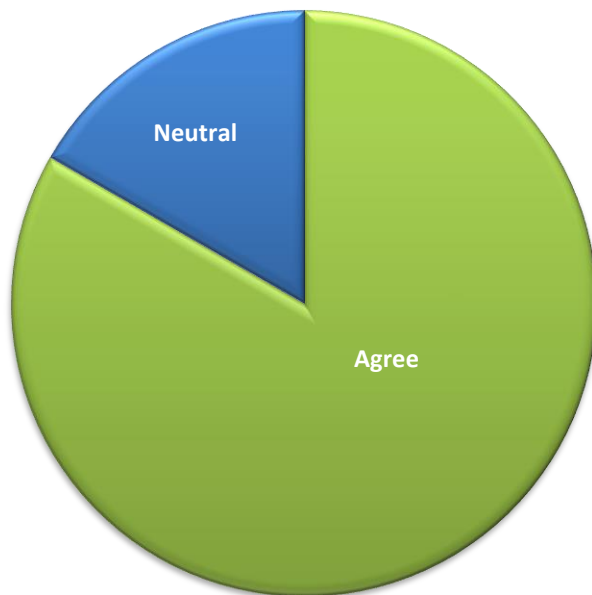


- **Agree:** certainty is needed to quickly implement the network
- **Disagree:** combination of inaction or plan disapprovals can not substitute for an affirmative declaration by a State
- **Neutral:** more clarification relating to parameters of the proposed plan are necessary

States Responsibilities After Alternative Plan Approval



Notice Interpretation: The inability of a State to implement its alternative plan would not preclude a State and FirstNet from agreeing to allow FirstNet to implement the RAN in such State

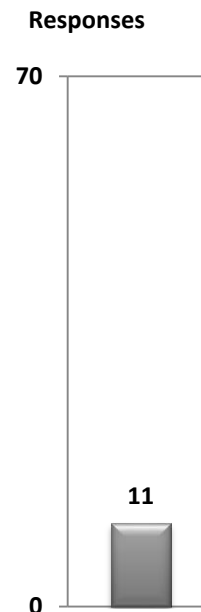
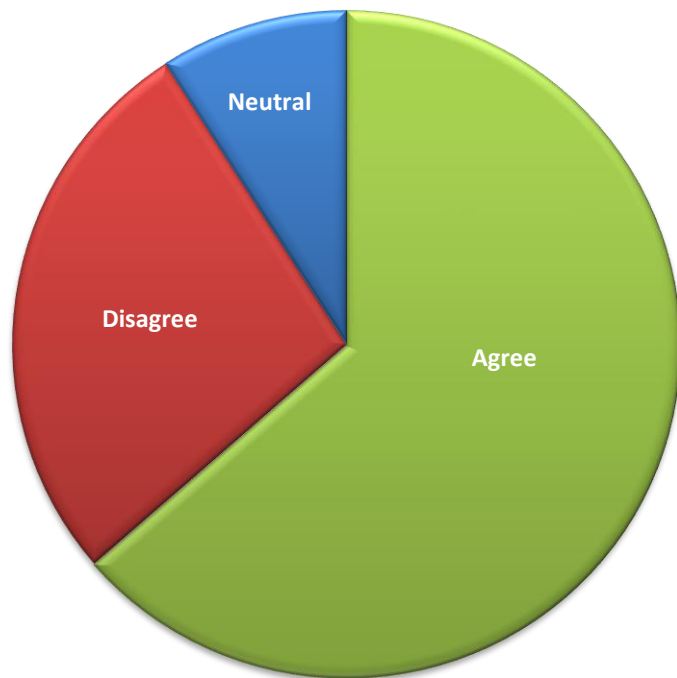


- **Agree:** all options should be considered to ensure the deployment of the network
- **Disagree:** no responses
- **Neutral:** more information is needed relating to the proposed plan implementation requirements

States Responsibilities After Alternative Plan Approval



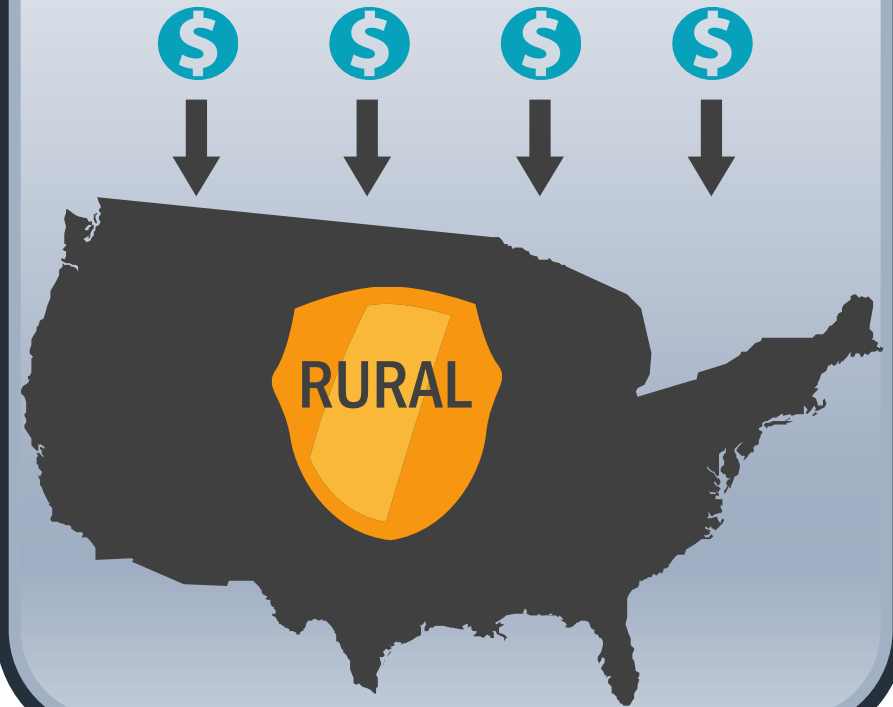
Notice Interpretation: The denial by NTIA of spectrum capacity leasing rights would then permit, but not require, FirstNet to implement a plan in the State because such uncertainty in any one State would affect the benefits of the NPSBN nationwide



- **Agree:** to implement the network quickly FirstNet must have the ability to overcome issues related to alternative plans in a timely manner
- **Disagree:** no combination of inaction or plan disapprovals can substitute for an affirmative declaration by the State
- **Neutral:** more information is needed relating to the proposed plan implementation requirements

Protect Deployment in Rural States While Preserving the Right of All States to Assume Responsibility for the RAN

The Act preserves the **right of States** to construct and operate their own RAN, but **not** in a way that also allows them to **capture funding**, beyond the reasonable costs of such a RAN



- **FirstNet is a Zero-Sum Game**

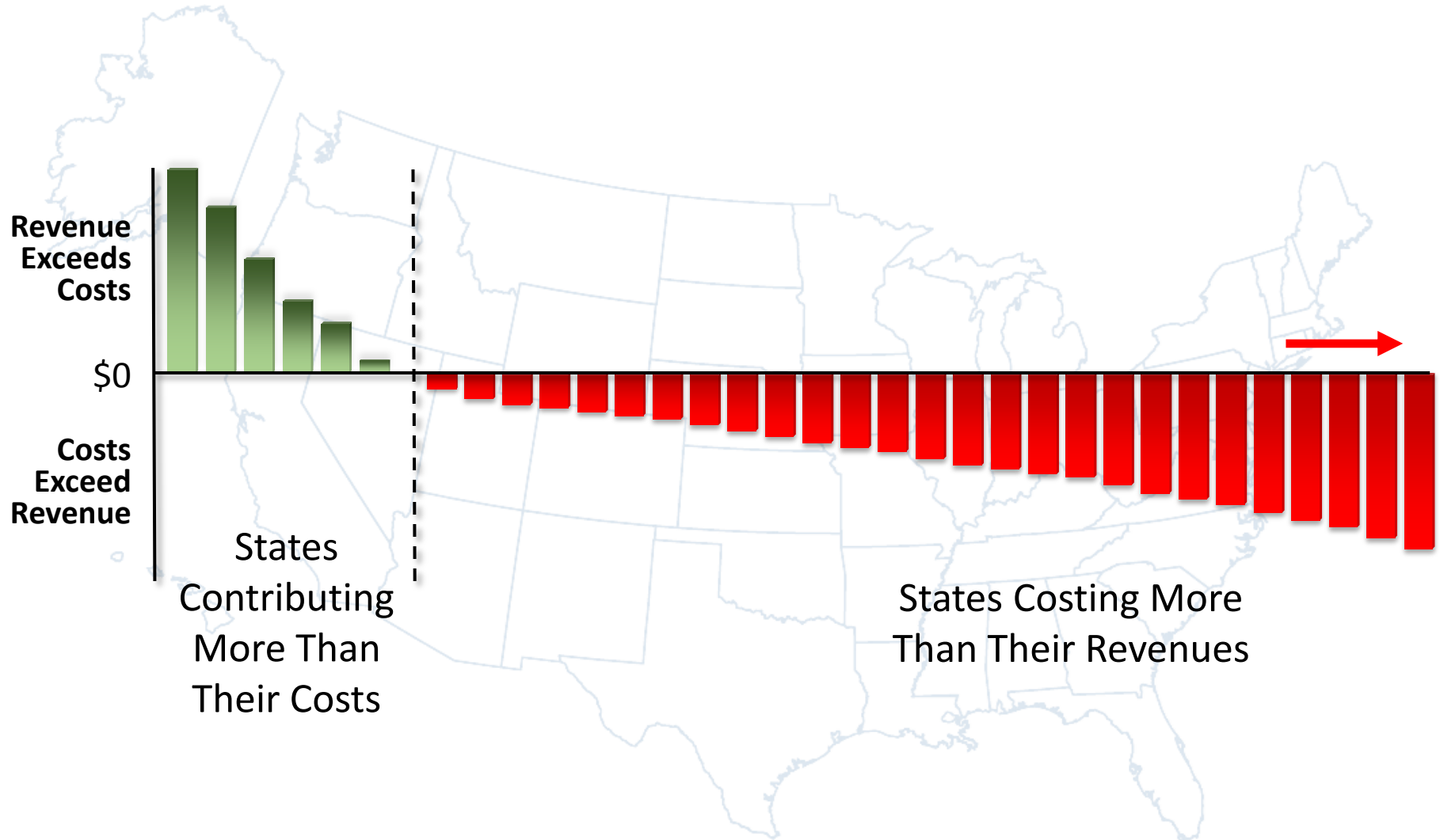
- Fees = Costs
- All FirstNet fees are reinvested to construct, maintain, operate, or improve the nationwide network

- **Three Funding Sources**

- \$7 billion
- Excess spectrum capacity fees
- Subscriber fees



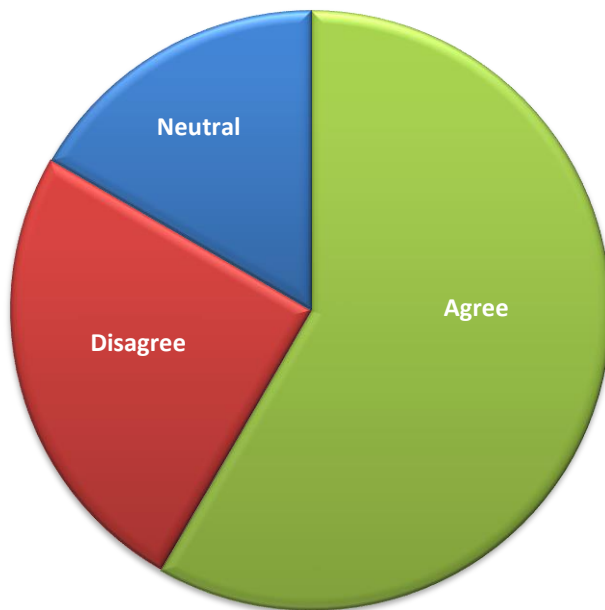
The State Equation: Cost to Serve \cong Density of Population



Reinvestment of Revenues



Notice Interpretation: The Act preserves the right of States to construct and operate their own RAN, but not in a way that also allows them to capture funding, beyond the reasonable costs of such a RAN, that is essential to rural States and the viability of the FirstNet program

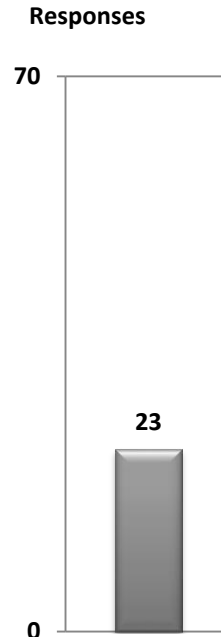
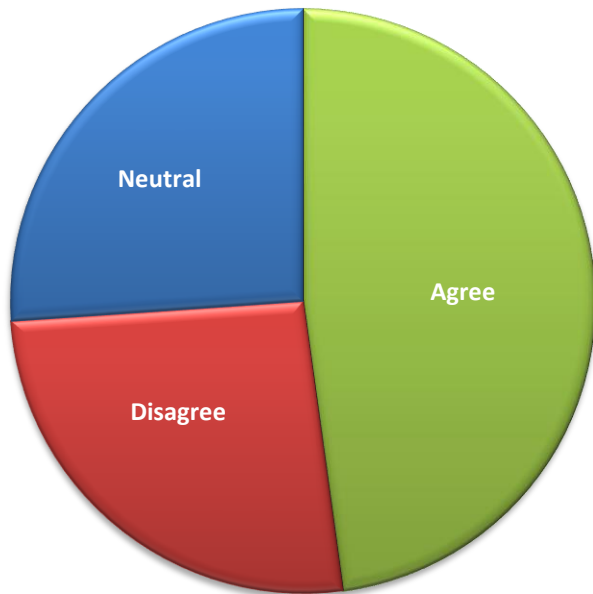


- **Agree:** the law was written to ensure that entire nationwide network is self-sustaining, including high-cost rural areas
- **Disagree:** this interpretation is unsupported by the Act's plain language
- **Neutral:** more documentation in support of this interpretation in necessary

Reinvestment of Revenues



Notice Interpretation: FirstNet must take the various funding considerations, including cost-effectiveness, into account in negotiating a spectrum lease with States



- **Agree:** FirstNet must use the tools available – such as spectrum lease approval – to ensure that an opt-out state does not siphon-off a disproportionate amount of the funds available for network implementation
- **Disagree:** the Act does not permit FirstNet to leverage its control of the spectrum to deny States the benefits of exercising the statutory right to opt out
- **Neutral:** further clarification on the spectrum lease approval process is required to evaluate this interpretation

- We asked approximately 50 questions
- Aim of interpretations is to ensure certainty within boundaries of statutory language to ensure service to public safety is not delayed
- Response levels across constituent entity groups was strong notwithstanding absolute number of responses per question
 - Different groups tended to respond to issues most relevant to them
 - e.g., vendor focus on technical questions - state focus on requirements related to RAN and investment of revenues, etc.
- Constructive and helpful feedback
- Overwhelming agreement with the bulk of our preliminarily conclusions
- Many of the disagrees were focused more on statutory language than FirstNet interpretation
- Neutrals often substantially agreed with interpretations, sought additional information, proposed alternatives, or raised different issues

