



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

NOV 29 2010

Mr. James R.J. Martin, II
President/CEO
Citynet
113 Platinum Drive
Suite B
Bridgeport, WV 26330

Dear Mr. Martin:

This letter is in response to your recent correspondence regarding the Broadband Technology Opportunities Program (BTOP). As an initial matter, your letter of November 19 accuses the Executive Office of West Virginia (EOWV) of misleading the National Telecommunications and Information Administration (NTIA) by stating that its BTOP project would offer broadband connections directly to homes and businesses in the project's service area. While your allegation seems serious on its face, it is unfounded. The EOWV application did *not* propose to serve homes and business directly. Instead, the application proposed to directly connect over 1,000 anchor institutions, such as schools and public safety agencies. As for homes and businesses, the application stated that under the open access conditions of the grant, the project will include interconnection points from which other Internet providers can build out their own networks to serve those residential and commercial customers. The EOWV application thus satisfied two important goals of BTOP as established by Congress: promoting the availability of broadband to anchor institutions and allowing open access to other providers who can use the federally-funded facilities to connect their own customers to the Internet.

Your mischaracterization of the project's intent with respect to homes and businesses ignores multiple statements in the application, which is available at <http://www2.ntia.doc.gov/grantees/WestVA>. For example, when asked to calculate the cost of the project per household served, EOWV stated that the question "is not applicable" since the project would not serve households directly. For the same reason, EOWV stated in another section of the application that "there is no estimated or actual cost per household." In a third section the application did calculate the total grant amount divided by the number of homes in the service area; however this calculation was included *not* to suggest that the project would directly connect homes, but instead, as the application stated, "in the interest of knowledge and a complete application." Thus, in finding that the application merited an award, NTIA understood from these clear and repeated statements by EOWV that the project would not directly connect homes and businesses.

In your correspondence you make a variety of other assertions that likewise seem to misunderstand our rules and the EOWV application. You request that NTIA suspend the grant for the purpose of requesting additional documentation and information from EOWV relating to its application. Please be advised that all grant awards are final. While NTIA is committed to a comprehensive post-grant monitoring program to guard against waste, fraud and abuse, third parties such as Citynet have no standing to seek a modification, suspension, or termination of a grant award.

As for your observations and allegations, we concur in your views about the acute broadband needs and challenges faced by West Virginia and recognize your efforts to highlight those circumstances and to identify solutions. Senators Rockefeller and Manchin have likewise been instrumental in the effort to accelerate the deployment and adoption of broadband so as to maximize the economic, educational, civic, and social well-being of all West Virginians.

NTIA has had the privilege and responsibility to assist states and territories in tackling their broadband challenges through the administration of over \$4 billion in broadband grants under BTOP and under the State Broadband Data and Development Program. Deciding how to allocate these funds throughout the states and territories posed a significant challenge for NTIA given the varying broadband needs of communities throughout the country as well as the wide array of goals articulated by Congress. Although your most recent letter states that “BTOP was designed specifically for middle-mile,” Congress and NTIA actually cast a much wider net: to provide or enhance broadband service in unserved and underserved areas; to increase broadband access at schools, libraries, health care facilities, public agencies, and other anchor institutions; to promote broadband access and adoption among vulnerable communities; to stabilize state and local government budgets; as well as a number of other purposes specified by statute and rules.

Although \$4 billion is certainly a large sum of money, it represents only a small portion of the amount that would be needed to satisfy all of the broadband needs across the country, as demonstrated by NTIA’s receipt of over 2,800 applications seeking over \$36 billion in funds, or nine times the amount available. This demand was reflected in West Virginia as well – we received many applications seeking to address the needs of communities across the state. Among the West Virginia projects that NTIA funded are:

- A \$3.2 million grant to deploy in Hardy County a 117-mile fiber network that is intended to connect 35 anchor institutions and will be available as a high-capacity middle-mile link for other Internet providers to enhance service to their own residential and business customers.
- A \$4.5 million grant to promote sustainable broadband adoption throughout the state, including the installation of publicly accessible computer centers, primarily in rural areas; training in digital literacy and other subject areas; and the refurbishment and sale of discounted computers to residents.
- A \$1.9 million grant to provide 245 new computer work stations at 20 public career centers that will offer high-speed Internet access and job training aimed at unemployed, low income, and other residents.
- A \$4.7 million grant to provide technical assistance to state-sponsored regional planning teams tasked with investigating and attacking obstacles to broadband adoption, promote broadband awareness, and collect and verify data to be used in the national broadband map.

In addition, NTIA awarded the grant discussed in your correspondence, a \$126 million project sponsored by EOWV. This project will expand and enhance the state’s existing microwave public safety network, better enabling first responders to provide rapid assistance to citizens in need. It will also fund about 2,400 miles of fiber enabling new or greatly enhanced high-speed Internet connections at more than 1,000 anchor institutions such as public safety agencies, public libraries, schools, and government offices. As

discussed above, the new fiber will include connection points that will enable other Internet providers to link their residential and business customers to the Internet via the high-speed capacity funded by the grant. NTIA is proud of its funded projects and is now overseeing them to ensure that federal grant dollars are spent efficiently and effectively to deliver benefits described above.

NTIA reviewed West Virginia applications using the same standards and following the same processes that applied to all other proposals. Applications were initially submitted to a first-stage review panel and those that satisfied this initial screening proceeded to a rigorous due diligence phase. At this step, NTIA staff carefully examined the application to determine the extent to which the project satisfied the requirements of the statute and the BTOP rules and would thus lead to sustainable broadband deployment and/or adoption in the community served. As part of this process, NTIA conducted an extensive review of information presented by applicants, community anchor institutions, States and Tribal entities, existing service providers, and other sources to ensure that the projects will have a substantial positive impact in areas with demonstrated need. Our due diligence also involved an in-depth analysis of the project's viability, including the applicant's organizational capability, and the project's sustainability.

EOWV's application, along with the other information NTIA relied on in making the grant, demonstrated that the project would meet a number of critical needs recognized by Congress and BTOP, including expansion of the microwave network for public safety agencies, enhanced broadband access for anchor institutions, helping to relieve the state government's economic burden, and opening up its federally-funded facilities to other Internet providers so that those providers and their customers may also benefit from the increased availability of broadband in the state. NTIA made this grant to EOWV based on its satisfaction of these requirements and its adherence to the BTOP rules.

On the basis of your objections to this grant, your October 6 letter proposes that NTIA seek additional documentation and information from EOWV regarding its application. Your proposal is outside the bounds of the BTOP rules and runs afoul of the framework established by Congress. As stated above, EOWV satisfied the rules as set forth by NTIA, consistent with the statutory framework, following a rigorous review and due diligence process. Your suggestion -- that NTIA single out EOWV for the purpose of imposing a greater evidentiary burden than was imposed on any other grant applicant -- would be unfair, unwarranted, and would serve simply to increase EOWV's costs of compliance, to the detriment of the citizens of West Virginia. Let me be clear: NTIA's goal is to make this project succeed in accordance with the grant terms, not to derail it. To the extent NTIA identifies any inability or unwillingness by EOWV to comply with any of its grant obligations, our role will be to focus on those specific shortcomings to ensure compliance going forward so that the benefits of the project can be realized, not to revisit the grant application process for the purpose of delaying or denying the realization of those benefits, as your correspondence proposes.

With respect to your specific criticisms of the project, many appear to ignore the benefits described above and seem largely based on a misunderstanding of the EOWV's application and our rules. For example, you assert that the EOWV project will create no middle mile infrastructure, will include no open access facilities, and will produce no economic benefits for the state. None of these statements is true:

- First, the microwave portion of the project consists of middle-mile infrastructure. In addition, the project's interconnection points will create middle-mile availability over fiber. Further, our rules do not require that any minimum proportion of a project consist of middle-mile

construction. While we recognize that a project deploying more traditional middle-mile infrastructure could bring its own benefits to West Virginia, NTIA's responsibility was to review the application as filed by EOWV against the program criteria as established by Congress and NTIA. As explained above, the EOWV project matched the goals of the program quite well in a number of ways, a conclusion that is in no way diminished by the fact that a different application emphasizing different program goals might also have merited an award.

- Second, your October 6 letter seems to suggest that the BTOP-funded facilities will not be subject to the open access requirements and you clearly predict that EOWV and its subrecipient, Frontier West Virginia, will not honor those requirements. In fact, following our receipt of your letter, Frontier expressly confirmed its status as a subrecipient and its resulting obligations under the grant. Your predictions as to the future conduct of EOWV and Frontier are speculative.
- Third, the construction of 12 new microwave towers, the upgrade of 84 existing towers, and the deployment of 2,400 miles of fiber involves substantial labor that means jobs for West Virginians with resulting economic benefits for the state. BTOP applicants were not required to quantify all of the direct and indirect economic benefits of their proposed projects, as that would have been both unnecessarily burdensome and somewhat speculative; again, your proposal to single out EOWV for disparate treatment in this regard is unwarranted.

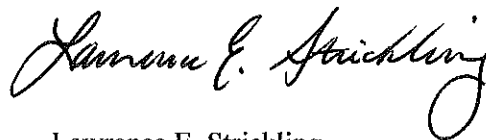
Most of your remaining objections seem overstated. For example, we cannot take action based on your negative characterization of the views or involvement of two state agencies regarding the project, particularly when one of those agencies is comprised primarily of appointees of the Governor, whose office is the recipient of the grant, and is chaired by the State Secretary of Commerce, who clearly endorsed and is overseeing the project. In any event, it is not for NTIA to dictate the involvement of various state agencies. (In this same discussion, you assert that in a self-scoring section the EOWV application scored only 1 out of a potential 100 points for achieving BTOP objectives; here you seem to be confusing the BTOP application with the separate application process managed by the Department of Agriculture under its broadband program, as the BTOP application did not have a self-scoring section or a 100-point grading system.)

With respect to the affordability of the services to be offered over the EOWV facilities, we believe NTIA should defer to the opinions of the West Virginia Governor and its Secretary of Commerce that funding of this project will relieve the state and state agencies of economic burdens, notwithstanding your reference to an email to the contrary from one county official. We understand that the rates contained in West Virginia's underlying contract with Frontier were the product of a standard state procurement process and your letter does not seem to contradict that fact, although I recognize you might have preferred a different result. In addition, we are advised that the parties to the contract are in the process of negotiating lower rates.

As indicated above, NTIA has established a strong oversight program for monitoring all BTOP recipients to ensure compliance with the terms of their grants. Where a problem emerges, NTIA intends to escalate its scrutiny accordingly. Our commitment extends to EOWV and its subrecipients. Your letter correctly highlights the importance of their compliance obligations, given the positive impact that compliance will have on other Internet providers, on business and residential broadband consumers, and on the economic development and job creation in the state. NTIA looks forward to helping bring those benefits to fruition

through oversight of EOWV and its subrecipient regarding their continuing compliance with all of the grant terms. We invite Citynet and other interested parties to bring to our attention any instances of noncompliance.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence E. Strickling". The signature is written in black ink and is positioned above the printed name.

Lawrence E. Strickling