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December 16, 2010

Anthony G. Wilhelm
Director
Broadband Technology Opportunities Program
National Telecommunications and Information Administration
1401 Constitution Avenue, N.W.
United States Department of Commerce
Washington, D.C. 20230

Re: Wisconsin Department of Administration BTOP Grant Number
NT10B1X5570028 for the BadgerNet Converge Network

Dear Director Wilhelm:

I am writing in response to your October 27, 2010 letter (NTIA Letter) sent to Mr. Bruce Reines regarding the BTOP Grant Number NT10B1X5570028 ("Grant") that was previously awarded to the Wisconsin Department of Administration. Your letter requested that the Department of Administration respond to several questions by December 15, 2010. Please allow me to address the Grant and your questions below.

First, however, allow me to echo the sentiments in your letter and thank you and the NTIA staff for your continued efforts in attempting to resolve the difficult Grant issues. We, along with AT&T, have appreciated the continuing dialogue to determine the best path forward to meet all of the Grant criteria.

In those discussions, we have thus far successfully indentified the root cause of our collective Grant challenges. Wisconsin applied for the Grant in order to expand its services on and customer access to its existing BadgerNet Converge Network (BCN). As described in Wisconsin's original Grant application, the BCN is a virtual, managed service network. AT&T and its WBAA partners own the physical infrastructure that comprises the BCN. Together they meet the State's service needs on the BCN under a master service agreement (BCN Agreement), through infrastructure owned and maintained by AT&T and WBAA. This existing and successful template has allowed the Department of Administration to expand service to businesses and residences throughout the state, achieving the public policy goal of maximizing scarce public funds to facilitate broadband services throughout all areas of Wisconsin. This of course parallels the public policy goals contained in the Grant.

However, the facts that AT&T and WBAA retain ownership of the BCN infrastructure, and that different entities use parts of the BCN physical structure have provided a unique set of challenges in meeting the NTIA Grant requirements. Specifically, these facts have caused challenges in meeting two of the Grant conditions including 1) the interconnection/non-discrimination requirements, and 2) the security interest/non-transferability requirement.

Despite these challenges, AT&T and WBAA remain committed to partnering with the Department of Administration in the Grant and working to meet the required Grant conditions.

Accordingly, please allow us to detail below our response to these conditions.

Interconnection & Non-discrimination Requirements

First, I have attached a letter from AT&T (AT&T Letter) in response to our recent discussions regarding the NTIA Letter. The AT&T Letter outlines AT&T's continued good faith efforts to clarify and confirm potential solutions and assist the Department of Administration in meeting the Grant conditions in a manner that differs from the vision laid out in the original Grant application. Specifically, the letter focuses on interconnection and non-discrimination issues.

As discussed in the AT&T Letter and in the Department of Administration's original Grant application, the Department of Administration intended to meet the interconnection requirements by allowing full access to the BCN at its four core nodes or hubs. Competitors and ISPs currently interconnect to the BCN at these locations allowing BCN customers competitive choice and pricing for ISPs on the BCN. The Department of Administration believes that such interconnection provisions meet the intent of the Grant. However, our conversations with NTIA lead me to believe that NTIA disagrees with this conclusion. Can you please confirm this in writing and provide a written explanation as to why such a solution is unsatisfactory?

Given our past discussions with NTIA, we have also discussed additional solutions with AT&T including interconnection at end user sites (e.g., other ISPs interconnecting through the new fiber and equipment at the schools and libraries themselves). This solution appears viable and would provide another means of meeting the Grant's interconnection requirements.

Finally, we believe that AT&T and its WBAA partners will continue to facilitate interconnection consistent with their current business practices, subject to all existing and applicable FCC rules and regulations. Accordingly, we believe that entities desiring interconnection through NTIA funded facilities on the BCN will do so subject to AT&T's and WBAA's existing applicable tariffs, existing business practices, or may negotiate interconnection on an individual case basis at any point in the BCN physical system. Such interconnection opportunities are consistent with the Grant goal of fostering extension of broadband access and

infrastructure throughout Wisconsin, while allowing individual broadband providers to competitively price service offerings.

We believe these options, in addition to interconnection opportunities at the BCN four core nodes fully meets the goals of the Grant interconnection obligations. If NTIA disagrees, we would respectfully request that you confirm this position in writing and provide a written explanation as to how and why these solutions fall short, and NTIA's detailed recommended remedies.

Security Interest & Non-transferability Requirements

Perhaps the most confounding issue pertains to the security interest obligation that attaches to the infrastructure funded with the Grant, and the 10 to 20 year restrictions on transferability of the physical assets. As discussed above, the BCN is a virtual network operating under a service based contract model. The Department of Administration has not historically owned the BCN physical infrastructure, and did not contemplate doing so in its Grant application.

The NTIA proffered solution has been to suggest that AT&T and WBAA become Grant subrecipients, and thereby transfer these obligations from the Department of Administration to our individual telecomm partners. While this is a solution, it begs a series of difficult questions surrounding long term administration of the Grant obligation and administration of the BCN, not the least of which is the fact that Wisconsin State procurement laws strongly disfavor contracts longer than 5 years, not to mention 10 or 20 years. This solution also does not clearly address the conditions or criteria needed to secure approval of future asset transfers, improvements or upgrades. We want to continue to dialogue with NTIA on these questions and clarify exactly what these standards, conditions and criteria would be.

At the same time, the Department of Administration has raised the prospect of crafting an alternate security agreement on several occasions both orally and in writing. We strongly believe that this is the right solution to the security interest problem. Let me state clearly and unequivocally, that the Wisconsin Department of Administration fully supports, concurs and understands the need to ensure that publically funded assets are handled with the utmost care and transparency to protect taxpayer funds. However, we believe that there are alternate, but equally strong paths to achieving this Grant condition.

The Department of Administration could agree that for the next 20 years, it will ensure that the individual schools and libraries served by the Grant will maintain the same or better access and service opportunities as those provided by the Grant. In line with the Department of Administration's BCN service model, the Department of Administration can ensure that the broadband service and access opportunities provided by the Grant will be maintained to the public library and school anchor institutions. The State of Wisconsin is willing to provide this type of long term irrevocable service guarantee to the NTIA. In fact we believe this approach is better than having our 20+ telecomm partners becoming subrecipients

and providing liens against hundreds of pieces of fiber and equipment located at many disparate locations throughout the State of Wisconsin. Moreover, I understand that our attorney attempted to draft such a document for your consideration back in July.

We know from past discussion that NTIA staff has objected to this solution. However, at this stage of the process we would like to request that NTIA clarify in writing whether it approves or objects to such a solution. If the NTIA objects to this solution, we would like a written explanation.

If NTIA is unable to approve this solution at a staff administrative level, we would request your assistance in clarifying the appropriate process. Based on our review of applicable federal regulations, it appears that under 14 CFR §14.4 and 14 CFR §24.6 Grant recipients may formally request deviations and exceptions from certain federal grant requirements, including the security requirements noted above, by writing to either the Assistant Secretary of Commerce or the Office of Management and Budget and obtaining approval. Could you please confirm whether this would be the next administrative step?

As stated above, we thank you for your ongoing efforts to assist the Wisconsin Department of Administration and its BCN partners to clarify and meet the Grant conditions. We, along with AT&T and our WBAA partners, remain firmly committed to doing what is necessary to ensure that the unique BCN model can adequately satisfy the NTIA Grant conditions in a manner that protects the public interest and ultimately meets the needs of our school and library customers. We look forward to hearing back from you on the questions raised in this letter and moving forward on finalizing the Grant.

Sincerely,



Diane Kohn
Chief Information Officer

cc: U.S. Senator Herb Kohl
BCN Advisory Committee
System and Resource Library Administrators Association of Wisconsin
Wisconsin Association of Cooperative Educational Service Agency Administrators
Wisconsin Association of Distance Education Networks
Wisconsin Association of School Boards
Wisconsin Department of Public Instruction
Wisconsin Educational Media and Technology Association
Wisconsin Library Association
Attorney David Baker Hunt, Counsel for AT&T
Doug Kinkoph, NTIA Grant administrator
Joe Bissonette, NTIA Grant administrator