

West Virginia Broadband Coalition
Position Paper Addressing Broadband Stimulus in West Virginia

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West Virginia Broadband Council
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Introduction:

The West Virginia Broadband Coalition has been formed to proactively address significant concerns over broadband enablement in our State as it pertains to funding provided under the American Recovery and Reinvestment Act (the “ARRA”). The ARRA allocated a total of \$7.2 billion of taxpayer money for broadband enablement programs through the Rural Utilities Service (the “RUS”) and the National Telecommunications and Information Agency (the “NTIA”). The cornerstone of these federal grant programs is the desire to facilitate “open access” infrastructure at affordable prices that would aid broadband expansion into unserved and underserved communities. This position paper addresses some key questions, concerns and policy items as they pertain to the NTIA’s \$130 million broadband stimulus award to the State of West Virginia (the “State’s Plan”).

The State’s Plan is not only extremely atypical relative to the NTIA’s stated objectives of broadband enablement, it is strangely unique in that the overwhelming majority of the funding will be provided to Verizon, the existing telecommunications monopoly in the State. Moreover, the State’s Plan only addresses the State’s ability to purchase services under its existing MPLS contract with Verizon with no other clear requirements documented for other potential services that may be beneficial to the State, or requirements regarding “open access”. This position paper is based on this understanding and it is our intent to provide constructive criticism and to further recommend some critical policy issues as it relates to the State’s Plan.

The membership of the West Virginian Broadband Coalition consists of a diverse set of competitive carriers, cable television operators and last mile providers. These providers are vital to ensuring adequate competition and choice for the citizens of West Virginia and their presence solidifies that consumers not only have access to new services, but that they have a choice among providers based on customer service, service options, performance and price.

The State’s Plan:

According to answers received by a number of the members of this Coalition, the State’s Plan provides no direct solutions or benefits for broadband enablement for the citizens or businesses in West Virginia. This is particularly troubling given the NTIA’s stated objectives and the West Virginia Broadband Council’s chartered goal of resolving Last Mile broadband service challenges. Fundamentally, this provokes the following question – “How is it possible that a \$130 million broadband enablement plan can ignore the needs of the economic heart and sole of our State (its citizens and businesses)?” The State’s Plan does provide much needed relief to critical community institutions, but this focus is incredibly narrow given the potential benefits that could be derived from a \$130 million investment in broadband infrastructure. Adding to these concerns is the fact that the State’s Plan produces critical assets that will not be owned or controlled by the State. According to the State’s Plan, the State will fund these assets, but they will be owned and operated by Verizon (West Virginia’s primary incumbent and essentially monopolistic carrier). The end result is an incredibly large and material (and frankly questionable) capital infusion to Verizon. In other words, this is a “business as usual” approach to broadband enablement that wholly fails to address the fundamental problems with access to

broadband in West Virginia. This is the same business as usual approach that today finds West Virginia at the bottom of the broadband heap. Albert Einstein would be proud to know his definition of insanity is alive and well – “insanity is doing the same thing over and over again and expecting different results”.

The members of this Coalition strongly believe this a fundamentally flawed approach to broadband enablement in our State and that the economic anchors of our State will not only remain broadband disadvantaged, they will in fact receive no material benefits from an otherwise historic and monumental opportunity. While the Coalition would strongly prefer to hit the reset button and start over, we recognize it will be difficult to correct this critical oversight. Therefore, this Coalition strongly encourages that the State of West Virginia must implement the policy requests outlined in this position paper.

It should be noted that the Coalition does not oppose direct funding of network operators due to the assurances of strenuous government oversight and accountability. Funding grants made directly to the network operator require the operator to perform specific duties as outlined in the comprehensive requirements of the NTIA that include: location, service offerings, pricing, open access, technology and matching funds (all of which align the government’s desires for success with those of the network operator). The grant by the NTIA to the State in this circumstance, however, poses serious questions regarding oversight and compliance. How will Verizon be held accountable for providing the benefits outlined by the NTIA since the money was awarded to the State? Is the State of West Virginia going to hold Verizon to the same level of scrutiny as required by the NTIA and how will that oversight be enforced? Simply by the MPLS contract? One would contemplate that the State could stop purchasing services from Verizon. But what of the assets? If Verizon would have applied for and received funding they would have been required to meet the same objectives of all the other applicants and, more importantly, they would have been directly accountable to the NTIA. Indeed, why didn’t Verizon apply for these funds directly with the State’s support? It would not be an incredibly difficult exercise to contemplate why Verizon failed to apply for these funds directly.

Last Mile Barriers:

The members of the Coalition clearly understand the challenges and need for cost effective broadband infrastructure in our State. It is a well known fact that tariff rates for capacity in West Virginia (especially in rural areas) have remained excessively cost prohibitive. Those excessive costs directly block the economic abilities of Last Mile providers to introduce sustainable broadband services into rural and low populace areas. This problem is not unique to West Virginia. Areas that remain under the control of monopolistic communications carriers suffer from this exact problem because there are no incentives to: (i) lower pricing, (ii) increase performance, or (iii) invest in new infrastructure. Acknowledgement of this challenge is clearly understood by the NTIA (given its stated objectives) and is further evidenced by the high number of non-public entities receiving awards for competitive middle mile network solutions.

It should further be noted that many tariff rates specific to broadband transport and backhaul in West Virginia remain Twenty (20) times more expensive (on a per unit basis) than other areas of our nation that enjoy healthy competition and choice. The members of this Coalition had hoped

this economic barrier would be addressed by the State's Plan, or at the least be required by the NTIA in its implementation. However, it would appear that this very real and unfortunate barrier to broadband expansion will remain in place. The State of West Virginia must require commitments from Verizon to address this challenge by materially lowering these costs and by improving the availability of these services in exchange for benefits received under the State's Plan (*i.e.*, \$130 million in capital funded by taxpayer money). If the State of West Virginia or Verizon, independently or together, will not voluntarily agree to such commitments, then this Coalition must take appropriate steps to compel the result needed for the citizens and businesses of the State.

Goals and Objectives of the Coalition:

We believe the leaders of West Virginia, the West Virginia Public Service Commission and the NTIA should enforce the following requirements in respect to the broadband infrastructure funded under the State's Plan. The State's plan calls for the construction of 900 to 2,400 miles (pending clarification) of fiber optic cable systems in our State and will be completed using taxpayer money. The members of this Coalition specifically request that the State of West Virginia formally address the following issues by implementing requirements that ensure maximum utility of the publicly funded assets and that, at a minimum, some benefits are propagated to the citizens and businesses of this State.

1) Asset Ownership and Access

The new assets will be funded by taxpayer dollars and should be owned and controlled by the State of West Virginia. Verizon should not, under any circumstances, be the sole beneficiary of these publicly funded assets. If this is not possible, the State should require Verizon to designate and reserve a minimum of 50% of the fibers for open access requirements for use by other certified carriers.

2) Pricing For Use of the Assets

The State should ensure that pricing established for any use of the assets reflect and acknowledge that these capital assets were paid for by taxpayers. These prices should address a minimalistic cost approach, *e.g.*, the prices should be aggressively low to ensure maximum use of the assets and they should not include capital carrying costs.

3) Construction Requirements

The State of West Virginia should establish a minimum set of construction requirements, with input from this Coalition, to ensure adequate availability of these assets once they are completed. For example, it is well known that there are minimal incremental costs associated with constructing a 96 count fiber cable versus a 72 count fiber cable, and so on. The State should require Verizon to construct these fiber assets so they have adequate fiber counts for the purposes of facilitating access. Requests for access to the assets should never be met with a response that "sufficient capacity does not exist to fulfill the request". In addition, they should include adequate provisions for installing splice points (access points) to the fiber cable assets that are user friendly, *e.g.*, easily accessible by other certified telecommunication carriers.

4) Verizon Tariff Rates

As stated earlier, tariff rates for broadband capacity in West Virginia remain extremely high. Last Mile expansion of broadband cannot be realized without some concessions on Verizon's broadband transport tariffs. This is especially true for rural, low populace communities. The State should gain commitments from Verizon to materially lower the cost of these services and materially improve the availability of these services in exchange for the publicly funded benefits they receive under the State's Plan.

Summary:

The purpose of this position paper is to inform interested parties of the policies that the State of West Virginia should be eager and willing to embrace and adopt relative to the implementation of the State's Plan. The suggested changes will help ensure maximum utilization of the publicly funded assets deployed under the State's Plan. As a result the members of this Coalition can drive awareness of these issues and gain support from key leaders to facilitate and implement these recommendations. This document is not meant to provide unnecessary criticism of either the State's Plan or Verizon. Rather, it is intended to highlight the gaping holes and significant broadband challenges that will remain if the State's Plan is implemented as presented. Further, this position paper is intended to help make certain that any potential benefits made possible by the State's Plan are considered and, where possible, propagated to the benefit of the citizens and businesses of West Virginia. We respectfully ask for your support and consideration of the ideas reflected in this position paper since the implementation of the State's Plan as currently contemplated will be a travesty for our beloved State.