



October 12, 2010

Sent Via E-Mail

Anthony G. Wilhelm
Director, Broadband Technology Opportunities Program
United States Department of Commerce
National Telecommunications and Information Administration
Washington, DC 20230

Dear Mr. Wilhelm:

We appreciate your response to our letter regarding the BayWEB project. However, it appears that you have been misinformed about a number of issues regarding Bay Area UASI (BAUASI). Your letter makes a number of assertions about BAUASI which we believe are incorrect. Indeed, it is this kind of misinformation that gives rise to our concerns about the grant process.

First, the BAUASI General Manager (GM) has no authority to act independently of the Approval Authority to commit the BAUASI, or its member agencies, to any project. According to the BAUASI Memorandum of Understanding, "The General Manager shall be responsible for implementing and managing the *policy and program decisions of the Approval Authority*, and performing other duties *as determined and directed by the Authority* (emphasis added)." To the extent the MOU authorizes the BAUASI GM to establish working groups or other advisory groups, the authorization is made for the purpose of facilitating input and recommendations to the Approval Authority. The BAUASI Approval Authority never took action to approve the BTOP application or to direct the GM, or BayRICS, to participate in the application. Indeed, the Approval Authority was never provided with all of the information required to understand the application or make the policy and program decisions regarding the BTOP project. Additionally, the Approval Authority was never convened to vote to support the BTOP project. It is apparent that NTIA has been misled to believe that a commitment was made that has not been made.

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Letters of support were solicited from Santa Clara County and from the City of San Jose by the UASI General Manager under the clear understanding that she was requesting these letters before the details of the BTOP grant application had been finalized and before specific information would be made available to potential participants. We supplied the requested letters in order to assist the regional goal of implementing a public safety Broadband initiative, and to show our support of that concept. Our letter did not and could not have supported the specifics of the actual BTOP application as it had not yet been completed and we had not been provided with the details of what it included. At the time our letters were drafted, the BAUASI GM was fully aware of and acknowledged the fact that we were requesting additional information so that we could make an informed decision regarding our participation in this specific initiative.

The process followed and the selection of Motorola as the region's partner for the BTOP grant program was inconsistent with local government standards or practice for this type of procurement or vendor selection. It was coordinated, supported and highly influenced by the BAUASI GM and members of her staff. The BAUSAI GM selectively excluded key members of the Santa Clara County area from critical discussions and the decision processes in spite of our clear expression of interest in participation so that we could better understand the details of what was being proposed.

To this day, the Approval Authority has not been allowed to review all of the documents which comprised the "procurement process" (i.e., the email request and responses) which preceded Motorola's designation as a sole source for the project and the recipient of over \$50 million of federal funding. Our repeated requests for transparency and openness have met with obfuscation, misinformation and deliberate stonewalling from the GM and BAUASI staff. We made a FOIA request to the Department of Commerce in hopes of getting copies of documents necessary to determine what has happened. We have yet to receive these documents.

Because of our continued requests, early last week we finally were able to obtain some preliminary information about the Motorola project design which heightens our concerns considerably. It appears now that our local agencies will be required to use their own General Fund dollars to make sites ready for installation of the project. This information was never shared with us prior to the grant submission. We also were made acquainted with the scope of ongoing obligations for maintenance of the project subsequent to build out, again a General Fund obligation that was never shared with

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the BAUASI Approval Authority members or with other local jurisdictions who would be participating. We take seriously our responsibility for the strained resources of our local government General Funds and can certainly make no such commitment of resources without the specific action of our own governing bodies.

Your letter makes it apparent that the NTIA relied upon the assertion that BayRICS was a partner in the application as an important reason for the approval of the application. In our opinion, this is a very significant problem. The BayRICS Policy Group was a creation of the UASI General Manager. We believe that it was created to demonstrate that there was a local governance group established that was supporting this application and which would assist in the implementation, management and sustainment of any system that would be built. The BTOP proposal stated that there was a public/private partnership between Motorola and an individual Agency (Alameda County) who was acting on behalf of the BayRICS Policy Group. It further states that the public/private partnership between Motorola and the Bay Area will be overseen by the BayRICS Policy Group. However, as of March 26, 2010, the date that the application was submitted, the BayRICS Policy Group had never met. In fact its first meeting was not held until three months later in July 2010. In March 2010, the composition of the Group had not even been finalized. Since that Group had not been formed and had never met at the time the application was submitted, statements within the BTOP application which indicate that the Policy Group was allowing anyone to act on their behalf, or that they had committed to oversee any aspect of this project are clear misrepresentations. As of this date, more than 6 months after the application was submitted, there is still a lack of clarity regarding the composition, role and authority of what was described in the application as the BayRICS Policy Group. You should know that there is no legal commitment from many of those agencies to participate in this application or the project. In our minds, that is a problem that is likely to cause the project to ultimately fail.

And finally, we are greatly troubled by the fact that the BAUSI GM and four of her senior staff are prior employees of the successful grantee, Motorola. We believe that this fact alone violates specific requirements of the BAUASI Memorandum of Understanding. Additionally, this fact risks compromising the project and the grant process. Without a formal independent investigation, we cannot be sure whether or not local, state, and federal laws or regulations have been violated. Consequently, we are

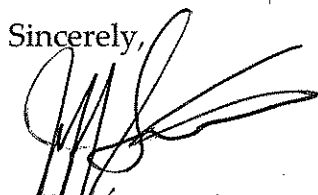
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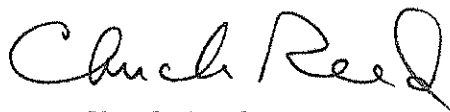
moving forward with a request for an investigation by appropriate state and federal entities.

We recognize that the questionable actions of the BAUASI General Manager, acting outside her scope of responsibility, and being involved in the promotion of an application that was never approved by the BAUASI Approval Authority, has placed the NTIA in a difficult position. Nevertheless, we believe that the best way to proceed is to replace secrecy with transparency, to acknowledge the mistakes that have been made at the local level and to do the best that we can together to try to salvage a valuable project. We hope to have your assistance in getting all the facts.

Sincerely,



Jeffrey V. Smith
County Executive



Chuck Reed
Mayor

c: Honorable Gary Locke, Secretary of U.S. Department of Commerce
Honorable Todd Zinser, Inspector General
BAUASI Approval Authority Members
Emily Harrison, Deputy County Executive