



April 19, 2010

Chairman Greg Jergeson  
Montana Public Service Commission  
1701 Prospect Avenue  
PO Box 202601  
Helena, Montana 59620-2601

Dear Chairman Jergeson:

As you are aware, 360networks is an existing full service, competitive wholesale carrier, offering a comprehensive range of services on our wholly owned fiber optic network in 17 states, including Montana. We are proud of the fact that our largest office is located in Butte and we employ 68 highly skilled and well compensated employees in Montana.

360networks respectfully requests the Montana Public Service Commission closely review the NTIA round II broadband stimulus BTOP applications submitted for projects affecting Montana. Additionally, we would respectfully ask the Commission to send a letter to the US Departments of Commerce, Agriculture and the NTIA urging them to reject XO Communications and similar "comprehensive community infrastructure" broadband stimulus grant applications that threaten investment, jobs and economic development in Montana. The Commission appropriately wrote to NTIA and RUS in the first round of stimulus applications. The second round is no different.

We are particularly concerned and wish to bring to your attention the application filed by XO Communications known as Northern Lights. This application seeks approximately \$206,000,000 in BTOP funds to construct a fiber optic network from Seattle to Chicago going through Montana (see attached map). This application proposes to overbuild and duplicate more than 90 % of our existing network and 100% of our Montana network as well as those of Sprint, AT&T and a host of regional providers.

The XO application, sadly does not meet the standard as set by the ARRA broadband stimulus program. The Broadband Technology Opportunities Program (BTOP) specifically is meant to provide broadband access to un-served areas, improve broadband access to underserved areas, create and maintain jobs. Funding of overbuilds defeats the purpose of BTOP. Funding of such a large overbuild project as proposed by XO will simply make BTOP funds unavailable to bring service to un-served and underserved areas. It will make it more difficult for existing providers to operate their business. Subsidizing duplication will retard rather than promote the investment of private capital. Further, in high cost, sparsely populated areas, where existing providers have difficulty covering cost, splitting

subscribers with a new subsidized competitor will put Montana jobs at risk. It burdens rather than benefits consumers.

The Commission hit the nail on the head in its October 27, 2009 letter to Secretary Locke, Secretary Vilsack and Senior Advisor Martinez when you stated “the digital divide that exists in Montana is a “last mile” problem”. XO fails to address this “last mile” problem. It has also failed to demonstrate that the communities along its proposed route have underserved needs to be filled and will, in fact, consume the proposed services. XO has taken an “if we build it, they will come” approach, which does not comport with the “comprehensive communities” policy rationale of the 2<sup>nd</sup> round NOFA. This failure will make it difficult for XO to satisfy the sustainability requirement of the NOFA. If they are successful it will threaten new telecommunications investment by existing providers in Montana as well as the other states their proposed route traverses.

360networks actively seeks and sells competitive broadband, IP, Ethernet and Private line services on our network along the route proposed by XO. We have current capabilities of up to 400 Gigabits worth of capacity on our network, including our Montana network. We have first hand, thorough working knowledge of the service needs in the markets XO is proposing to construct and contrary to XO’s assertions, 360 is unaware of any pent up demand for services. Quite frankly the application by XO is nothing more than an effort by XO to fill a hole in its national network at taxpayer expense.

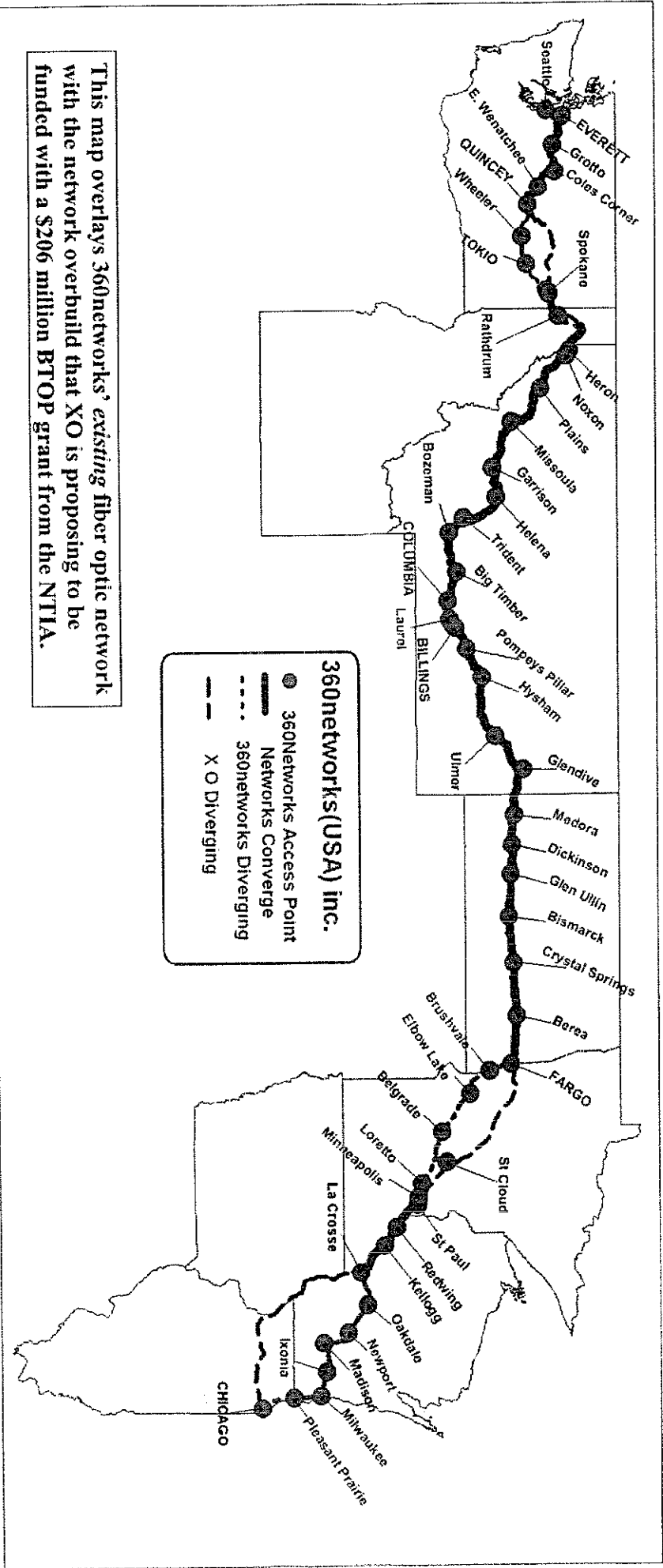
Rather than fund new infrastructure builds, the government should focus its efforts on building coalitions of existing carriers and community leaders to work together to solve the “last mile” problem in Montana and other states. Spending \$206,000,000 in taxpayer money to fund a new competitor in an already crowded market simply makes no sense; let alone implementing the goals of the ARRA to provide economic stability, creating and maintaining jobs and expanding broadband to un-served and underserved markets.

If you should have any questions we can help you with, please do not hesitate to contact me. I have also attached a letter we provided to the Governor with which we copied the Commission and the Montana Consumer Counsel.

With Respect,



Patrick M. Hogan  
360networks  
130 N. Main  
Butte, MT 59701



This map overlays 360networks' existing fiber optic network with the network overhaul that XO is proposing to be funded with a \$206 million BTOP grant from the NTIA.



Copy

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.<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup>

For these reasons, level of need is a critical element of a CCI application.<sup>3</sup> 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.”<sup>4</sup> Moreover, fiber will not be funded when it is *excessive additional capacity* to support the services proposed in the application.<sup>5</sup> 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.<sup>6</sup>

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.

<sup>2</sup> 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.

<sup>3</sup> See NIIA, BTOP, Round 2 Guidance, CCI (March 19, 2010) at page 51.

<sup>4</sup> Transcript, supra. at page 75.

<sup>5</sup> NOFA at V. E. 2; NIIA, BTOP, Round 2 Guidance, CCI (March 19, 2010) at pages 3-5.

<sup>6</sup> <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 2<sup>nd</sup> round NOFA.<sup>7</sup> This failure will also make it difficult for XO to satisfy the requirement that its project is sustainable.<sup>8</sup> 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,

Chris Mueller  
Chief Financial Officer  
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[cmueller@360.net](mailto:cmueller@360.net)

Enclosure

Cc: Montana Public Service Commission

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<sup>7</sup> NOFA II.B.1.

<sup>8</sup> NOFA VIC 1 c.