



**BAY AREA REGIONAL INTEROPERABLE COMMUNICATIONS SYSTEMS (BayRICS)
JOINT POWERS AUTHORITY**

MEMORANDUM

DATE: January 24, 2014
TO: Bay Area Public Safety Stakeholders
FROM: Barry Fraser, BayRICS General Manager
RE: Conclusion of Spectrum Lease Negotiations with FirstNet and Close-Out of BayWEB Project

On December 17, 2013, the First Responder Network Authority (FirstNet) announced that it was unable to reach agreement with BayRICS and Motorola Solutions Inc. on the terms of a spectrum lease. Obtaining a spectrum lease from FirstNet was a necessary requirement to lift the partial funding suspension on the Broadband Technology Opportunities Program (BTOP) grant and restart work on the BayWEB wireless broadband project.

On December 31, 2013, Motorola voluntarily terminated the BTOP grant by delivering notice to the Department of Commerce. This notice effectively ended the BayWEB project. Subsequently, on January 9, 2014 the BayRICS Board of Directors approved an agreement to mutually terminate the “Build, Own, Operate and Maintain” (BOOM) agreement with Motorola, and to begin the process of informing site-owning jurisdictions of the termination of the Site Access and Use Agreements with Motorola.

This Memorandum describes the events and circumstances leading up to the conclusion of spectrum lease negotiations between BayRICS and FirstNet, the specific actions taken to close-out the BayWEB project and next steps for BayRICS members and site-owning jurisdictions.

Background

The Bay Area Wireless Enhanced Broadband (BayWEB) was designed to serve as a regional wireless broadband network for first responders throughout the San Francisco Bay Area. The network would provide “smart phone” applications to enable first responders to share text, pictures, real-time video and other mobile “apps” designed specifically for public safety.

In 2010, the region received a \$50.6 million Broadband Technology Opportunities Program (BTOP) federal stimulus grant to fund the BayWEB project. The grant was awarded by the National Telecommunications and Information Administration (NTIA), a federal agency within the Department of Commerce. The grant was awarded to Motorola, the vendor selected to partner with BayRICS to build and operate the network. Motorola would provide an additional 20% in matching funds. BayWEB was governed by BayRICS, a Joint Powers Authority formally

established in August 2011. BayRICS member agencies would contribute radio sites, fiber and microwave infrastructure and staff resources to the project.

BayRICS and Motorola negotiated a “Build Own Operate and Maintain” (BOOM) agreement in January 2012. In addition, Motorola negotiated individual Site Access and Use Agreements with 12 Bay Area counties and cities to secure the radio site locations for the network. By February 2012, BayRICS and Motorola had overcome several early challenges and made substantial progress toward network deployment. BayWEB was moving forward and on schedule to meet its September 2013 completion deadline.

On February 22, 2012, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012 (“Act”) which mandated creation of a nationwide public safety broadband network. The Act also created FirstNet, an independent authority within the NTIA, to build, deploy and operate the network in consultation with State, local, tribal, and territorial entities.

On May 11, 2012, the NTIA announced that it was partially suspending the BTOP grants for seven public-safety projects nationwide, including BayWEB.¹ NTIA stated that FirstNet should have the opportunity to review these projects to determine whether the projects would provide any benefits for the nationwide network. NTIA required each BTOP grantee to obtain a spectrum lease from FirstNet in order to lift the funding suspension and restart the project.

The FirstNet Board held its first meeting on September 25, 2012. At that meeting, the Board indicated that it would immediately begin a review of the BTOP projects to determine how building these early networks might benefit FirstNet. FirstNet Board members met with each grantee, including a day-long meeting with BayRICS and Motorola on December 18, 2012.

Spectrum Lease Negotiations with FirstNet

On February 12, 2013 the FirstNet Board adopted “Resolution 18” acknowledging that the BTOP projects, including BayWEB, could bring “substantial benefits” to the nationwide network. Resolution 18 also directed FirstNet Board member Sue Swenson to begin negotiating with BTOP grantees for the spectrum leases required to lift the NTIA funding suspensions.

Extensive negotiations took place between February and November 2013, during which BayRICS officers and staff conducted hundreds of phone calls and meetings, and exchanged dozens of draft proposals and redlined contracts.² FirstNet set an initial 90-day negotiating period for reaching agreements on the leases, and subsequently extended the negotiating period four times, with the final negotiations period ending on November 15, 2013.

The negotiations began as a joint effort with the seven BTOP grantees negotiating as a team coordinated by BayRICS GM Fraser. However, by June 2013, after several months of slow but steady progress, grantees were asked to complete negotiations individually. LA-RICS and New Mexico obtained leases within the next 30 days. Three projects (Charlotte, Adams County,

¹ The seven BTOP public safety grantees were BayRICS/Motorola, Adams County, CO, Charlotte, NC, LA-RICS, Mississippi, New Jersey and New Mexico.

² The BayRICS negotiations team included Chair Richard T. Lucia, Vice Chair Karen Wong, Technical Advisory Committee Chair Michelle Geddes and GM Fraser.

Colorado and New Jersey) were told that they would not receive leases, although Adams County and New Jersey later received leases.

BayRICS and Mississippi continued to negotiate until the final negotiations deadline of November 15. BayRICS, Mississippi and Charlotte were ultimately unable to obtain leases from FirstNet. FirstNet continues to negotiate with the State of Texas for a lease to continue operations of an early-build project in Harris County Texas.

The lease negotiations have been frustrating for BayRICS officers and staff because of the many changes in the terms and conditions requested by FirstNet. Throughout the 10-month process, FirstNet continually assured BayRICS of their strong interest in completing BayWEB and the potential key learnings and other benefits from the project. As late as June 21, 2013, FirstNet negotiators assured us that the lease would be awarded under terms substantially similar to LA-RICS, and that the system could be built under the original business model described in the BayRICS-Motorola BOOM agreement.

However, after nearly 5 months of negotiations, FirstNet suddenly informed us that Motorola must agree to co-sign the spectrum lease. Then we were told that the BOOM agreement with Motorola must be revised before a lease would be approved. Finally, after Motorola and BayRICS worked out substantial modifications to the BOOM, FirstNet advised us that it required new conditions imposing potential risk of future costs on Motorola/BayRICS (not required for LA-RICS or the other grantees).

The BayRICS Board twice voted to approve a tentative spectrum lease, on July 11 and September 16, but each time FirstNet or Motorola changed positions or made new demands immediately prior to the meeting. The Board attempted to approve a third version of the lease on November 14, but by that time Motorola and FirstNet were at an impasse regarding two new conditions in the spectrum lease.

These new conditions ultimately proved to be the downfall of the negotiations. They imposed the risk of uncapped future costs on Motorola and BayRICS in at least two areas: (1) proprietary (non-standards based) applications, such as Push to Talk (PTT) and (2) assumption of responsibility for costs of future requirements adopted by FirstNet.

1. Proprietary Solutions/Push to Talk (PTT). The BOOM required Motorola to provide a non-standards based PTT application that FirstNet considered to be proprietary. FirstNet was concerned that the application created potential risk that it would not be interoperable with the future PTT application ultimately chosen by FirstNet. FirstNet required BayRICS and Motorola to assume any costs to migrate the user base to a FirstNet-approved solution. Motorola would agree to meet all open standards requirements, but believed that FirstNet's proposed language was too broad and extended to all applications for which standards had not yet been developed. Motorola would not sign up to non-standards based requirements or the unknown costs of meeting those requirements.
2. Future Requirements adopted by FirstNet. FirstNet's position was that Motorola/BayRICS should bear the costs of compliance with any system availability, capacity, performance, or

coverage requirements adopted by FirstNet prior to April 30, 2015.³ Motorola believed that this position created potentially uncapped cost liability. Motorola stated that it could not accept responsibility for the cost of meeting unknown future requirements because the BTOP grant has a specific funding limit and scope. None of the parties were willing to accept the risk of incurring these costs outside of the grant.

At the November 15 negotiations deadline, the Motorola and FirstNet remained apart on these two issues, and both parties indicated that they were unwilling to compromise or discuss further alternatives. Thus, the FirstNet Board determined on December 17 that it would be unable to issue a lease to BayRICS and Motorola.

When it became apparent the a lease would not be awarded, GM Fraser attempted to secure approval from Motorola and NTIA to “repurpose” the BTOP grant for other Bay Area public safety broadband projects, but insufficient time remained before the grant terminated on December 31, 2013. Despite several last-minute efforts to extend the grant, the repurpose proposals failed.

On December 31, 2013, Motorola voluntarily terminated the BTOP grant by delivering notice to the Department of Commerce.⁴ This notice effectively marked the end of the BayWEB project, and prompted the BayRICS Board of Directors to take action on January 9, 2014 to close-out the project, with the approval of an agreement to mutually terminate the BOOM agreement with Motorola and directing staff to contact the site-owning jurisdictions with instructions that they terminate their Site Access and Use Agreements with Motorola.

The following timeline represents a high level summary of the negotiations:

December 18, 2012	Initial FirstNet meeting with BayRICS and Motorola
February 12, 2013	FirstNet adopts Resolution 18 acknowledging that BTOP Grant projects can bring “substantial benefits” to nationwide network and setting 90 day negotiations period for spectrum lease
February 22, 2013	GM Fraser forms joint negotiating team with other BTOP grantees to negotiate uniform spectrum lease with FirstNet
May 13, 2013	Initial negotiation period extended by FirstNet for additional 30 days
June 4, 2013	Negotiation period extended by FirstNet for additional 30 days, to July 12
June 2013	BTOP grantees begin individual negotiations
June 21, 2013	Meeting with Sue Swenson in San Bruno, CA – agreement in principle on lease and BOOM business plan
June 27, 2013	LA-RICS receives spectrum lease from FirstNet
July 11, 2013	BayRICS Board approves tentative spectrum lease agreement, but FirstNet advises BayRICS that Motorola must co-sign the spectrum lease

³ Motorola had previously agreed to the April 30, 2015 date for regulatory changes imposed by the FCC, but refused to extend the date to requirements established by FirstNet.

⁴ Available at: http://www.bayrics.net/uploads/1/2/4/6/12466172/item_8_-_motorola_grant_termination_letter.pdf

July- August, 2013	FirstNet requires 23 separate changes to BOOM agreement as condition for issuing spectrum lease
August 13, 2013	Negotiation period extended by FirstNet to September 30 for BayRICS and Mississippi only; Deputy GM TJ Kennedy takes over lease negotiations for FirstNet; New Mexico receives spectrum lease
September 16, 2013	BayRICS Board again approves tentative spectrum lease agreement, and BOOM changes, but FirstNet requires additional BOOM changes and lease conditions
October 25, 2013	Negotiations period extended to November 15; BTOP Grant extended to December 31
November 12, 2013	BayRICS/Motorola agree to most of the 23 changes to BOOM; FirstNet requires new conditions to spectrum lease not required for LA-RICS; Parties at impasse on two key issues
November 15, 2013	Final negotiations period ends; BayRICS informed that no additional extensions would be granted
December 17, 2013	FirstNet formally announces two additional leases with New Jersey and Adams County, CO; announces that it is unable to reach agreement with BayRICS/Motorola
December 20, 2013	Call with BayRICS, Motorola, NTIA and FirstNet to attempt to repurpose grant funds
December 30, 2013	NTIA advises Motorola and BayRICS that insufficient time remains to repurpose grant before it terminates on December 31
December 31, 2013	Motorola submits grant termination letter to Department of Commerce
January 9, 2014	BayRICS Board authorizes termination of BOOM agreement with Motorola

Next Steps for BayRICS Authority

The end of the BayWEB project does not mean the end of BayRICS. The Authority remains financially sound with sufficient operating and reserve funding to continue operations for the foreseeable future. The Authority also has several ongoing projects with obligations and responsibilities that it should continue to meet, such as administration of the BayLoop maintenance agreement and pending grant requests for funding to assume coordination tasks for regional public safety voice system interoperability.

In fact, the BayWEB project termination provides a unique opportunity for BayRICS to consider a course correction and adoption of new goals for the organization. At the January 9th meeting the Board established an ad hoc committee to develop a strategic plan can be used to evaluate and align regional projects with the strategic goals of the organization.⁵ Strategic planning will also provide guidance to staff and the Board for operational and financial planning.

⁵ Committee members include East Bay Hub (Joe Calabrigo), Marin County (Lee Ann Magoski), City and County of San Francisco (Michelle Geddes), Santa Clara County (Bert Hildebrand) and Sonoma County (Dennis Smiley).

As the strategic plan is developed, BayRICS will prepare to assume a key role in the build-out of the FirstNet network in California, by working with California First Responder Network (CalFRN) and FirstNet Public Safety Advisory Committee (PSAC) to support FirstNet planning, including planning to preserve the work accomplished on BayWEB for possible use by FirstNet. Concurrently, the Authority will work with the regional P25 system operators and Technical Advisory Committee (TAC) to identify and deploy voice network coordination policies and procedures on behalf of the region, and to develop ways to enhance the value of the BayLoop regional microwave network for voice and data uses.

Next Steps for BayRICS Members: Preserve the work accomplished on BayWEB for possible use by FirstNet

Before the BayWEB project was terminated, a significant amount of work had been accomplished toward the development of the network. Over 120 radio sites identified for the project were secured through "Site Access and Use Agreements" between Motorola and the site-owning jurisdictions. A considerable amount of fiber and microwave infrastructure, including the BayLoop network, had also been identified for the project. In addition, a large number of planning and design documents and diagrams were developed to support network build-out. It is unknown at this time precisely how much of this work can be preserved for future use, such as FirstNet deployment when it occurs.

With the termination of the BOOM agreement, the site agreements will also terminate. Motorola will work with site-owning entities to close out the site agreements and answer any questions about the status of these sites. As part of the site agreement close-out and termination, BayRICS staff will contact each jurisdiction that had committed sites or infrastructure to determine what BayWEB project assets may be preserved for future use. Based on this outreach, staff will prepare a transition plan and inventory list, if feasible, for the Board's consideration.

It may not be possible to maintain access to the sites, microwave facilities, fiber backhaul and other assets that were previously committed to the BayWEB project. This question is complicated by the fact that we have little information from FirstNet about the nature of assets they intend to use, the terms of use FirstNet will offer, or the time frame in which the build-out will commence. However, staff believes it to be in the best interest of the Bay Area to preserve as much as possible of the work accomplished on BayWEB, to serve as a foundation for California's efforts toward the early and efficient build-out of FirstNet in the Bay Area.