



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

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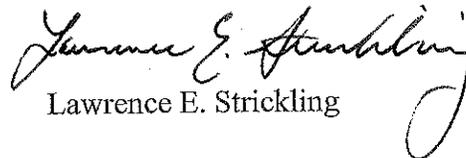
The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Chairman Walden:

Thank you for the opportunity to testify on February 27, 2013 before the Subcommittee on Communications and Technology at the hearing entitled "Is the Broadband Stimulus Working?" I appreciate your forwarding additional questions for the record to me on March 28, 2013.

My responses to the questions are enclosed. If you or your staff have any additional questions, please do not hesitate to contact me or James Wasilewski, NTIA's Director of Congressional Affairs, at (202) 482-1840.

Sincerely,



Lawrence E. Strickling

cc: The Honorable Anna G. Eshoo, Ranking Member
Subcommittee on Communications and Technology

Enclosure

Responses to Questions from the Honorable Joe Barton

- 1. NTIA recently issued the funding announcement for the state planning grant program. I understand the grant performance period is three years and that there could be a second phase adding another two years. How do you reconcile a three to five year planning period with the fact that on Saturday during the National Governors Association conference Board Chairman Sam Ginn testified that the Board has already “architected the system” and “know[s] what it's going to look like”?**

The State and Local Implementation Grant Program (SLIGP) will run concurrently with the First Responder Network Authority’s (FirstNet’s) work to design and develop the nationwide public safety broadband network. The Middle Class Tax Relief and Job Creation Act of 2012 (Act) directs NTIA to establish SLIGP to assist state, regional, tribal, and local jurisdictions with identifying, planning, and implementing the most efficient and effective means to use and integrate the infrastructure, equipment, and other architecture associated with the nationwide public safety broadband network to satisfy the wireless broadband and data service needs of their jurisdictions. SLIGP also supports and facilitates the states’ consultations with FirstNet, which the Act created as an independent authority within NTIA to oversee the design, construction, and operation of a nationwide public safety broadband network that is based on a single, national network architecture.

The grant program has a three-year period of performance. Within this three-year period, the program is divided into two phases. The initial phase allows up to 50 percent of the federal funds to be used by states and territories to start planning, outreach, and governance activities, as well as the initial consultations with FirstNet. The second phase will be opened once FirstNet has determined what data elements it needs collected from the state, local, and tribal stakeholders. NTIA will release the remaining 50 percent of federal funds sometime during the first three years of SLIGP, at which time the states and territories will have access to all federal funds to complete all activities, including the outreach, planning, consultation, and data collection.

NTIA received SLIGP applications and expects to award grants this summer. The efforts funded under SLIGP will complement and facilitate FirstNet’s consultations with regional, state, tribal, local, and federal jurisdictions and public safety, which FirstNet Board Chairman Ginn has stated will be ongoing. To the extent FirstNet is “architecting the system,” it is merely in the preliminary phases of exploring various design, deployment, and financing options, consistent with the Act, and is not making final decisions on network design. Indeed, FirstNet needs to have a thorough understanding of these options in order to have meaningful consultations with state, tribal, and local governments and public safety, and to incorporate their requirements into the ultimate network design.

- 2. I am encouraged that FirstNet has been visiting the states, including Texas recently, and may potentially move forward with all the suspended BTOP projects if terms and conditions can be successfully negotiated over the next 90 days. I understand, however, that one such condition would be to transfer control of the BTOP assets to**

FirstNet. Wouldn't the effect of this transfer of assets be to eliminate a state's statutory right to opt-out of the FirstNet deployment since it would otherwise be left with no beneficial access to these assets? Stated differently, wouldn't this create a de facto opt-in position for BTOP jurisdictions prior to their being presented a plan to make an opt in/opt out decision? What would be the purpose of requiring agreement to a transfer of control now as opposed to waiting until the plan for a particular state is complete?

In February 2013, the FirstNet Board adopted a resolution outlining its path forward with the seven public safety BTOP grantees, whose funding was partially suspended by NTIA following enactment of the law creating FirstNet. Currently, Board member Sue Swenson is negotiating 700 MHz lease agreements with each of these seven projects. As this process has not yet concluded, FirstNet has not provided me with the terms of any agreement and I cannot speculate on the possible effect any hypothetical term may have on a state's decision to opt-out. Moreover, as five of the seven projects are with entities other than states, whatever conditions those grantees might negotiate would have no effect on a state's opt-out rights.

- 3. In the last FirstNet meeting held on Feb 12, 2013, the board approved resolution 18 directing the board to negotiate spectrum lease agreements with BTOP public safety grant recipients within 90 days. Texas was not included within that resolution and there are concerns with the Special Temporary Authority (STA) process being temporary causing jurisdictions concern about investing money into the network and planning within Texas. Is there planning within NTIA and FirstNet to ensure that Texas also is allowed to negotiate a long term spectrum lease agreement and if so when can it be expected.**

While the Board's February resolution applies only to its negotiations with BTOP awardees, a representative of the 700 MHz public safety project in Harris County, Texas, which was funded with grants awarded by the U.S. Department of Homeland Security, has been participating in the group's discussions as an observer. At its April 23, 2013 meeting, the FirstNet Board adopted a similar resolution authorizing Ms. Swenson to commence negotiations on a spectrum lease agreement with the State of Texas to cover operations under the Harris County project. Texas is currently engaged in discussions with FirstNet regarding a spectrum lease.

- 4. The current authority for the Texas Public Safety Broadband buildout is only for a total of 14 sites within Harris Co area. Just to deploy the Harris Co area would require approximately 90 sites. It is my understanding that jurisdictions within Texas have local funding to invest in infrastructure however they cannot proceed within the current approved authority. What is being done within NTIA and FirstNet to work with Texas to allow them to continue to buildout infrastructure beyond the current 14 sites?**

The Harris County, Texas project was funded through grants awarded by the Department of Homeland Security. Thus, unlike the circumstances with the BTOP public safety projects, NTIA does not have an administrative role in monitoring and overseeing the project.

Responses to Questions from the Honorable Cory Gardner

1. Is delivering middle mile facilities to unserved and underserved locations one of the main objectives of the NTIA BTOP grant?

The broadband grant program of the American Recovery and Reinvestment Act (Recovery Act) has several statutory purposes: providing broadband to unserved and underserved areas; enhancing broadband for community anchor institutions (CAIs) such as schools, libraries, and healthcare providers; improving broadband for public safety agencies; and stimulating broadband demand.

In the first round of BTOP funding, NTIA solicited applications for both last mile and middle mile projects. NTIA defined middle mile projects as any broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices and that may include interoffice transport, backhaul, Internet connectivity, or special access. In the first round, NTIA also had as a goal to expand and enhance broadband services for community anchor institutions such as schools, libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations.

NTIA found that the strongest applications were from those entities that proposed a comprehensive approach to meeting the community's broadband needs by both expanding on middle mile investments and providing new or substantially upgraded connections to community anchor institutions. As a result of these tremendous benefits, NTIA awarded a significant portion of funds in the first round of BTOP funding to such projects, and in the second round of BTOP funding, adopted the "comprehensive communities" approach that prioritized applications that would deliver middle mile broadband infrastructure and offer new or substantially upgraded connections to CAIs.

Middle mile investments also help "prime the pump" for additional investment by public and private entities. In particular, the open access and interconnection requirements imposed on federally-funded infrastructure encourage last mile and other broadband providers to tap into the middle mile networks to expand broadband services and speeds for American consumers and businesses. Across the country, providers have signed over 600 agreements with our grantees to use federally-funded networks to better serve their customers. In this way, NTIA leverages limited federal funding to significantly improve broadband capabilities for the greatest number of Americans.

The additional focus on connecting anchor institutions provides a number of important benefits to the nation. Schools, libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations increasingly rely on high-speed Internet connectivity to serve their constituencies and their communities. Expanding broadband capabilities for community anchor institutions enables them to deliver significantly-improved education, healthcare, and economic development. Healthcare providers will be able to monitor patient health remotely, consult with other medical professionals, and share medical records in real-time. Emergency responders will be able to share real-time video and other situational awareness to help protect the public and respond quickly and efficiently to disasters

and other emergencies. Broadband connections in libraries enable students to conduct research and locate information and allow workers to identify and apply for jobs. Schools and colleges are able to stream audio and video content from other institutions, provide and receive instruction through online distance-learning programs, and facilitate training and skill development for adult learners.

2. Was it a goal of NTIA to collaborate with existing providers where sufficient broadband already existed?

NTIA's goal was to encourage our grantees to utilize existing infrastructure where it was available, and BTOP grantees took steps to obtain information about existing infrastructure and leverage these facilities as much as possible. In cases where some broadband facilities existed, NTIA encouraged applicants to solicit information from incumbent broadband providers on the availability of existing infrastructure and to lease "dark fiber," or otherwise leverage the existing facilities where possible. In these cases, federal funding was used to upgrade or improve the level of broadband infrastructure in the community, such as lighting unused existing fiber with appropriate electronics. By authorizing recipients in those circumstances to use grant funds to light existing dark fiber and bring it online, NTIA's grant recipients have made good use of existing facilities. In the case of Eagle-Net, approximately 1,900 network miles, or more than 65 percent of the total miles in the State of Colorado, have been leased or upgraded from existing broadband providers. Across the United States, BTOP grantees have upgraded more than 55,000 miles of existing broadband infrastructure, demonstrating the ability of BTOP to identify win-win opportunities for our grantees and existing broadband providers.

3. What were the criteria used to determine whether sufficient broadband existed within unserved and underserved areas, and did NTIA have a step-by-step process in place to determine where sufficient fiber optic facilities existed? If so, what was that process?

NTIA defined unserved to mean an area where at least 90 percent of the households lack access to facilities-based, terrestrial broadband service of at least 768 kilobits per second (kbps). It defined underserved to mean an area where either no more than 50 percent of the households have access to broadband service greater than 768 kbps, no broadband service provider advertises broadband speeds of at least 3 Mbps, or the rate of broadband subscribership is 40 percent of households or less. The second round of funding did not require projects to serve only unserved or underserved areas, but the extent to which the project proposed to serve those areas, along with meeting the other goals of the Recovery Act, was a significant factor in consideration of the application.

The mere presence of an existing provider did not necessarily indicate that the area was adequately served. For example, community anchor institutions such as schools and libraries need broadband speeds many times faster than the basic mass market broadband offered to residential customers. The State Educational Technology Directors Association (SETDA) has reported that schools need bandwidth of at least 100 megabits per second (Mbps) for every 1,000 students and staff. SETDA expects that requirement to increase to one gigabit per second by 2017-18. Compare those speeds to a basic mass market broadband offering of 3 Mbps. In

Colorado, only 4 percent of schools subscribe to broadband speeds greater than 50 Mbps, compared with North Carolina where a statewide educational network allows 75 percent of schools to have broadband service at speeds of 50 Mbps or greater. Clearly, Colorado is an example of a state with significant need for additional broadband investment to deliver the high Internet speeds that students need to be competitive in the 21st century.

In reviewing applications, NTIA relied on such information submitted by applicants as data collected by states or other government entities, or evidence that CAIs lacked sufficient broadband service. NTIA received thousands of letters and testimonials from schools, libraries, healthcare facilities, and public safety entities indicating that they could not obtain the broadband services they needed to fulfill their missions in today's technological age. In many cases, this evidence was bolstered by the support of leadership representing the state. To give just one example, the Eagle-Net project in Colorado was endorsed by the Governor, the state legislature, the Colorado Department of Education, and numerous incumbent providers. Republican and Democratic members of the Colorado Congressional delegation wrote:

“As representatives of Colorado’s congressional delegation, we are well aware of the inconsistent and in some cases, completely non-existent high speed broadband services for some of our most vulnerable communities. EAGLE-Net’s proposal will address this need among the communities where market forces have failed to attract affordable broadband infrastructure and investment. EAGLE-Net will serve as the non-profit network to Community Anchor Institutions throughout the state, including 178 K-12 school districts serving over 2,000 schools & 800,000 students, 16 community colleges, 26 libraries, 12 BOCES, two institutions of higher education, public safety and health care providers, as well as city and county governments.”

To further avoid duplicating existing infrastructure, NTIA published detailed information about the proposed service areas of BTOP applications and requested comment from incumbent broadband providers on their level of service in these areas. NTIA reviewed the information submitted by these providers and took it into consideration during the review process.

4. If sufficient broadband existed, did NTIA guidelines have steps in place to ensure that BTOP grant awardees had a process to evaluate the best possible use of existing facilities and BTOP grant dollars?

Please see my answer to question 2 above. NTIA encouraged awardees to utilize existing infrastructure, such as by lighting dark fiber, to ensure the efficient use of taxpayer dollars. Of course, this outcome was only possible where existing providers were willing to make dark fiber available on reasonable terms and conditions.

5. Can you justify a circumstance where an unserved or underserved community did not get fiber with Eaglenet’s BTOP middle mile grant, yet other locations that appeared to be well served received funding? Please explain in the context of the priorities of the BTOP grant program how this could occur.

In 2010, NTIA awarded a grant to Eagle-Net to construct a high-speed broadband network to connect schools and other community anchor institutions throughout the state. Eagle-Net developed the project application based on its assessment of the needs and priorities of schools in Colorado. As described in my answer to question 3, data indicate that Colorado schools have tremendous need when it comes to broadband investment.

The goal of the Eagle-Net project is to connect schools across Colorado to a statewide education network. We have seen from our experience in other states that students, teachers and the state more generally will benefit tremendously from a statewide education network. A statewide education network can significantly lower costs for schools and teachers by combining their purchasing power to lower costs for bandwidth. Teachers, students, and parents can harness the power of a statewide network to share resources, best practices, and software applications. Students can engage in distance learning more efficiently over a statewide network and take advantage of teacher instruction in areas across the state. By lowering bandwidth costs and increasing broadband speeds for schools, students and teachers can conduct coursework online and leverage the global resources that the Internet provides. Most schools in the United States now require that student and teacher assessments be administered online, making high-speed broadband even more of a necessity. The proliferation of tablets and low-cost notebook computers is providing students with unparalleled new opportunities to learn that were unimaginable just a few years ago, but also straining antiquated broadband networks in some communities. Schools that lack sufficient broadband service will continue to be at a disadvantage in their ability to give students the tools and services they need to compete in the twenty-first Century.

Development of a statewide network will involve connecting schools located in unserved, underserved, and served areas of a state. It also makes economic sense, because Eagle-Net would be unsustainable otherwise. Revenues from school districts in more densely populated areas of Colorado allow Eagle-Net to provide service in underserved school districts in a supportable and self-sustaining manner well into the future.

As noted in the answer to question 2, NTIA encourages all our grantees to utilize existing infrastructure where they can, which has been the case with Eagle-Net in Colorado. In addition, Eagle-Net has delivered significant network assets in western Colorado, deploying over 500 miles of broadband infrastructure in the West. These assets include leasing existing infrastructure that interconnects cities such as Craig, Grand Junction, Montrose, and Durango. Additionally, core network routers have been deployed in major interconnect locations, including Durango and Grand Junction. Eagle-Net has encountered delays in delivering other parts of the Western build due to contractor and procurement issues. Additionally, the terrain in the western parts of the state has made deploying broadband infrastructure more challenging.

In April 2013, NTIA lifted the suspension on the Eagle-Net project after the recipient addressed its environmental requirements and developed a viable path forward for the project's long term sustainability. Eagle-Net now has a plan to focus on constructing in western Colorado during the limited 2013 construction season, working closely with community stakeholders and existing broadband service providers. Eagle-Net is committed to continuing discussions with the Colorado Telecommunications Association and its members to identify partnership opportunities

that will benefit Colorado schools. Eagle-Net will implement a plan that focuses immediately on 29 school districts west of I-25, including Silverton. Eagle-Net plans to complete the majority of this construction by August 2013 and request an extension of its BTOP project to 2014. At the end of this phase, over 50 percent of the 190 combined school districts (178) and Board of Cooperative Educational Services (12) in Colorado will be on-net to the Eagle-Net network.

6. Are BTOP awardees such as Eaglenet required to provide annual audited financials? If so, where are they sent?

Yes, the Department of Commerce Standard Terms and Conditions require all BTOP grant recipients to have their award audited, if they meet certain financial thresholds. State, local, and tribal governments; universities; and non-profit organizations such as Eagle-Net must have an A-133 audit for every fiscal year in which the recipient expends \$500,000 or more in federal funding. Recipients submit their A-133 audit reports to the Federal Audit Clearinghouse via <http://harvester.census.gov/sac/> 9 months after their fiscal year ends. For more information on BTOP audit requirements, see <http://www2.ntia.doc.gov/compliance#audit> and http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf.