



April 14, 2010

Governor Brian D. Schweitzer
Office of the Governor
Montana State Capitol Bldg.
P.O. Box 200801
Helena MT 59620-0801

Re: State Recommendations for Broadband Technology and Opportunities Program

Dear Governor Schweitzer:

360networks (USA) inc. ("360networks") urges the government of Montana to recommend to the National Telecommunications and Information Administration ("NTIA") that it reject the Comprehensive Community Infrastructure ("CCI") application of XO Communications Services, Inc. ("XO") because the application proposes to overbuild existing fiber infrastructure of broadband providers here in Montana and fails to satisfy the requirements of the 2010 Notice of Funds Availability ("NOFA") as well as the stated assurances by Larry Strickling of the NTIA to prevent overbuilds of existing broadband networks. Overbuilding existing infrastructure will harm existing providers, does not provide for job creation, and most importantly, does not efficiently accomplish expanded broadband service to the underserved markets in your state.

360networks (USA) inc. is one such existing provider in your state. We are a full service, competitive wholesale carrier, offering a comprehensive range of infrastructure services on our wholly owned fiber optic backbone to carriers, ISPs, and cable companies. 360networks' services include IP Transit, Ethernet, Private Line, Collocation, Local Access and VoIP. Our facilities-based network spans over 17,200 miles to over 75 western U.S. markets in 17 states, including Montana.

The Broadband Technology Opportunities Program ("BTOP") specifically is meant to provide broadband access to unserved areas, improve broadband access in underserved areas and create jobs.¹ Funding overbuilds defeats these purposes. If the limited amount of money that is available is spent on duplicate facilities, money will not be available to bring service to unserved areas and it will make it more difficult for existing providers to operate their businesses in the face of a government subsidized competitor. Thus, rather than encourage the deployment of infrastructure and create sustainable jobs, overbuilding discourages private investment, harms deployment and costs jobs. Particularly in high cost, sparsely populated areas, where existing providers have difficulty covering cost, splitting subscribers while subsidizing a new competitor

¹ American Reinvestment and Recovery Act, Section 6001(b), 123 Stat. at 512-513.



will only make it harder for all carriers to recover broadband investments, putting jobs in jeopardy and leading ultimately to a burden on the consumer, states and the country.²

For these reasons, level of need is a critical element of a CCI application.³ NTIA Assistant Secretary Larry Strickling summarized the standard of review on this point, as one to ensure that “overbuild is minimal and it is justified only when the facilities in the area are currently inadequate.”⁴ Moreover, fiber will not be funded when it is *excessive additional capacity* to support the services proposed in the application.⁵ In other words, if the middle mile services proposed by the project may be provided using existing carriers’ fiber and/or transport services, the cost of fiber to build a new route is not eligible for funding through BTOP.

XO asks the NTIA for a grant of \$206,464,795 to build a 2,227 mile, 144 fiber cable route serving Washington, Idaho, Montana, North Dakota, Minnesota, Wisconsin, Illinois and Iowa. It offers to provide middle mile services to last mile providers and communities along its route including IP Transit, Ethernet, private line, peering arrangements and dark fiber at \$10 per MB.

Today, 360networks offers IP Transit, Ethernet, private line and peering arrangements to last mile providers and communities along XO’s proposed route (see attached 360networks (USA) inc. infrastructure map compared to XO’s proposed route). 360networks invested more than \$300 million of private funds to build our route from Chicago to Seattle. Our private line backhaul offerings range in speeds from 1.544 Mps to 10 Gps and IP Transit is available in increments of 1.5 Mps up to 1000 MBs or higher. 360networks competes with AT&T, Qwest and smaller providers along various sections of the route. Pricing is based on a per MB basis and is currently competitive to similar services of the competitors. 360networks can offer services in the \$8 to \$10 per MB range.

360networks’ current capabilities are 400 Gigabits worth of capacity. Advancements in optronics enable carriers to expand exponentially available capacity on a fiber strand without having to install new fiber strands. Today, through additional investment in optronics, in a matter of days, 360networks’ fiber could reasonably support up to 4800 Gigabits. The next generation of optronics is expected to increase the capacity of a single fiber to 8 Terabits, which is 5 times the capacity that is supported today.⁶

360networks also maintains points of presence (“POPs”) along the route, enabling other carriers to collocate and interconnect to our fiber backbone. In addition, amplification and regeneration (“Amp/Regen”) sites are located every 40 to 50 miles. These Amp/Regen sites could be transformed into additional POPs by the deployment of optronics equipment and wireless towers. 360networks’ platform allows for add/drop capability and it has an excellent track record of building out our network to provide off and on ramp capability to our POPs.

² See Transcript of March 4, 2010 Hearing on House Oversight of the American Recovery and Reinvestment Act: Broadband, Part 3: Comments of Representatives Stearns, Barton, Blackburn, Terry and Shimkus.

³ See NTIA, BTOP, Round 2 Guidance, CCI (March 19, 2010) at page 51.

⁴ Transcript, *supra*. at page 75.

⁵ NOFA at V. E. 2; NTIA, BTOP, Round 2 Guidance, CCI (March 19, 2010) at pages 3-5.

⁶ <http://infinera.com>



XO also fails to demonstrate that the communities along the route have needs to be filled and will, in fact, consume the proposed services. Rather, XO has taken an “if we build it, they will come” approach, which does not comport with the “comprehensive communities” policy rationale of the 2nd round NOFA.⁷ This failure will also make it difficult for XO to satisfy the requirement that its project is sustainable.⁸ 360networks promotes, markets and sells our services along this route, and actively seeks out business opportunities to expand customer base and service offerings on this route. Accordingly, 360networks has a first-hand, thorough working knowledge of service needs and contrary to XO’s assertions, 360networks is unaware of any significant pent-up demand for services. This application does not appear to be aimed to bring broadband to unserved and underserved communities but instead to fill an obvious hole in XO’s nationwide broadband network. This observation is buttressed by the fact that prior to XO’s filing of its application, 360networks offered to provide XO services along the route as an alternative to an overbuild. XO did not pursue this alternative.

Through these available 360networks’ services and similar services of other carriers with fiber located along XO’s overbuild route, high speed, affordable carrier grade services are available to community anchors, local governments, public safety institutions, wired and wireless last mile providers, without the need to invest more than \$200 million of taxpayer dollars to build excessive additional middle mile fiber. Rather than fund new infrastructure, to the extent these communities need improved broadband services, the government should focus its efforts to build coalitions of existing carriers and community leaders who can work together to solve the problem efficiently. 360networks is willing to participate in such a coalition.

Thank you for the opportunity to provide comments on pending BTOP applications affecting Montana. Please contact me with any questions you may have about these matters.

Sincerely,

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Enclosure

Cc: Montana Public Service Commission

⁷ NOFA II.B.1.

⁸ NOFA VI.C.1.c.