

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

June 20, 2013

The Honorable Lawrence E. Strickling
Administrator
National Telecommunications and Information Administration
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Administrator Strickling:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is examining the National Telecommunications and Information Administration's (NTIA) management and oversight of the Broadband Technology Opportunities Program (BTOP). Specifically, the Committee is investigating NTIA's review process for awarding a \$100.6 million grant to the Educational Access Gateway Learning Environment Network Alliance (EAGLE-Net or ENA), a public/private/state partnership formed for the purpose of connecting 234 school districts, libraries and community anchor institutions throughout the state of Colorado via a high-speed middle mile fiber-optic broadband network.¹

As you are aware, the American Recovery and Reinvestment Act of 2009 (ARRA) appropriated \$7.2 billion to expand access to broadband throughout the United States. Of the \$7.2 billion, \$4.7 billion was appropriated to NTIA² to award grants for (1) the deployment of broadband infrastructure in "unserved" and "underserved" areas,³ (2) the enhancement of

¹ The \$100.6 million grant was originally awarded to the Centennial Board of Cooperative Educational Services (CBOCES), an educational cooperative serving 13 school districts in Weld, Boulder, Morgan, Adams and Larimer counties. CBOCES, which developed the EAGLE-Net network in 2007 and began connecting school districts to it in 2009, transferred its BTOP award to the EAGLE-Net Alliance on January 31, 2011.

² See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, div. A, tit. II, 123 Stat. 115, 128 (Feb. 17, 2009) [hereinafter, "ARRA"]. On August 10, 2010, Congress rescinded \$302 million from BTOP, reducing the program's funding to approximately \$4.4 billion. See Act of Aug. 10, 2010, Pub. L. No. 111-226 § 302, 124 Stat. 2404 (2010).

³ The term "underserved" as it relates to middle mile BTOP projects was defined in NTIA's January 22, 2010 Notice of Funds Availability (NOFA) as a project in which (1) no more than 50 percent of households in the proposed funded service area have access to broadband with advertised speeds of at least 768 kbps downstream and at least 200 kbps upstream to end users; (2) no fixed or mobile broadband service provider advertises broadband speeds of at least 3 mbps; or (3) the rate of broadband subscribership for the proposed funded service area is 40 percent of households or less. See Broadband Technology Opportunities Program, 75 Fed. Reg. 3792, 3798 (Jan. 22, 2010). The term "unserved" was defined in the NOFA as a "service area where at least 90 percent of the households lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed" *Id.* at 3799.

broadband capacity at public computer centers, and (3) the promotion of sustainable broadband adoption projects.⁴ The ARRA required the NTIA to award all appropriated funds by September 30, 2010 and mandated that all BTOP projects be substantially completed within two years and fully completed no later than three years following the date of issuance of a project's award.⁵

NTIA awarded the BTOP grants in two funding rounds, the first beginning in July 2009 and ending in August 2009 and the second beginning in February 2010 and ending in March 2010. By the end of Fiscal Year 2010, NTIA awarded approximately \$4 billion in funding to 233 projects.⁶ As of March 2013, NTIA had disbursed approximately \$2.6 billion of the awarded funds.⁷

On March 26, 2010, pursuant to guidelines established in a January 22, 2010 Notice of Funds Availability (NOFA), the Centennial Board of Cooperative Educational Services (CBOCES), the original developer and operator of the EAGLE-Net network, submitted a Round 2 BTOP application in support of the Colorado Community Anchors Broadband Consortium-Connecting Colorado's Middle Mile Project.⁸ The purpose of the project was to create an independent intergovernmental entity called the EAGLE-Net Alliance which would build upon CBOCES's existing network to expand high-speed fiber-optic broadband to every public school in Colorado. According to the application, "[t]his middle mile solution [would] push high-speed broadband into parts of the state that are unserved or underserved, thus creating the opportunity to expand broadband to homes, businesses, and other public institutions currently without access."⁹

On September 1, 2010, after review of the application, NTIA announced that it would fund the EAGLE-Net project with the grant amount requested. According to recovery.gov, as of today's date, ENA has received \$67,845,330 of the grant award.¹⁰

While the Committee recognizes the importance of expanding broadband access to rural areas of the country, we are concerned by reports that the EAGLE-Net project has overbuilt existing systems rather than extend service to areas of Colorado that legitimately meet the underserved/unserved eligibility requirements. For example, on February 11, 2013, the *New York*

⁴ See ARRA div. B, tit. VI, 123 at 512. See also Broadband Technology Opportunities Program, 74 Fed. Reg. 33104 (July 9, 2009).

⁵ See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-937, RECOVERY ACT: BROADBAND PROGRAMS ARE ONGOING, AND AGENCIES' EFFORTS WOULD BENEFIT FROM IMPROVED DATA QUALITY, at 6 (Sept. 14, 2012), available at <http://www.gao.gov/assets/650/648355.pdf>. [hereinafter, "Sept. 14, 2012 GAO Report"].

⁶ See NAT'L TELECOMM. & INFORMATION ADMIN., BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM (BTOP) QUARTERLY PROGRAM STATUS REPORT, at 1 (Mar. 2013). By March 15, 2013, this number had been reduced to 224 projects due to certain grant recipients either refusing to accept their award, voluntarily terminating their projects, or failing to comply with the terms and conditions of their grant. *Id.*

⁷ See *id.* at 7.

⁸ See Centennial Bd. of Coop. Educ.Servs., *Broadband Infrastructure Application Submission to NTIA – Broadband Technology Opportunities Program* (Mar. 26, 2010) [hereinafter, "CBOCES Round 2 BTOP Application"].

⁹ *Id.* at 7.

¹⁰ *EAGLE-Net Alliance (Award Number NT11BLX5570001)*, RECOVERY.GOV, <http://www.recovery.gov/Transparency/RecoveryData/pages/RecipientProjectSummary508.aspx?AwardIdSur=126231&AwardType=Grant> (last visited June 20, 2013).

Times reported that the EAGLE-Net project built a connection to an 11-student elementary school in Agate, Colorado which already had two existing high-speed fiber optic connections.¹¹

Meanwhile, those areas of Colorado which truly lack high-speed broadband connectivity – such as the communities along the Western Slope - are still waiting for the promised EAGLE-Net service to be turned on. We remain skeptical of that occurring on time and on budget in light of a February 28, 2013 report indicating that \$96 million of the \$100.6 million grant has already been committed or spent.¹² Even more troubling to the Committee is EAGLE-Net's recent acknowledgement that only \$7.8 million of the original grant money remains despite reports that the project is less than half complete.¹³ In order to help the Committee better understand NTIA's review and oversight of the EAGLE-Net project, we ask that you please provide written answers to the following questions by July 8, 2013:

- Q1. What review did NTIA conduct to verify data regarding served, unserved, and underserved populations in the EAGLE-Net project area? Did the EAGLE-Net project enter a market already served (in whole or in part) by an existing broadband provider? If so, please list those providers and state whether they offered broadband services at the speeds identified in NTIA's January 22, 2010 NOFA.
- Q2. How did EAGLE-Net's building of fiber optic connections in communities with previously existing sufficient bandwidth, such as the Cherry Creek School District, satisfy BTOP's underserved/unserved eligibility requirements?
- Q3. How did the design of the EAGLE-Net network change between the original awarding of the grant and now? Did the NTIA provide an opportunity for private providers and other interested stakeholders to comment on network design changes?
- Q4. Does the EAGLE-Net project overlap with any U.S. Department of Agriculture Rural Utilities Service (RUS) middle mile Broadband Initiative Program (BIP) awards?
- Q5. Please list all entities, including school districts, libraries, and community anchor institutions, projected to be served by the EAGLE-Net project and state whether those entities are currently receiving service. For those entities not currently receiving service, state specifically when service is expected to begin.
- Q6. What percent of the EAGLE-Net project has been completed? How much of the original \$100.6 million grant has been committed or spent? How much remains uncommitted? How much remains to be disbursed? What are the current operating revenues and operating expenses of the EAGLE-Net project?

¹¹ See Edward Wyatt, *Waste Is Seen in Program to Give Internet Access to Rural U.S.*, N.Y. TIMES (Feb. 11, 2013), http://www.nytimes.com/2013/02/12/technology/waste-is-seen-in-program-to-give-internet-access-to-rural-us.html?pagewanted=all&_r=0.

¹² See Andy Vuong, *Taxpayer-funded EAGLE-Net Broadband Network May Need More Money*, DENVER POST (Feb. 28, 2013), http://www.denverpost.com/business/ci_22683746/taxpayer-funded-eagle-net-broadband-network-may-need?IADID=Search-www.denverpost.com-www.denverpost.com.

¹³ See Andy Vuong, *EAGLE-Net: \$7.8 Million Remaining From \$100.6 Million Broadband Grant*, DENVER POST (May 6, 2013), http://www.denverpost.com/breakingnews/ci_23183151/eagle-net-7-8-million-remaining-from-100?IADID=Search-www.denverpost.com-www.denverpost.com.

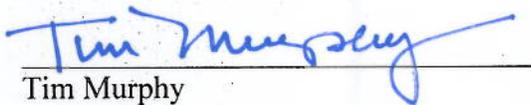
- Q7. Why was the EAGLE-Net project placed on a corrective action plan in August 2012? What actions did the NTIA recommend be taken pursuant to that plan and have those recommendations been implemented?
- Q8. Did the EAGLE-Net project, as originally conceived in the CBOCES's March 26, 2010 application, contemplate that a third-party network operator would manage the day-to-day operations of the physical EAGLE-Net network?

As the Committee with jurisdiction over Federal telecommunications policy, we also request that you submit to the Committee the following documents related to NTIA's review and oversight of the EAGLE-Net project:

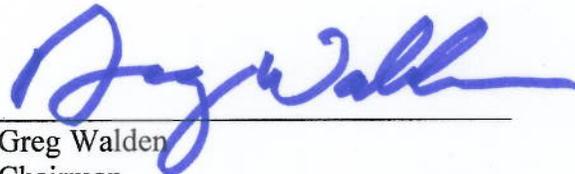
- D1. All written and electronic communications between (1) any employee, agent or representative of NTIA and (2) any employee, agent, or representative of the ENA related to or discussing (a) the financial viability of the EAGLE-Net project and/or (b) whether the EAGLE-Net project satisfied BTOP's underserved/unserved eligibility requirements.
- D2. All documents prepared, received or reviewed by NTIA to evaluate and verify: (1) whether the EAGLE-Net project satisfied BTOP's underserved/unserved eligibility requirements; (2) whether ENA had the necessary legal authority for the project; and (3) whether ENA had the ability to build and operate the proposed network.
- D3. All documents prepared, received or reviewed by NTIA to evaluate and verify the financial viability and sustainability of the EAGLE-Net project, including but not limited to financial statements, sustainability reports, and revenue and expense projections.

Please contact Committee staff to arrange delivery of the materials. An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions, please do not hesitate to contact Daniel Tyrrell with Committee staff at (202) 225-2927.

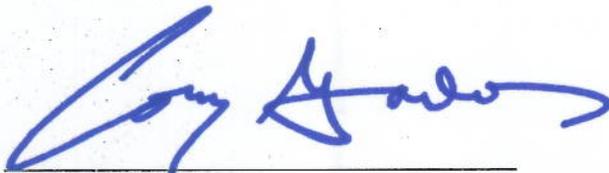
Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and
Investigations



Greg Walden
Chairman
Subcommittee on Communications and Technology



Cory Gardner
Member of Congress

Cc: The Honorable Fred Upton, Chairman

The Honorable Henry Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

The Honorable Cameron Kerry, Acting Secretary
U.S. Department of Commerce