



# **First Responder Network Authority Tribal Consultation Policy**

**October 2017**



## **Preface**

The First Responder Network Authority (“FirstNet”) respects the nation-to-nation relationship that exists between federally recognized Indian tribes<sup>1</sup> and the United States government. The purpose of this policy is to establish a foundation for honoring tribal sovereignty, accompanied by productive and long-lasting communications, consideration, and engagement with tribal governments surrounding the deployment and operation of the nationwide public safety broadband network (“NPSBN”; the “FirstNet network”). Congress has tasked FirstNet to deploy a nationwide public safety broadband network to bring mission critical data with quality of service, priority, and preemption to public safety entities. However, public safety entities, including those of sovereign tribal nations, are not required to subscribe to FirstNet services or purchase devices. This freedom also applies to tribes that have land within any state that chooses — and receives approval from the Federal Communications Commission (“FCC”), National Telecommunications and Information Administration (“NTIA”), and FirstNet — to deploy the radio access network (“RAN”) portion of the NPSBN at state expense (i.e. “opt out”). Although FirstNet will operate as a public-private partnership between the federal government and AT&T, this unique arrangement does not lessen FirstNet’s commitment to the inclusion of Indian country, Alaska Native villages, and Oklahoma tribal statistical areas throughout all phases of its development.

## **Phases**

The Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. § 1401 *et seq.*) (“the Act”) established the duties and responsibilities of FirstNet to develop the NPSBN in consultation with public safety stakeholders. FirstNet’s tribal consultative practices divide into two phases: pre- and post-decisional. The decision — to be made by the governors of each state, every territory, and the District of Columbia (referred to collectively as “states” and individually as “state”) — is in response to a state-specific network deployment plan proposed by FirstNet, in conjunction with AT&T. Governors must decide who will be responsible for building, operating, and maintaining the in-state portion of the NPSBN (referred to as the aforementioned RAN). This choice is whether to — opt-in (to the FirstNet/AT&T proposal) or opt-out (and submit a state-developed alternative plan for consideration).

Upon formal notice of the state-specific network deployment plan (“state plan”) delivery to all governors, each will have 90 days to decide whether to opt in or opt out of the FirstNet-proposed RAN deployment. The months leading up to and during this pre-decisional period are important for all interested stakeholders, including tribal nations. It is an opportunity to engage with governor-designated state points of contact (“SPOCs”) for inclusion in the gubernatorial decision-making process. All state consultation undertaken specifically in preparation for delivery of those tailored state plans will be conducted through the SPOCs, as mandated by the Act. However, tribal governments may also request informational meetings with FirstNet’s national and regional tribal liaisons during the pre-decisional phase.

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<sup>1</sup> “‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. § 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 25 U.S.C. § 5304(e) (formerly cited as 25 U.S.C. § 450(b)).



The importance of remaining engaged will grow in the post-decisional phase. Following each governor's decision, FirstNet will interact directly with stakeholders, customers, as well as embrace nation-to-nation consultation between FirstNet and tribal governments. FirstNet will have an ongoing desire for information related to where network connectivity is needed to support public safety and the services that would be beneficial for tribal public safety entities. This tribal-specific information will help influence RAN deployment and maintenance throughout the network's existence. Representatives from AT&T — and/or its subcontractors — may observe discussions between FirstNet and tribal-designated officials, subject to tribal government approval, and tribal-designated officials may also invite tribal business/community stakeholders whom they deem important and necessary participants.

Described below is FirstNet's tribal engagement protocol for the pre-decisional phase, followed by the establishment and exercise of a nation-to-nation consultation policy between FirstNet and tribal nations in the post-decisional phase and, until this policy is amended, continued throughout FirstNet's existence.

## ***Tribal Consultation***

### **Pre-decisional**

Prior to a state governor's decision on RAN deployment, FirstNet will continue to follow the tribal-specific consultation requirements established by Congress under FirstNet's enabling legislation. In the pre-decisional phase of RAN deployment, FirstNet may consult directly with a tribe if a tribe requests a meeting and the state SPOC is present, or is invited but chooses not to be present. FirstNet staff may otherwise meet with tribal officials and/or designees for the purposes of outreach, education, and engagement.

FirstNet staff — including but not limited to its national and regional tribal government liaisons — will continue to meet with tribes at their request to discuss tribal-specific matters while keeping SPOCs apprised of the general outcomes of such discussions.

### **Post-decisional**

Following state governors' opt-in/out decision on RAN deployment, FirstNet intends to institute regular and meaningful consultation and collaboration with tribal officials and/or designees in policy decisions that have tribal implications. As described in Executive Order 13175<sup>2</sup>, the nation-to-nation tribal consultation process will establish and recognize the fiduciary federal trust relationship between the United States government and federally recognized tribal nations. In addition, tribal consultation sessions held with tribal governments will be for the purposes of gathering recommendations and providing solutions to address the needs of public safety communications on tribal lands. Where appropriate, this nation-to-nation consultation will include commensurate FirstNet participation.

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<sup>2</sup> Exec. Order No. 13175, 65 Fed. Reg. 67,249, "Consultation and Coordination with Indian Tribal Governments" (Nov. 6, 2000).



### ***FirstNet Core Principles for Consultation and Collaboration with Tribes***

Under this policy, consultation is a process whereby FirstNet and federally recognized tribal governments meet and confer to exchange views, deliberate, and seek common ground resulting in the adoption of mutually beneficial policies and attainment of sustainable outcomes related to the NPSBN. The purpose of this FirstNet nation-to-nation consultation policy is to ascertain tribal concerns and benefit from recommendations related to all aspects of the FirstNet network. FirstNet will engage in tribal consultation on network issues that impact tribes in accordance with the following principles:

- **Collaboration.** FirstNet is committed to interacting with federally recognized tribes on a nation-to-nation basis. It will demonstrate mutual respect and the development and maintenance of meaningful, productive dialogue, as described by Executive Order 13175.
- **Communication.** Candid, yet respectful, discourse is essential. This works best when undertaken in the formative and final phases of substantive decision-making, as well as when changes in leadership arise. Sincere efforts to be inclusive and allow sufficient time for appropriate participation are vital. When a matter involves confidential or culturally sensitive information, FirstNet and tribal officials and/or designees will thoughtfully approach such discussions to ensure they proceed in a culturally and legally appropriate manner. In-person meetings among appropriate party representatives is vital, whenever feasible.
- **Inclusion.** FirstNet has designated a member of its Board as a tribal liaison, as well as employing national and regional tribal government liaisons, for the purposes of policy coordination, information dissemination, and engagement at all levels. Furthermore, the Tribal Working Group (“TWG”) — a group of appointed delegates representing various international, national, regional, and intertribal associations with interests in tribal public safety — will continue to operate in accordance with its charter under the Public Safety Advisory Committee (“PSAC”) and with the oversight and participation of FirstNet leadership and the Board. The TWG serves as a forum for policy discussions relevant to FirstNet and tribes. Delegates serve as liaisons from their organizations, to and from which information, concerns, and considerations are shared between FirstNet and association leadership.
- **Timely Notice.** Tribes or FirstNet may request consultation. All reasonable attempts will be made to coordinate listening sessions, consultations, or staff meetings in a timely manner. Accommodations should be made for the duration of internal administrative processes and scheduling constraints for all parties. Tribes are located in far-ranging and often remote regions, underscoring the necessity for adequate notice of meetings that will require travel. Tribal officials and/or designees will be contacted as early as possible to provide adequate time for response, and to respect tribal protocols and cultural practices that require deliberation and consensus, often among diverse segments of the tribe.



***FirstNet Implementation of Tribal Consultation Policy***

- This Tribal Consultation Policy shall not be construed to alter, amend, interpret, modify, or repeal tribal sovereignty, any treaty rights of any Indian tribes, or to limit, modify, or preempt the exercise of any such rights.
- Although AT&T will have a vendor-to-customer relationship with tribal public safety entities, FirstNet will establish and maintain a nation-to-nation relationship with federally recognized tribal governments, as stipulated by Executive Order 13175.
- FirstNet shall update this tribal consultation policy, as necessary.