

September 16, 2010

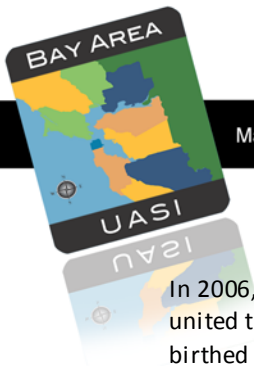
Mr. Chuck Reed, Mayor
200 East Santa Clara Street
18th Floor
San Jose, CA 95113

Dear Mayor Reed :

I am writing in response to your letter dated September 3, 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 by the National Telecommunications and Information Administration (NTIA) of \$50.6M of Broadband Technology Opportunity Program (BTOP) funding to complete additional phases of BayWEB.

Before I address your concerns, I believe it is essential to review the evolution of public safety interoperability nationally and regionally, to provide a foundation and context for the issues you raise. Public safety interoperability, within the diverse counties of the San Francisco Bay Area and across the nation, has been an extremely challenging and complex problem. The problem impacts each first responder community across the Bay Area region on a day to day basis and over the years has been tragically highlighted during compelling events such as the "101 California" shootings, the Loma Prieta earthquake, and the Oakland Hills Fire, as well as national tragedies like "9/11" and hurricane Katrina. Both "9/11" and hurricane Katrina brought a national focus to how interoperability challenges seriously impact first responder effectiveness, officer and community safety, and the ability to effectively command/control an event requiring responses from multiple public safety agencies. Over the last decade, the public safety community has faced these challenges to mitigate and resolve both operability and interoperability, addressing spectrum (within adjacent and compatible bands), funding and governance issues.

The Bay Area region has recently been provided historically unprecedented resources, in both spectrum and funding, to improve and resolve public safety interoperability within the Bay Area region. The challenges of interoperability and operability effectiveness become more complex when coordinating usage, ownership, operations, management and sustainment of these federally funded shared resources within our diverse region of ten counties and over 100 cities. I challenge that the real core issue of your concerns is governance and how we "share" and sustain these resources within the UASI footprint and ultimately within the larger planning areas. BayWEB – like the regional BayLOOP microwave program - is a shared "mutual aid" asset within our "mutual aid family". Unlike the many city, county or multi-county endeavors for public safety voice interoperability within our region, BayWEB and BayLOOP present our first governance challenges as we learn how to share and sustain these regional resources and programs. Our challenge is complicated by the many local and county-wide networks or consortiums that must share these regional assets towards the greater interoperability "good" within the region and ultimately Northern California, as we extend these regional assets and connect with our partners in the Capitol Bay Planning Area and beyond in Northern California.



In 2006, through the Urban Area Security Initiative (UASI) Program the Department of Homeland Security united the three previously separate urban areas of San Francisco, Oakland and San Jose. That union birthed a regional approach to interoperability. With this marriage, we redefined our understanding of the term “regional” to focus beyond limited local interests to include a broader, multi-county approach.

The other recent “defining” event in public safety interoperability was hurricane Katrina, which provided the first opportunity for significant lessons learned on planning, response and recovery for catastrophic events. What we have learned from this marriage and Katrina is that our “family” is very extended. To mitigate interoperability and improve operability, we must look beyond our individual cities and individual counties. Katrina sparked planning efforts that focused our resolution on the ten county footprint with our UASI and coordination with our larger interoperability planning areas within the mutual aid region (15 counties) and Capitol-Bay Planning area (22 counties) and State (through CALSIEC Planning Areas).

In May of this year, the Bay Area was granted a conditional waiver to become an early builder - or pioneer - of an interoperable public safety broadband network intended to ultimately span the nation. That waiver requires a partnership with the State and collaboration between the ten counties of the Bay Area and our partners within the mutual aid region. As an early builder, we have committed to a vision of collaboration that includes the Capitol-Bay Planning Area and ultimately all of Northern California. We are working with the other early builders and waiver recipients to ensure that the dream of interoperable data and broadband access is realized across the nation - with all partners rural, suburban and urban. We require a new mindset to avoid the past stovepipes of public safety communications. With the availability of the largest spectrum release in the last thirty years (700MHz), the potential of gaining additional adjacent spectrum (D-block) and stimulus funds (BTOP) - we are provided a unique opportunity to make the most significant progress in interoperability in the last three decades within the Bay Area.

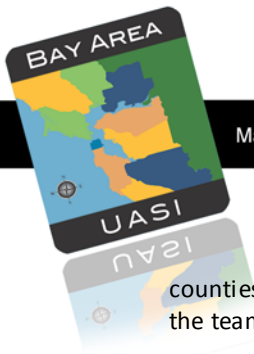
With this foundation in mind, I will respond to the concerns in your letter.

Cornerstone/BTOP Selection Procedures:

Since last summer, the UASI Management Team has worked with its regional partners to develop and implement a process to launch a regional public safety broadband program. Ultimately, the UASI Management Team coordinated two selection processes, as described below. The UASI Management Team understood that these processes were required to conform to state and federal grant assurances and regulations, and any applicable local procurement requirements, and consulted with contracting, legal and grants management staff to ensure they did.

The process began with a Request for Information (RFI) created cooperatively by the region, including the City of San Jose. The RFI sought information about business models and technology for public safety broadband, and expressly stated that it may serve as the basis to select a vendor or vendors for one or more pilot broadband programs. The UASI Management Team distributed the RFI responses to the regional broadband workgroup, which included San Jose and other South Bay representatives.

Subsequently, the region learned about the possibility of partnering with a private vendor to seek BTOP grant funding for public safety broadband. The UASI Management Team consulted all regional partners to determine interest to participate in the BTOP application, providing the region could identify a suitable partner, and developed a Request for Proposals (RFP) seeking a partner for the BTOP grant application. On February 1, the UASI Management Team issued that RFP to the vendors that responded to the RFI, and received four valid responses. An evaluation and selection team made up of the jurisdictions that were interested in participating in the BTOP effort reviewed the RFP submissions. That team represented six



counties and two large cities, and was carefully screened to ensure no conflicts existed. On February 23, the team selected Motorola as the partner for the BTOP application.

Motorola applied for the BTOP grant, supported by its public partners from the region. On 8/18/2010 the NTIA awarded Motorola \$50.6 million dollars in BTOP funding for the BayWEB program.

The BTOP application indicated that, in Phase 0 of the broadband project, a ten site pilot broadband program, the region would invest UASI grant funds with the BTOP partner, i.e., Motorola. Consistent with the grant application, Alameda County, as the executive sponsor and fiscal agent for Project Cornerstone, contracted with Motorola for that initial pilot project.

In your letter, you ask that the UASI Management Team support an external inquiry into the selection process. The UASI Management Team initiated that inquiry, with CalEMA conducting that review. I hope to receive the results of that review next week, and will make the report available publicly. I am confident the review will validate the processes used.

Your letter also asks that the UASI Management Team present a plan to the Approval Authority to re-open the selection process. But as described above, the selection process was a fair and neutral one, which presented more than an adequate opportunity for interested vendors to meaningfully participate. The process was vetted through the regional workgroups, and supported by all regional partners, including San Jose. Assuming the CalEMA inquiry validates the selection process, there is no basis for re-opening that process. Further, the BTOP award is to Motorola, not the public agencies in the region. Those grant funds are only available to the region through its partnership with Motorola. If the region re-opened the process and ultimately selected another vendor, it would forgo the BTOP grant funding secured through its partnership with Motorola.

San Jose Participation in BTOP/Cornerstone:

On January 29, 2010, Interim Director of Santa Clara County OES Dave Kronberg identified Mike Milas as the representative of the City of San Jose and Santa Clara County for the BayRICS Policy Group. The regional partners have established that group to address the issues of use, maintenance and sustainment related to the regional public safety interoperability shared assets and program. On February 8, 2010, after the UASI Management Team issued the RFP, Mr. Milas responded to the Management Team's inquiry about participating in the BTOP grant process, stating that San Jose and Santa Clara County would not participate in the BTOP grant process. Regional partners and UASI Management Team staff encouraged San Jose and Santa Clara County to participate in the BTOP application over the month of February, while continuing to pursue the BTOP opportunity. As mentioned above, on February 23, the evaluation team selected Motorola as the region's BTOP partner. On February 26, Mr. Milas informed us that San Jose and Santa Clara County would participate in BTOP with "conditions" that allowed them to "opt-out." Effectively, San Jose declined to participate in the BTOP process during the month of February. The regional discussion and decisions around the BTOP application strategy, the business model, fiscal/technology risk and ultimate selection of the vendor/partner/applicant all occurred during San Jose's "non-participation" period.

At the April 28, 2010 meeting of the BayRICS Interoperable Working Group, as with our usual processes since 2006, the UASI management team solicited "sites" from Bay Area participants for a ten county pilot network. Items discussed at this meeting included the history of the allocation for the 2009 UASI grant, and the benefits of the pilot. Your staff was present and participated in that discussion. Neither San Jose nor Santa Clara County submitted proposed projects. Teresa Reed suggested at a recent Approval Authority meeting that your staff assumed that since they had provided 35 sites the previous summer as



the procurement documents were developed, that they were exempt from completing the template requests that would later be used for the experimental license and appropriate grant management records. Additionally, on August 27, 2010, when the FCC granted the Bay Area a two year experimental license, rather than an eight month license as expected, UASI Management Team member Heather Plamondon solicited feedback from members on how this longer period should impact the project and sites selected. Your staff has been present at these meetings. To this date, we have received no feedback, nor recommendations, from San Jose or Santa Clara County on the potential placement of sites within San Jose. As a “sponsor” of the waiver on behalf of the Bay Area region, we were surprised by San Jose’s lack of participation but assumed it was related to back haul concerns. The Cities of Sunnyvale and Santa Clara did submit proposed sites for the first footprint of Long Term Evolution (LTE) in the South Bay, and the working group selected one site proposed by each of those cities. Since we are building one collective, shared network, the Sunnyvale and Santa Clara sites are the first South Bay sites for this regional/northern California network.

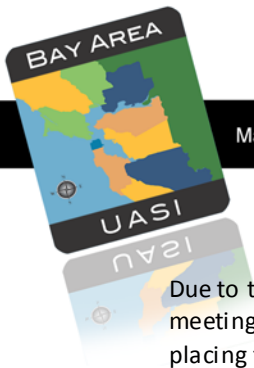
The first notice that San Jose had concerns about the process was received at 9:38PM on Friday, September 3 (Labor Day weekend) by Undersheriff Rich Lucia, Alameda County Sheriff, and included an electronic copy of your letter to me, which my office received after the Labor Day weekend. In reviewing the process, I identified over thirty regional meetings attend by your staff about this process, where they never raised concerns about the process. You distributed your letter to the press, state and federal authorities, the vendor community, and elected officials who have supported public safety interoperable communications efforts in our region - all prior to the completion of an inquiry. These activities demonstrate a lack of commitment to regional collaboration and processes and cast a shadow of doubt on the entire regional public safety community as united in the efforts to achieve an interoperable broadband network for the region.

Pilots require a tremendous amount of staff focus and the “right stuff” when deploying pioneering technology. We understand our pilot to be the first early build of public safety LTE in the nation. There will be errors made and lessons learned to the benefit of the public safety community. The pilot network was never about grant funding a city owned or county owned broadband network. At one meeting Santa Clara County staff suggested that the purchase of ten “cores” and implementation of several networks within the Bay Area was preferable to sharing one core within the larger region. This public statement seems to express the policy desires of San Jose and Santa Clara County.

Throughout the process and even recently we have heard from several cities in the South Bay that San Jose Police Department has been discouraging involvement in the larger regional effort. We are unclear on the motives or agenda other than the desire for local control. 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.

Approval Authority Matters:

As part of the 2009 UASI grant application process, the Approval Authority approved a special investment justification submission that included a \$9M broadband pilot for the Bay Area focused on footprints within the Cities of San Francisco, Oakland and San Jose. The three sponsoring cities committed to a match of \$3M to augment the regional pilot and to seat sites for the project within their cities. Later the three cities notified the UASI Management Team that with general fund reductions, the matches were not available to augment the pilot network. The UASI Management Team requested and received from the Department of Homeland Security a waiver of the original investment justification match and a reduction of the allocation to \$6M. The UASI Management Team notified all three cities of this change.



Due to the ongoing FCC licensing issues and without authority to use the 700MHz, at the January 2010 meeting the UASI Management Team notified the Approval Authority that the Management Team was placing the \$6M funding for the broadband network on reserve until the federal issues and potentially other standards issues were resolved.

In terms of the authorities of the Approval Authority, it is our interpretation that the processes followed met the language of the memorandum of understanding. You may recall that language was added to that renewed agreement in 2007 to allow for flexibility for procurements outside of those for the fiscal agent. Historically and by the current language in the MOU, there is no requirement to get additional approvals from the Approval Authority once the allocation was made with the application process. The allocation for broadband was made with the 2009 grant application. The authority of the Approval Authority was met with that allocation (as it was used for broadband). There has never been a requirement for the Approval Authority to approve the location of sites or other specific information for shared networks. There was no requirement to "vote" on the award of a contract for the executive sponsor just as San Jose and Santa Clara County did not get "approval" from the Approval Authority to award contracts for ECOMM or other projects executed through your local procurement practices after general allocations were made. As per the MOU and UASI policies and procedures, discussed in our annual workshops with UASI grant participants, the contracting agency was only required to follow local procurement requirements and ensure that the process met the applicable state or federal requirements or grant assurances.

I challenge your assumptions and interpretation that processes were skirted and approvals were not obtained.

In conclusion, there is clearly a misalignment of expectations on the authorities, powers, and responsibilities of the Approval Authority, General Manager and between members of the Approval Authority. With the renewal of our master MOU, we should strive for alignment and clarity of these roles.

Regarding the disagreements surrounding governance of the Bay Area broadband and interoperable communications initiative, let us focus our energy and passion on growth as we further develop our governing body for these shared resources. To resolve interoperability, we require leadership and stewardship. I believe that Bay Area public safety leaders are committed to provide this leadership and collectively continue the management of interoperability as technology, infrastructure, and applications advance. To be successful, the collaboration beyond our individual county borders, beyond the UASI borders must continue. I highly encourage San Jose to demonstrate that leadership, be part of solving the problem, and continue collaboration as we work through this marriage and governance structure for public safety interoperable communications.

Regards,

Laura Phillips, Executive Director

cc: Honorable Ronald V. Dellums, Mayor, City of Oakland
Honorable Gavin Newsom, Mayor, City and County of San Francisco
Jeffrey V. Smith, County Executive, County of Santa Clara
Debra Figone, City Manager, City of San Jose
Dan Lindheim, City Administrator, City of Oakland
Ed Lee, City Administrator, San Francisco



Renee Domingo, Director of Emergency Services, City of Oakland
Scott Frizzie, Director of Regional Operations, CalEMA
Vicki Hennessey, Director, City of San Francisco DEM
Kirstin Hofmann, Director of Emergency Services, Santa Clara County OES
Rich Lucia, Undersheriff, Alameda County Sheriff's Office
Monica Fields, Deputy Chief of Administration, City of San Francisco Fire Department
Teresa Reed, Assistant Fire Chief, San Jose Fire Department