



MONTANA PUBLIC SERVICE COMMISSION

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October 27, 2009

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

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

Ian Martinez
Senior Advisor and Director of Outreach
BTOP Program National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington DC 20230

Re: Montana Public Service Commission Comments on Recommendations to
NTIA/RUS for ARRA Broadband Stimulus Funding

Dear Sirs:

The Montana Public Service Commission (PSC) respectfully takes this opportunity to comment on the Montana recommendations to NTIA/RUS for ARRA broadband stimulus funding submitted to you by the Office of the Governor, State of Montana.

Both federal and Montana statutes assign numerous responsibilities to the Montana PSC in the telecommunications field. This agency has diligently executed its responsibilities vis-à-vis the telecommunications industry and, as a consequence, has developed an extensive understanding of this complex and vital industry in our state. Although a number of telecommunications services are not subject to our regulatory authority, the PSC has had to stay abreast of the provision of those services as their integration with regulated services is necessary for this complex system to work. Montana law establishes

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the Montana PSC as an independent agency in order to assure that our analyses and decisions are the most objective possible.

The Montana PSC submits that the recommendations submitted to you by the Governor's Office are seriously flawed, particularly the recommendation that the total available funds be awarded to a single application submitted by Bresnan Corporation. There is a cardinal rule in competitive grant-making, "the proposer should never be the evaluator of the competing proposals." Given their own explanation of the genesis of the Bresnan proposal (the White Paper), the Governor's Office must be considered a co-proposer. Therefore, the Governor's Office should not have assumed the role of evaluator of the applications for this "competitive" grant program. Specifically, the Montana PSC wishes to comment on the inherent flaws in the Governor's support for that particular application.

Mischaracterization of the "digital divide" that exists in Montana

The application and Governor's support for it (the White Paper) assert that there is a lack of the essential "middle mile" broadband infrastructure necessary to bridge the digital divide. This is not accurate. Telecommunications providers in Montana, individually and in concert, have invested in and installed a very robust, very redundant broadband infrastructure backbone that reaches nearly every community hosting a high school or community college, including tribal community colleges, in the state. The Qwest AFOR settlement approved by the Montana PSC assures that 28 of the remaining 30 high school districts without broadband availability will have it within three years. Broadband will not be available in Pryor without additional investment, but that investment need be much less than a taxpayer investment of \$70,000,000. Exhibit #1 contains two maps reflecting fiber optic deployment in Montana: (1) the first is from page 10 of the White Paper but provides little deployment detail; (2) the second labeled "Montana Telecommunications Assets" shows much more detail of the existing broadband deployment in the state. The second map shows that deployment is widespread, extensive, and redundant and available on Montana's seven American Indian Reservations. Exhibit 2 is a two page document prepared by 360Networks explaining the duplicative aspects of the Bresnan application to fiber already deployed.

The digital divide that exists in Montana is a "last mile" problem. That "last mile" problem is endemic throughout large stretches of rural Montana, both on and off our seven American Indian Reservations. The concentration of funding for the unwarranted Bresnan "middle mile" infrastructure overbuild leaves minimal to non-existent resources to address the real digital divide, the "last mile."

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The Governor's comments suggest that the "last mile" will be addressed in the next round of funding. This begs the question, since the "last mile" is the real digital divide problem; why not address it squarely in this round of funding?

Lack of "Universal Service" obligation on the part of Bresnan

Unlike the Montana telecommunications providers who have Eligible Telecommunications Carrier (ETC) status, Bresnan Communications is not required to shoulder "universal service" obligations.

The Montana PSC has required, as a condition of receiving ETC designation, the providers actively advertise and promote the lifeline and link-up programs in order to assure that low-income persons have access to basic telephone service. In reports to the PSC, these providers have demonstrated their compliance with this requirement year after year. For example, upon receiving ETC designation, Sagebrush Cellular, an affiliate of Nemont Telephone Cooperative, held phone fairs in communities throughout the Fort Peck Reservation to assist residents in acquiring cell phones and lifeline and link-up assistance for those customers who qualified.

In another example of the proactive stance to advance "universal service, the leading forces to implement Extended Area Service (EAS) have come from Montana telecommunications providers. These EAS designations have relieved many rural Montanans, both on and off Montana's seven American Indian Reservations, from the expensive burden of long-distance phone calls to family and friends in neighboring communities. Three of these EAS designations have provided huge benefits to American Indian residents in the following three instances, the Nemont EAS in northeastern Montana, covering the Fort Peck Reservation, the Triangle EAS in northcentral Montana, covering the Fort Belknap and Rocky Boy Reservations, and the Ronan EAS covering the Flathead Reservation in western Montana.

The Departments of Agriculture and Commerce in their July 9, 2009 NOFA, Section c.2 state that the sale of award funded facilities is prohibited for the life of the facilities. However, the agency can waive this requirement after ten years. Industry sources indicate Bresnan has requested, subject to agency approval, that they be able to sell these facilities, built with taxpayer dollars, in less than ten years at their discretion or they will not be able to proceed with the project. This wholly self-serving demand alone should be enough to disqualify them from receiving any taxpayer dollars in this ARRA stimulus program.

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American Indian economic needs not met by proposal

While the Governor's White Paper 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 or the White Paper that inspires any confidence that those problems will be materially addressed by this \$70 million overbuild of "middle mile" assets.

Conclusion

The Montana PSC fully supports the purposes and goals of the ARRA broadband stimulus funding program. This ARRA initiative offers real promise that the opportunities of telecommunications technology can be fully realized by all our citizens.

However, the Montana PSC respectfully asks that your agency not fund the Bresnan application and that you focus the available funds on those applications that have demonstrated plans to address the "last mile" problem and the reasonable record and capacity to carry out those plans for the benefit of rural communities in Montana.

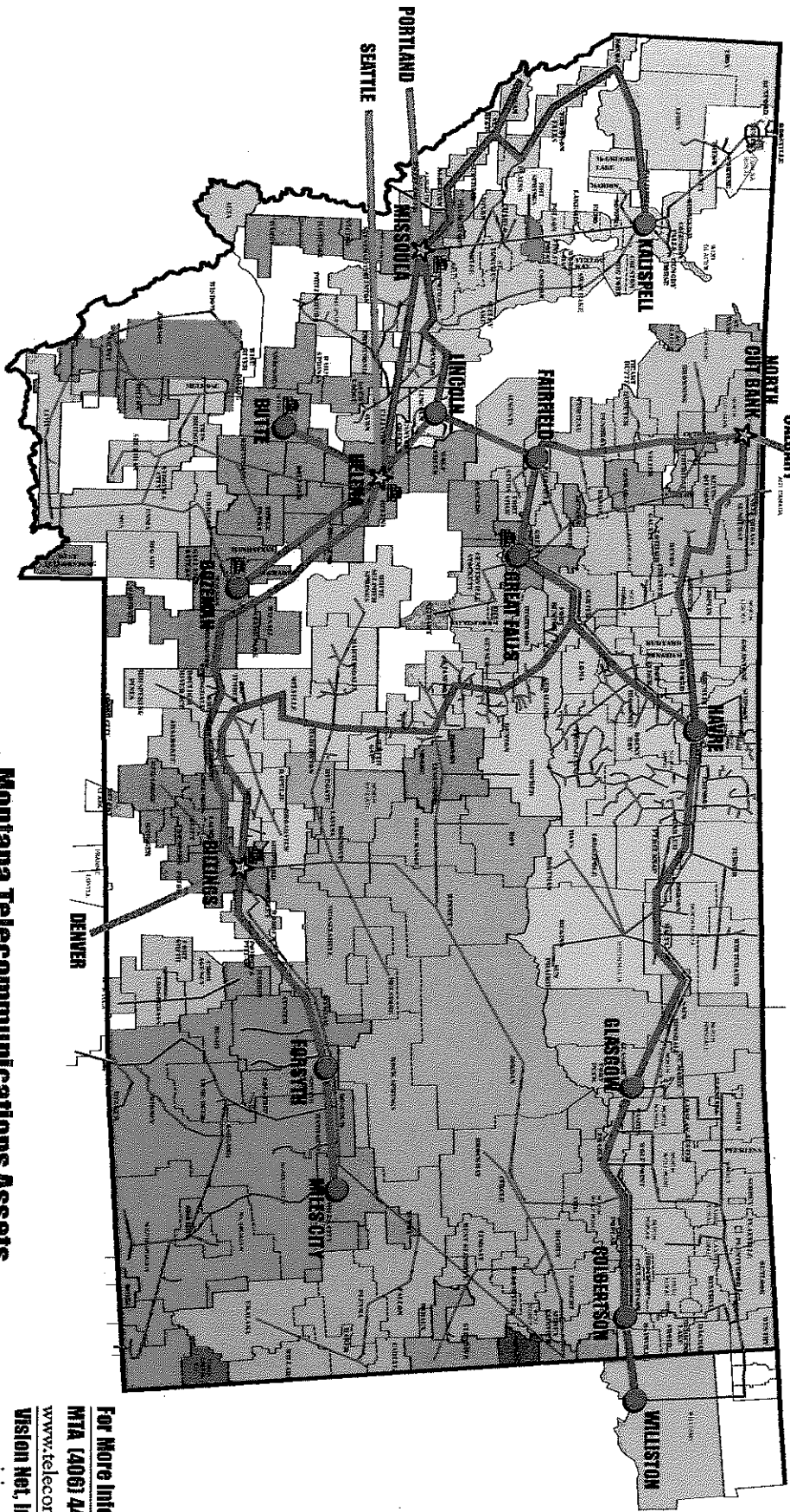
Sincerely,



Greg Jergeson
Chairman
Montana Public Service Commission

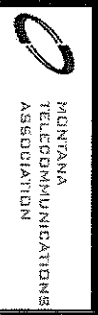
JP/GJ/vs

ATTACHMENT 1



Montana Telecommunications Assets

- ★ INTERNET PEERING POFS
- EXISTING NODE
- TIER 1 INTERNET
- VISION NET MID-MILE NETWORK (UP TO 10G CAPACITY)
- EXISTING INDEPENDANT CO. FIBER OPTICS
- ICONNECT FIBER HOEL
- BLACKFOOT TELECOMMUNICATIONS GROUP
- RESERVATION TELEPHONE COOPERATIVE
- NEWMONT TELEPHONE COOPERATIVE / PROJECT TELEPHONE COMPANY
- RANGE TELEPHONE COOPERATIVE
- TRIANGLE TELEPHONE COOPERATIVE / CENTRAL MONTANA COMMUNICATIONS
- LINCOLN TELEPHONE COMPANY
- LINCOLN TELEPHONE COMPANY
- INTERBEL TELEPHONE COOPERATIVE
- MID-RIVERS COMMUNICATIONS
- CITIZENS COMMUNICATIONS
- 3RIVERS COMMUNICATIONS
- ROMAN TELEPHONE COMPANY
- HOT SPRINGS TELEPHONE COMPANY
- SOUTHERN MONTANA TELEPHONE COMPANY
- CENTURYTEL
- NORTHERN TELEPHONE COOPERATIVE
- WEST RIVER COOP TELEPHONE COMPANY
- QWEST COMMUNICATIONS
- UNASSIGNED AREA



For More Information Contact:
MTA (406) 442-4316
www.telecomassn.org
Vision Net, Inc (406) 467-4700
www.vision.net

ATTACHMENT 2

360networks -Long Haul Fiber Builds Duplicating Existing Fiber Backbones Should Not Be Funded

Applications for funding under the Broadband Infrastructure Program (“BIP”) of the U.S. Department of Agriculture’s Rural Utilities Service (“RUS”) and the Broadband Technology Opportunities Program (“BTOP”) of the U.S. Department of Commerce’s National Telecommunications and Information Administration (“NTIA”), both established by the American Recovery and Reinvestment Act (“ARRA”) propose duplicative long haul fiber network construction under the guise of “middle-mile” infrastructure construction to connect local communities to the Internet. These applications are contrary to goals of BIP and BTOP and are destabilizing to the precarious economics of the existing wholesale broadband markets. Private enterprise has invested billions of dollars in existing broadband backbones and is still struggling for economic returns in the wake of excess supply evident from the period 2000-current day. Broadband capacity prices have dropped by 90%, from \$100 per megabyte in 2003 to as low as \$10 per megabyte in many markets covered by these proposals.

Duplicative long haul fiber network construction proposals are:

- An inefficient use of tax payer dollars as broadband infrastructure already exists on many segments of these proposed long haul fiber routes;
- Destabilizing to current broadband provider economics as they introduce public-subsidized competitors; and,
- Harmful to existing employment bases and threaten future investment in Montana’s telecommunications infrastructure.

In Montana, the \$70,007,000 grant request by Bresnan Communications is testament to each of these factors. Further, existing long haul fiber network providers like 360networks, Montana rural telecom providers and formerly, Montana Power, for example, have invested in excess of \$100 million in private capital in Montana, which will be impaired if the Bresnan proposal is approved.

Bresnan proposes to build a long haul broadband network for the following city pairs where redundant fiber networks already exist, providing existing sources for 10 gigabit capacity or better

<u>Route</u>	<u>Existing Suppliers</u>
Glendive to Fort Peck	Nemont Coop, Mid-Rivers, Qwest
Fort Peck to Havre	VisionNet, Triangle Coop, Nemont Coop
Glendive to Forsyth	Mid Rivers, AT&T, 360networks, Sprint, Qwest
Forsyth to Billings	Qwest, Sprint, AT&T, 360networks, Range, VisionNet
Havre to Great Falls	VisionNet, Qwest
Great Falls to Cutbank	VisionNet, 360networks Northern Telephone Coop, Qwest
Cutbank to Kalispell	VisionNet, AT&T, 360networks, Qwest
Kalispell to Missoula	CenturyTel, Blackfoot Coop, 360networks, VisionNet, AT&T

Rates for transport between these city pairs remain very competitive due to the multiple vendors, including Qwest, which offers advertised rates of \$.00149 per DSO mile on DS3 capacities throughout its western footprint.

Bresnan has already become a fierce broadband competitor to Montana local exchange carriers, inter exchange carriers and telecommunications cooperatives due to its cable franchises in Montana. The Montana cable franchises allow Bresnan a restricted competitive environment for video distribution which has allowed it to leverage this advantage to telecommunications service. While leveraging a cable franchise into telecommunications services is NOT troubling, supporting taxpayer funding to "for profit" entities to offer competitive services is VERY troubling and an unfair advantage to private capital in a competitive market.

360networks rescued Touch America (the telecom subsidiary of Montana Power), from bankruptcy and potential liquidation in 2003, saving a substantial number of skilled jobs and a valuable telecommunications asset in the State of Montana. 360networks did this with its own risk capital and has since invested in excess of \$15 million upgrading assets in the State. Currently, 360networks employs approximately 70 well-paid and highly skilled workers in the network operations facilities, which are based in Butte. Overbuilding existing fiber routes could jeopardize this investment and the viability of one of the country's leading regional fiber providers.

Based on the above factors, 360networks encourages BIP and BTOP to reject the Bresnan application in its current form. At a minimum, the agencies should delay a decision on the application until a determination may be made about whether the public interest goals suggested to be furthered by the proposed project may be accomplished using existing "middle-mile" infrastructure and thereby more efficiently use federal taxpayer money and deter the potential destabilizing effect the proposal would have on private enterprise.