

Testimony of Mr. Peter Kirchhof

Executive Vice President

Colorado Telecommunications Association

Subcommittee on Communications and Technology

February 27, 2013

CTA Mission Statement

To promote the availability of resources and enhance the opportunity of its members to provide the most advanced and highest quality communications networks and services to customers in rural Colorado and link residents of the state to the global network.

Summary

The 25 CTA member companies provide voice, video and data services to approximately 30,000 Colorado customers that are located in 25,000 square miles of very diverse geographical territory (1.2 customers per square mile). Our members supported EagleNet because they believed it would benefit rural communities by building facilities where truly needed and/or lease existing facilities from companies where possible. It appears to CTA members that this project was never intended just for unserved or underserved areas but rather to build a government owned and operated duplicate network to serve as many government entities as possible. EagleNet is primarily overbuilding networks on the Eastern Plains, South Central Colorado and in the Denver Metro Area while largely ignoring Western Slope Communities. Since most of the RUS funding to our members is through loans not grants, overbuilding presents a serious risk to the financial stability of our members operations and ultimately to RUS if their ability to re-pay the loans is compromised. CTA members still support the original mission to provide service to unserved and underserved areas. We respectfully ask committee members to strongly encourage EagleNet to negotiate in good faith with local providers to use existing local facilities and to avoid duplication of existing infrastructure. EagleNet should redeploy remaining funds to areas of the state (Western Slope) where it is badly needed.

Chairman Walden, Ranking Member Eshoo and subcommittee members

My name is Pete Kirchhof Executive Vice President of the Colorado
Telecommunications Association (CTA).

Background on CTA

The association was founded in 1963 to support companies providing communications facilities in rural Colorado. The association now has 25 small rural communications companies. Our member companies were formed decades ago out of necessity because the former bell operating company Mountain Bell refused to serve customers in sparse rural areas of Colorado. These companies evolved in to several different operating structures: family owned, cooperatives (owned by their members) and publicly or privately held entities. They provide voice, video and data services to approximately 30,000 customers that are located in 25,000 square miles of very diverse geographical territory. That equates to 1.2 customers per square mile which presents huge challenges (high cost, low revenue) in providing service to these customers. The attached service area maps show the large geographic area served by our members.

CTA Members Support Local Communities

Our members are also very connected (pun intended) in their communities. They live, work and raise families side-by-side with their customers.

In 2010, an economist with Colorado State University issued a study on the economic impacts of member companies in their communities. They provide:

- 165 direct jobs (428 total)
- Average salary \$61,300 (35 percent higher than the average rural job)
- \$21 million in annual payroll

CTA Members Receive Federal Funds

CTA members receive support from two federal programs: Universal Service Fund (USF) and Rural Utilities Service (RUS). Both of these programs were and are instrumental in helping our members grow their companies, upgrade their networks and provide high quality affordable communications service. In Colorado, members receive approximately \$23 million dollars annually from the USF and with the changes in the USF program are focusing those dollars on providing broadband service. RUS has long been a partner of the rural companies providing primarily loans and some grants to build their networks. There is approximately \$114 million dollars in outstanding CTA member loans for communications infrastructure and broadband deployment.

NTIA Awards EagleNet \$100.6 Million for Broadband Deployment

In 2010, the National Telecommunications and Information Administration (NTIA) awarded a grant to an entity in Colorado now known as EagleNet. The purpose of the grant is to provide broadband service to unserved/underserved schools, libraries and community anchor institutions through construction of middle mile infrastructure and in collaboration with local communications companies like CTA members. Several CTA members sent letters of support to NTIA and were referenced as potential partners by EagleNet in its original application. Our members truly believed that this project would be a tremendous benefit to rural communities. EagleNet would build facilities where needed (fill in the gaps or reinforce existing facilities) or lease existing facilities from companies where possible to provide broadband service to the targeted institutions. However, EagleNet's implementation did not match its initial promise. Discussions both formal (responses to RFP and RFI) and informal (including network information) took place with individual CTA companies for several years but with little success. The original CEO of EagleNet was invited to speak at one of our membership meetings to help the members understand their mission and to develop relationships. I am personally aware of only two companies that signed an agreement but even then - one was not spared from being overbuilt by EagleNet (even after the manager attended a press conference in support of the project).

A sobering reality when that company discovered in the summer of 2012 plows were burying fiber optic lines right next to existing company lines.

EagleNet builds Duplicate Network (see attached maps)

It appears to CTA members that this project was never intended just for unserved or underserved areas, building middle mile infrastructure or collaboration with local providers but rather to build a government owned and operated duplicate network (overbuilding hundreds of miles of existing infrastructure from our members and other providers) to serve as many government entities as possible including many in urban, highly competitive and densely populated areas. There are two very clear examples where duplicative facilities were built and, even more troubling, were funded by three different federal programs. Agate, Colorado is located 71 miles east of Denver. CTA member, Agate Mutual Telephone Cooperative Association, has facilities in place to serve the local K-5 school with 11 students. Another provider using federal E-rate dollars from the USF has a facility at the school and now EagleNet has recently supplied a third facility to the school. All three facilities were built using federal money (USF, RUS, NTIA) for a school so small that several strands of fiber would likely provide all the bandwidth they could ever use. A similar situation exists in the town of Flagler – population 561. This eastern plains K-12 school has 140 students and will have three fiber connections to the school funded by RUS, NTIA and USF.

Other examples of overbuilt facilities exist or are planned in other areas of the state including CTA members PC Telcom, Blanca Telephone and SECOM. In Denver, they have connected several schools, cities and even a museum. One example is the Cherry Creek School District which is the 4th largest in the state; serves a very highly populated and middle/upper income community and has many, many choices of providers for broadband service and the necessary bandwidth to support their needs. Hardly unserved and/or underserved by anyone's definition. The Colorado General Assembly wanted to avoid this very situation when they approved a resolution (HJR 10-1026) in support of the grant. In part, it stated:

“WHEREAS, Every effort should be made to prioritize the provision of broadband **service to unserved customers through the efficient distribution of resources to avoid over-building of existing facilities and to strongly encourage the use of private sector local telecommunications providers**; now, therefore,” (emphasis added)

Interestingly, EagleNet has done just the opposite of what the legislature intended by primarily overbuilding (and not collaborating with local providers) networks on the Eastern Plains, South Central Colorado, in the Denver Metro Area as well as to Laramie, Wyoming while largely ignoring Western Slope Communities (i.e., Silverton and Routt County) where broadband facilities are desperately needed and would be welcomed by those communities.

EagleNet Undermines RUS Loans in Colorado

CTA member service areas have small populations, are costly to serve and generate limited revenues. Supporting even one network under these circumstances is a challenge even with subsidies. Maintaining two competing government funded networks is highly unlikely. Since most of the CTA members' RUS funding is through loans not grants, overbuilding presents a serious risk to the financial stability of our members operations and ultimately to RUS if their ability to re-pay the loans is compromised. In addition, EagleNet's open network and excess capacity availability for resale will likely have the effect of funding new commercial carriers to enter the market to compete with the local provider (including our members) for non-governmental (residence and business) customers. Many of our members already face varying degrees (access and reliability may be limited) of competition from the private sector: wireless providers (including one provider that also receives federal USF dollars and recently won a Connect America Fund grant), and cable and satellite providers. CTA members cannot "compete" with EagleNet or its network because it is not regulated, does not pay taxes, has no debt (their money was a grant not a loan) and has no state oversight.

Conflicting Agency Policies, Practices and Grant Conditions

Conflicting federal agency policies and strict grant conditions limit CTA member's ability to secure agreements with EagleNet. First and foremost, federal agencies should insure that taxpayer dollars are not used to duplicate infrastructure development in rural communities. In addition, NTIA should reconsider its' policy of primarily leasing Dark Fiber Facilities because of an internal accounting requirement that leases can only be categorized as a capital expenditure. Some lit fiber solutions may provide better service at a more reasonable price with greater reliability. Also, both RUS and NTIA require that they be in the first lien position on owned or leased fiber facilities. This is counterproductive and leaves CTA members stuck in the middle. The federal government is the federal government – this should be resolved through internal accounting or inter-agency agreement not by penalizing local providers.

Assistant Secretary Strickling Meets with CTA in Colorado

CTA was able to meet with Mr. Strickling earlier this month while he was in Colorado to speak at a conference. In addition, the meeting included Mr. Gardner and his staff, myself and CTA Board President Kevin Felty as well as other NTIA staff and Congressional staff. Newly appointed EagleNet CEO Mike Ryan also attended the meeting.

While no agreements or commitments were made by either party Mr. Ryan agreed to make every effort to work with our members where feasible.

Conclusion

- CTA members still support EagleNet's original mission to provide service where there is a demonstrated need that is not being met by another provider
- We respectfully ask committee members to strongly encourage EagleNet to negotiate in good faith with local providers to use existing local facilities and to avoid duplication of existing infrastructure
- Eliminate conflicts within federal agencies to allow for collaboration
- EagleNet should redeploy remaining funds to areas of the state (Western Slope) where it is badly needed

Mr. Chairman, Ranking Committee Member Eshoo thank you for your time and attention to this very important issue affecting our members. I would be happy to answer questions.