

October 28, 2009

The Honorable Gary Locke, Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

The Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Dear Secretaries Locke and Vilsack,

On October 14, Brian Schweitzer, Governor of Montana, sent a letter to Mr. Ian Martinez, Senior Advisor and Director of Outreach for the National Telecommunications and Information Administration (NTIA). The Governor's letter provided comments on "Montana-related applications for federal stimulus funding under the Broadband Infrastructure Program (BIP) and the Broadband Technology Opportunity Program (BTOP)." The Governor's letter "urge[s] the NTIA and RUS to fully fund the entirety of the Bresnan Communications application" for broadband stimulus funds.

The undersigned companies include every rural telecommunications provider in the State of Montana. These companies unanimously object to the Governor's recommendation of Bresnan Communications' (Bresnan) application and urge you to reject his recommendation and deny Bresnan's application. The Governor's letter includes factual errors and mischaracterizes the state of broadband telecommunications investment and deployment in Montana—particularly on Tribal lands. It reaches "conclusions" which are the result of a lack of due process and a disregard for transparency and accountability. The letter raises conflicts of interest and legal questions regarding Bresnan's willingness to comply with the terms of the stimulus program. If granted, the Bresnan application will not meet the greatest broadband needs and provide the greatest possible benefits in our State. It will not stimulate Montana's economy. In short, by duplicating existing networks, the Bresnan application, if allowed, will result in less investment, fewer jobs and economic decline in rural Montana.

Since the Governor first took office in 2005, Montana's rural local exchange companies (RLECs) and their representatives repeatedly have informed him and his staff about the extent to which the RLECs have invested in broadband deployment to the outer edges of their networks in order to serve Montana's residential and business consumers with advanced telecommunications technology and applications. (See attached Fact Sheet illustrating RLEC broadband investment in Montana.) The Governor's October 14, 2009 letter to NTIA makes clear that this information has been completely ignored. In fact, it

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now becomes evident from his letter to NTIA that the Governor has been working with Bresnan since June of 2005, shortly after being elected, to “put together a plan...to accomplish improved communications” in Montana. Without conducting any broadband data survey of Montana’s broadband infrastructure deployment, he apparently “concluded that there was a serious lack of communications capability in and around Montana’s seven Native American Reservations [and a] clear lack of modern communications was contributing to that lack of economic achievement in Indian Country here in Montana.”

Trouble is, that conclusion is patently wrong. It was wrong in 2005, and it’s wrong in 2009. The Governor never requested the telecommunications providers serving these areas to help him put together a plan. He never requested information on existing capabilities or future deployment plans, what services exist, or what Montana’s RLECs could do to help him achieve his objective. There was no notice provided to rural providers of opportunity to comment on a plan nor was any other due process or opportunity to comment extended. In short, there was a total lack of transparency and accountability in the process used by the Governor to reach a “conclusion” that there is a lack of communications capability or a lack of interest among the telecommunications providers of Montana to help him accomplish his goals.

The Governor’s endorsement of Bresnan’s application and the application itself raise a number of questions. For example, since Bresnan is under contract with the State of Montana to provide telecommunications services, doesn’t the Governor’s endorsement of his own telecommunications network provider constitute a conflict of interest especially since he appears to have been working exclusively with Bresnan since 2005? (See letter from Montana Public Service Commission to Secretaries Vilsack and Locke: 10/27/9: “the proposer should never be the evaluator of competing proposals.”) The 2009 Montana Legislature denied the Governor’s request for appropriations for broadband matching funds to avoid just such a conflict of interest and to avoid a lack of transparency and accountability resulting from the Governor’s failure to indicate how or why such funds were being requested.

Additionally, while Bresnan seeks “middle mile” funding for an 1,885 mile fiber network connecting Montana’s seven Reservations, there is no publicly available document which depicts Bresnan’s proposed network. Instead, they offer misleading or incorrect information about the state of connectivity on Montana’s Reservations, and they offer no information at all about connectivity between Montana’s Reservations. The on-line broadband mapping tool effectively precludes many Montana companies from even viewing, not to mention responding on Bresnan’s public notice filings. Many other applications are heavily redacted, further preventing appropriate public scrutiny.

Further, Bresnan’s self-exemption from federal procurement terms and conditions should disqualify its application on its face. The executive summary of

Bresnan's application states, "Bresnan cannot proceed with the above project if the entire company is encumbered by the prohibition of sale within ten years." Do they want to get \$70 million in broadband stimulus funds and then "flip" the company, perhaps to their private equity investors or co-owners? Bresnan further notes, "Bresnan cannot, however, agree to a prohibition of transfer of any company assets for any period of time or have the valuation of the company assets be subject to agency approval." Moreover, "Bresnan must be permitted to sell IRUs without violating the general prohibition of the sale or grant funded project assets." It appears Bresnan wants its cake and eat it too. That is, they seek \$70 million of taxpayer money, but appear disinclined to comply with terms and conditions that apply to thousands of other applicants who commit to rules designed to assure public accountability from companies accepting federal funds.

Perhaps most troubling are the false claims that Bresnan makes in order to win approval of its application, which, if granted, will threaten—not stimulate—Montana's economic development. First are the claims both by Bresnan, and regrettably, the Governor, that areas Bresnan seeks to serve with stimulus funds are in fact unserved or underserved. As individual companies will attest in formal responses to Bresnan's (and others') public notice filings, these assertions not only are misleading; they're just plain wrong. (See also the attached Fact Sheet.)

Second are the effects on Montana's economy if Bresnan's application were granted. As Bresnan states in its executive summary, they plan to build a "1,885 mile fiber optic network connecting seven Reservations, and unserved and underserved communities." As the attached map of Montana's rural telecom infrastructure depicts, there already are several middle-mile fiber networks not only providing connectivity to, and in, all seven Reservations, but communities on and far from the main backbone middle mile network. Bresnan, in other words, offers nothing new, and in fact threatens to overbuild existing infrastructure contrary to the intent of the Recovery Act.

For example, as one Montana RLEC pointed out to the Governor before he sent his letter to NTIA, "Bresnan's application proposes to duplicate approximately 80 miles of an existing Gigabit Ethernet (Gig-E) fiber route [we have] in place, as well as duplicating hundreds of miles of other provider's existing facilities."

The broadband stimulus Notice of Funds Availability (NOFA) states that middle mile applications, such as Bresnan's, "will be scored on the level of need for a middle mile network in the area...whether there are middle mile providers already present in all or part of the area [and] what proportion of the network's users are located in unserved or underserved areas." (p. 67.) The NOFA further states that middle mile projects "should offer substantial benefits to unserved and underserved areas relative to the costs of providing service." (p. 42.) These criteria simply are not satisfied by Bresnan's application.

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If granted, Bresnan's application threatens to waste taxpayer dollars and divert traffic and revenue from existing infrastructure providers. Any jobs "created" by such duplication of effort would come at the expense of current jobs held by Montana's rural telecom providers and other industry participants. Earning a viable return on investment in Montana is precarious at best, as a result of the extremely high capital expense of building and operating an advanced telecommunications infrastructure in a geographically challenging environment with low population density. Overlaying existing infrastructure—including infrastructure built with RUS loans—with taxpayer-funded duplicative networks threatens existing returns—including RUS loan repayment schedules—and discourages future investment. Sustainability of both current and stimulus-funded networks would be put at risk. It is hard to imagine how such duplication promotes jobs or economic development when it comes at the expense of Montana's own existing telecommunications infrastructure and the Montanans who make such investment work.

The broadband stimulus program provides a unique opportunity to bring the benefits of enhanced broadband connectivity to unserved and underserved consumers in Montana. Regrettably, Bresnan's application fails to achieve these benefits and instead threatens to waste taxpayer funds, threaten jobs, and retard economic development in Montana. Instead of exploring partnership opportunities with existing broadband providers who have deployed advanced telecommunications capabilities in our state, the Governor has opted for a sole-source funding scheme that fails to meet the greatest needs of Montana. Bresnan's application—as well as others that would overbuild existing broadband infrastructure—offers nothing new, and in fact threatens to undermine the objectives of the Recovery Act's broadband stimulus provisions.

As the Montana Public Service Commission states in its October 27, 2009 letter to you, while the Governor's justification for his recommendation of the Bresnan application

eloquently and correctly describes the very real, gripping, and onerous economic circumstances and challenges facing residents of Indian Country, there is nothing in the Bresnan proposal...that inspires any confidence that those problems will be materially addressed by this \$70 million overbuild of 'middle mile' assets. (PSC letter to Secs. Locke and Vilsack, 10/27/9.)

The undersigned strongly urge you to reject Governor Schweitzer's recommendation and deny Bresnan's application for broadband stimulus funds.

Please feel free to contact either Geoff Feiss, General Manager of the Montana Telecommunications Association (406-442-4316/gfeiss@telecomassn.org) or Bonnie Lorang, General Manager of Montana Independent Telecommunications Systems (406-443-1940/blorang@mitstel.com) if you would like to contact any of the undersigned, or if you have any questions or would like to discuss these concerns in greater detail.

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Respectfully submitted,

3 Rivers Communications. Fairfield, MT
Blackfoot Telecommunications Group. Missoula, MT
CenturyLink. Kalispell, MT
Frontier Communications. Libby, MT
Hot Springs Telephone Company. Hot Springs, MT
InterBel Telephone Cooperative. Eureka, MT
Lincoln Telephone Company. Lincoln, MT
Mid-Rivers Communications, Circle, MT
Nemont Telephone Cooperative/Project Telephone. Scobey, MT
Northern Telephone Cooperative. Sunburst, MT
Range Telephone Cooperative. Forsyth, MT
Ronan Telephone Company. Ronan, MT.
Southern Montana Telephone Company. Wisdom, MT
Triangle Communications. Havre, MT

Cc Gov. Brian Schweitzer
Sen. Max Baucus
Sen. Jon Tester
Cong. Denny Rehberg
Jonathan Adelstein
Lisa Zaina
Larry Strickling
Ian Martinez

Attachments:

Fact Sheet: Rural Telecom Providers Investment in Montana
Montana RLEC Fiber Deployment Map