

September 17, 2010

Jeffrey V. Smith,
County Executive, County of Santa Clara
Office of the County Executive
70 West Hedding Street
San Jose, California 95110

Dear Mr. Smith:

I am writing in response to your letter dated September 3rd that I received on 9/9/2010 in which you express concerns regarding the Bay Area Public Safety Broadband initiative BayWEB and specifically grant activities related to Phase 0, now known as Project Cornerstone, and the recent award of \$50.6M of Broadband Technology Opportunity Program (BTOP) funding to complete additional phases of BayWEB.

The UASI has enjoyed a strong and trusting relationship with Santa Clara County since our “shotgun” marriage in 2006. I was surprised by the position taken on both the recent broadband issues and the UASI program protocol discussions. I would be remiss without acknowledging the outstanding work and contributions by these Santa Clara County employees. Four leaders are provided from Santa Clara County. These leaders manage significant budget and programs for the ten county UASI. The leadership and expertise demonstrated by these individuals have succeeded in making the UASI program a “best practices” and model organization to the nation for regional collaboration and risk/threat based investment strategies. Captain Eastus, Santa Clara County Sheriff, is managing our risk management/threat reduction program for the ten counties. Battalion Chief John Justice, Santa Clara County Fire, manages the Chemical Biological Radiological Nuclear Equipment program for the ten counties and shares responsibility for management of the regional Training and Exercise Program. Michael Clark, Santa Clara County Emergency Medical Services, is leading the development of the regional patient management and distribution plan, the mass casualty plan and the medical surge plan for the ten counties. Finally, Guy Bernardo, Santa Clara County OES, is a principal on the Regional Catastrophic Preparedness Program which includes ten county plans and coordinates with the Sacramento area for a catastrophic event. Guy is managing the debris management, mass transportation/evacuation, mass fatality, mass care/shelter, volunteer and donations management annex’s for the Regional Emergency Coordination Plan. These individuals and their contributions are the reason that the UASI program is successful. I want to thank Santa Clara County for their leadership in the region. That said, it is very important to take the appropriate actions to establish trust.

While we enjoy impressive leadership from your County with the Urban Area Security Initiative Program in most programs, we have struggled in the arena of interoperable communications. There is great maturity in your governance model and I applaud the SVRIA endeavors. Our area of discord, at times, has been regarding the perspective of regional and what that means. While most initiatives involve a strategy that embraces a ten county regional approach, there is a lack of alignment, at times, with goals and objectives towards resolution of this “dynamic” problem. We should strive for collaboration and demonstrate leadership in this important initiative as it will require “ongoing” cooperation and coordination.



BayWEB: the authorization to use spectrum

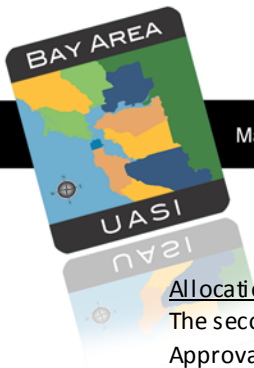
As you are aware, the Bay Area was granted a conditional waiver to become an “early builder” of a 700MHz Long Term Evolution Broadband Network. Work began in this arena as early as 2007. The issue of public safety broadband is very dynamic and will remain dynamic as we work collectively and collaboratively towards interoperable communications solutions for first responders. Our conditional waiver and the FCC’s and State’s broadband vision are for our BayWEB broadband system to be the foundation of a larger Northern California network. We are required to collaborate with our Capitol Bay Planning Area and the larger Northern California footprint. This network will connect into the State of Oregon’s network (OWIN), also an early builder. We do not want to repeat, nor are we authorized, to build the stovepipes that have created the interoperability problems that we experience today. As “early builders” and pioneers in this 1st endeavor of Public Safety LTE, we are stewards of the larger responsibility of demonstrating a way to drop borders and interoperate.

BTOP/Cornerstone Participation:

We were informed on 1/29/2010 by Interim Director of Santa Clara County OES Dave Kronberg that Mike Milas would represent the City of San Jose and Santa Clara County as we kicked off the BayRICS Policy Group. On 2/8/2010, Mr. Milas informed us that San Jose and Santa Clara County (collectively the South Bay) would not be participating in the BTOP grant process. Several attempts were made by regional partners and staff to encourage the South Bay to participate in the BTOP over the month of February. On 2/26/2010, Mr. Milas informed us that they would “participate in BTOP” with “conditions” that allowed them to “opt-out”. Effectively, San Jose/Santa Clara County declined to participate during the month of February. The regional discussion and many decisions around the BTOP application strategy, the business model, fiscal/technology risk and ultimate selection of the vendor/partner/applicant all occurred during your “non-participation” period. Although Mike Milas wanted to be part of the selection process while indicating “no intent to participate”, his previous employment with a company that had submitted a proposal- would have eliminated him from that process. No evaluators were permitted that had been previously employed by a company that had a submission for BayWEB. Throughout this complex process, I have communicated regularly at all tiers of our structure. I counted over thirty meetings where objections or questions regarding procurement, site location, the BTOP business model or other issues could have been raised. I was dismayed that the first notice of a procurement concern was raised in the letters received from San Jose and Santa Clara County. I look forward to the results of the external inquiry into the process for Cornerstone and BTOP.

After San Jose/Santa Clara County re-joined the BTOP effort, letters of support for the grant and other participation in BayWEB has been regular. A BTOP application was submitted on 3/26/2010 by Motorola. During the application process, we had heard from several south bay cities that San Jose Police Department was discouraging those agencies from participation in the larger regional effort with BTOP. I believe one of our trust issues is rooted in multiple voices from the south bay and the inconsistency in policy/message that has occurred at working group meetings. I am hopeful that having a single point of contact for San Jose and Santa Clara County can provide that one voice.

Across the nation and historically, setting aside the issues of spectrum and funding, the primary impediment to interoperability is that lack of willingness to share systems and desire to control. As pioneers in this technology and stewards of the spectrum- we are “required” to interoperate and must “share”.



Allocation of Funding: Alignment of Expectations

The second issue of significance is the lack of alignment of expectations regarding the powers of the Approval Authority. BayWEB funding was allocated with the 2009 grant process. This funding was not reallocated as it is being used for Broadband and in alignment with the licensing and federal conditions developed since the set aside. There is no ability to allocate funding to individual systems since we are building one network. By allocating it to separate UASI partners and building “three networks”, we would have increased the cost of the project and created a new interoperability problem. Additionally, we would not be in compliance with the “regional” waiver. The FCC has no intention on granting single system, or single county networks. Additionally, no contracts have been voted on or “approved” by the Approval Authority when executed by a (sub) recipient after an allocation has been made. I call to your attention \$5.3M in funding for ECOMM in UASI funding that was not voted on by the Authority and a total of \$11M in contracts for San Jose/Santa Clara County for interoperable communications contracts for 2006 UASI, 2007 UASI, 2008 UASI and PSIC grants that never were brought to the Approval Authority for approval or vote. I also call to your attention BayLOOP. This is a “shared” network just as BayWEB, the subject of your concern. Other than the original allocation when the Approval Authority “voted” and allocated the funding, there has been no precedent on shared networks to return to that body for approval of sites and/or vendor contracts. All local procurement processes differ. The MOU renewed in 2007, encouraged local procurement so as to relieve the burden from San Francisco and allow for local ownership of those processes. The requirement, as per the Federal grants, is that the local processes are in compliance with the state, federal grant assurances and guidelines so as to provide reimbursement. There was never a requirement to follow the City of San Jose’s or County of Santa Clara procurement process-other than for those jurisdictions.

At this point, there is an inquiry in process to look at the facts. I am confident that the process met the applicable local, state and federal requirements. It will be a valuable learning experience in many ways as we learn how to continue to collaborate within our larger region.

I concur that we have a “break in trust” on both sides of this relationship. It is in the best interests of our communities and first responders to move forward and mend this issue. I would hope that once the processes of inquiry are complete, we can start rebuilding a relationship of trust. We will be challenged to step away from the UASI federal mission as the economic times strain us. Your staff has demonstrated outstanding leadership in meeting the program goals that focus on the most effective ways to manage risk/threat for our larger region. I am hopeful that we can align our expectations with our renewed MOU and continue being a national leader with the demonstrated leadership of your staff.

Regards,

Laura Phillips, Executive Director

cc: Emily Harrison, Deputy County Executive
Kirstin Hofmann, Director of Emergency Services
UASI Approval Authority