



State of West Virginia
Joe Manchin III
Governor

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September 24, 2010

Lawrence E. Strickling
Assistance Secretary of Commerce for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Assistant Secretary Strickling,

West Virginia is the proud recipient of Round 1 BTOP funding from the National Telecommunications and Information Administration (NTIA). The state has taken the responsibility of administering this grant award very seriously, and has worked closely with NTIA staff to make sure that the state is in full compliance with the award.

The application process by the NTIA is to be commended. The due diligence with respect to the state's grant application could not have been more thorough. Both the NTIA and the third party consultant assigned to the state's application, Booz, Allen & Hamilton, went through the application with meticulous care over a series of months. Similarly, the attention to the administration of the grant on the part of the NTIA has been equally dedicated. The state has appreciated the opportunity to participate on regular calls and to have such knowledge and guidance in the grant administration. The state's plan is ambitious, the expenditure timetable is tight, and therefore, the one-to-one communication with the NTIA has proven valuable.

The state knows that the NTIA is extremely familiar with the state's grant application and grant award. The grant application referenced the state's MPLS contract as the vehicle for expending the funds and identified state critical access infrastructure, included engineering and cost estimates from Verizon (the MPLS contract holder at the time of the state's application) based on the contract rates. The only realistic way to provide fiber connectivity to over 1000 points of interest throughout the state and to provide the engineering required by the Notice of Funding Availability was to use the existing state contract that provides for these services to state entities. The contract was awarded by the state through competitive procurement in 2007. The application was thoroughly and completely analyzed during the due diligence phase of the grant

review process. Further, the NTIA is also well aware of the state's progress and compliance with the terms of the grant. The NTIA has been invaluable in assisting in compliance and reporting. Although the NTIA is aware that the state intends to fully comply with the terms of the grant, I again reiterate that intention.

The formal protest, when stripped of gratuitous comments, seems to come back to two main points: (1) that the network built with BTOP funds will not be open; and (2) the facilities will not be available and should be offered at no cost or de minimis cost.

The basic BTOP open network requirements are found in Section V(2)(c) of the Notice of Funds Availability (NOFA) issued on July 9, 2009,^[1] and can be summarized as follows:

- All grant recipients must offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties.
- Recipients may satisfy the requirement for interconnection by negotiating in good faith with all parties making a *bona fide* request for interconnection.
- Recipients and parties requesting interconnection may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection.
- Parties are encouraged to resolve differences through negotiation. If an agreement cannot be reached within 90 days, the party requesting interconnection may notify NTIA in writing of the failure to reach satisfactory terms with the recipient.
- These conditions will apply for the life of the facilities used in the project, but do not apply to any existing network arrangements.
- These conditions apply to any contractors or subcontractors employed to deploy or operate the network facilities for the infrastructure project.
- Recipients that fail to comply with these requirements may be considered in default or breach of their grant agreements, and NTIA may exercise all available remedies to cure the default.

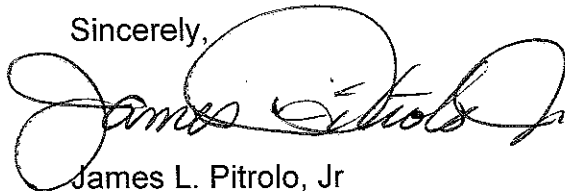
Very simply, the facilities will be open as the NTIA regulations require. Frontier has committed to be a sub-recipient under the grant and will be subject to all of the sub-recipient requirements under NTIA rules. Further, the state has undertaken, as extra assurance that plenty of fiber will be available for leverage by private companies to provide service to residences and businesses and to ensure that all reporting requirements are met, to retain a technical and grant consultant through competitive procurement process. Finally, under NTIA regulations, any negotiations on availability

^[1] *Notice of Funds Availability*, Rural Utility Service and National Telecommunications Information Agency, 79 Fed. Reg. 33103 (July 9, 2009), at 33110-33111.

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and/or pricing are to be entered into pursuant to a *bona fide* request for interconnection. The facilities have not yet been built. If disputes concerning availability and/or pricing arise after a *bona fide* request, those disputes can be resolved by negotiation between the parties, or ultimately by NTIA.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Pitrolo, Jr.", written in a cursive style with a large loop at the beginning.

James L. Pitrolo, Jr
Legislative and Policy Director