

**VIA ELECTRONIC MAIL AND FEDERAL EXPRESS**

February 22, 2010

Assistant Secretary Lawrence Strickling  
Broadband Technology Opportunities Program  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

Re: Request for Clarification Regarding Whether Eligible Expenses under BTOP include the Full Cost of an IRU for Dark Fibers Strands

Dear Assistant Secretary Strickling:

We are two national higher education organizations representing information technology professionals in colleges and universities across the nation, four national U.S. Research and Education networking organizations, and 24 state and regional R&E networking organizations with networks in 44 states that provide advanced broadband services and networking to tens of thousands of universities, K12 schools, community colleges, and other community anchor institutions. Many of us are planning to apply in round two, but we urgently need to share our concerns with NTIA regarding how it may decide to treat infeasible rights of use (IRUs) of dark fiber strands as eligible expenses under the BTOP program.

We request that NTIA clarify that eligible expenses under BTOP include the full cost of an IRU -- and not just some small fraction of the cost. Otherwise, IRUs will not be a viable mechanism under BTOP, and thus numerous parties who were planning to obtain IRUs to provision broadband service in connection with BTOP proposals will be, for all practical purposes, unable to apply. As a result, NTIA's opportunity to evaluate such excellent proposals, as well as the public's ability to benefit from such tremendous projects, will be lost.

It is clear under the round two NOFA that NTIA considers the cost of an IRU for dark fiber strands to be an eligible cost under BTOP. Nevertheless, it is our understanding that NTIA has not yet clarified whether the full cost of an IRU is an eligible cost, or whether only the first three years' portion of the cost is an eligible cost. If NTIA adopted the latter approach, for a twenty year IRU, for example, only 3/20 (i.e., 15%) of the cost would be an eligible cost, and in that event IRUs would not be a realistic option for BTOP projects, to the detriment of applicants, NTIA and, most importantly, the public.

Numerous providers of broadband service use individual dark fiber strands to provision their services. Individual strands of dark fiber are not sold via a bill of sale. Instead, it is standard practice in the telecommunications industry for a provider of broadband service to receive a long-term IRU for strands of dark fiber to correspond to the useful life of the strands. Such IRUs are often, but not always, for 20 year periods. IRU purchasers pay for the full cost of the IRU in advance, and treat the purchase of the IRU as a capital event, and the IRU as a capital asset under GAAP.

Dark fiber that is not “lit” is incapable of providing broadband service. Accordingly, an IRU purchaser ordinarily also acquires in a separate transaction the electronics and other equipment necessary to light the individual fiber strands so that broadband services can be provided. Therefore, purchasing an IRU for individual strands of dark fiber, and purchasing the electronics and other equipment required to light the strands, are both necessary costs incurred to reach the ultimate objective – providing broadband service.

There is no question that the full cost of the electronics and other equipment required to light the fiber is an eligible cost under BTOP for CCI projects. Such electronics and other equipment are undoubtedly necessary to improve and/or construct the facilities required to provide broadband service.

But we believe that it is equally clear that the full cost of the long-term IRU for the dark fiber strands should be an eligible cost under BTOP for CCI projects. The purchase of these strands through an IRU is just as necessary to the completion of the project and the provision of broadband service as the purchase of the electronics and other equipment required to light the strands. Without the IRU, there are no dark fiber strands for the provider to light, and thus the IRU is equally vital to, and connected with, the construction and improvement of the facilities required to provide broadband service.

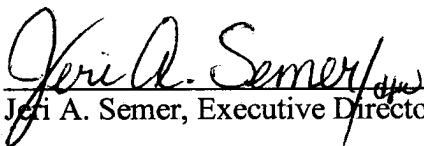
Moreover, the practice of using IRUs supports the model of having multiple providers share in the cost and maintenance of the fiber path. This provides the most affordable way to deliver fiber and prevents the overbuilding of fiber assets on the same path. This supports two goals of NTIA: prevention of overbuilding, and the use of open networks that would allow many providers in an area to have access to the fiber asset. Also when an IRU is used, significant expenses are saved, and a purchaser is able to acquire just the strands it needs, which helps support sustainable business models for CCI projects.

In closing, we again ask that NTIA clarify that eligible expenses under the second round of BTOP include the full cost of an IRU -- and not just some small fraction of the cost. Unless NTIA reaches the same conclusion, or permits some other mechanism for funding such costs, while the NOFA expressly permits IRUs to be funded, it will for all practical purposes eliminate the purchase of IRUs as a realistic approach under BTOP (and force applicants to propose to overbuild existing capacity resulting in far greater costs and less effective use of stimulus finds). Yet, long-term IRUs for dark fiber strands represent a very common, well-recognized, and extremely important means of providing broadband service, and NTIA should encourage proposals using such an approach – not inadvertently effectively eliminate them. There is no benefit to be gained by limiting

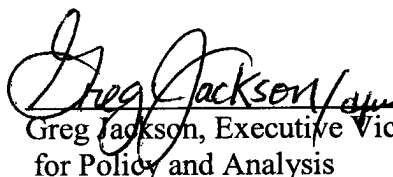
reimbursement to only a small fraction of the IRU costs, which will make projects consistent with common industry practice no longer viable under BTOP. A prompt clarification on this issue as requested herein would be extremely helpful, and would allow many applicants to move forward with their applications.

Thank you for your consideration of this important matter. Please feel free to contact Alan Fishel at 202-857-6450 if you wish to discuss this further.

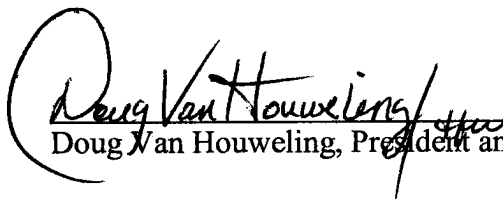
**Association of Information  
Communications Technology  
Professionals in Higher Education**

  
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Jeri A. Semer, Executive Director


**EDUCAUSE**

  
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Greg Jackson, Executive Vice President  
for Policy and Analysis

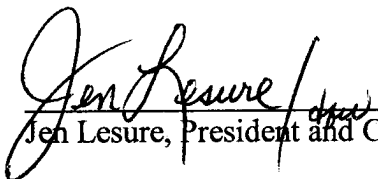
**Internet2**

  
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Doug Van Houweling, President and CEO

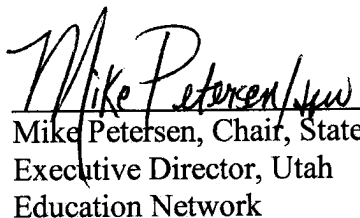
**National LambdaRail**

  
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Glenn Ricart, President and CEO

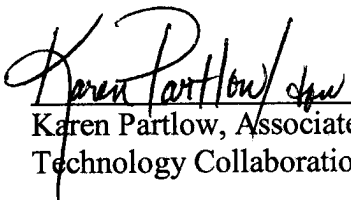
**The Quilt**

  
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Jen Lesure, President and CEO

**StateNets**

  
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Mike Petersen, Chair, StateNets and  
Executive Director, Utah  
Education Network


**CIC OmniPoP**

  
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Karen Partlow, Associate Director for  
Technology Collaboration

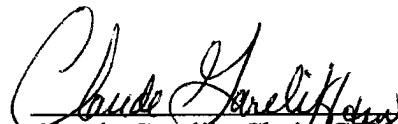
**Florida LambdaRail**

  
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J. Phillip Halstead, CEO


**Front Range GigaPoP**

  
Marla Meehl, Manager of the  
Front Range GigaPoP

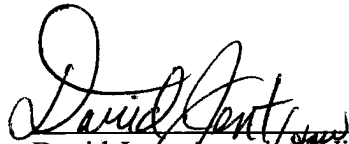
**Great Plains Network**

  
Claude Garelik, Chair, GPN  
Executive Council

**Idaho Regional Optical Network**

  
Victor Braud, III, General Manager

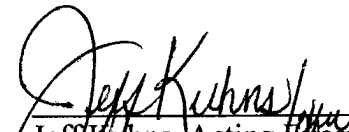
**Indiana Gigapop**

  
David Jent, Associate Vice  
President, Networks

**Kentucky Regional Optical Network**

  
Allen Lind, CEO

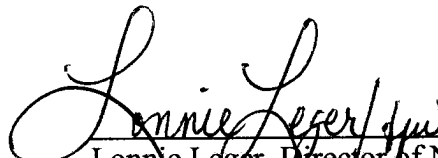
**Keystone Initiative for Network Based  
Research and Education**

  
Jeff Kuhns, Acting Executive Director

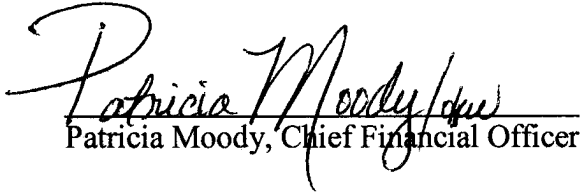
**Lonestar Education and  
Research Network**

  
Michael Phillips, Executive Director

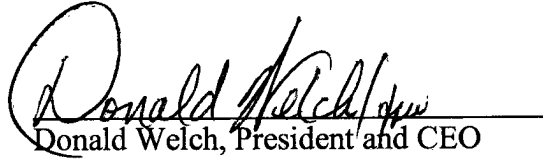
**Louisiana Optical Network Initiative**

  
Lonnie Leger, Director of Networking

**MCNC**

  
Patricia Moody, Chief Financial Officer

**Merit Networks**

  
Donald Welch, President and CEO

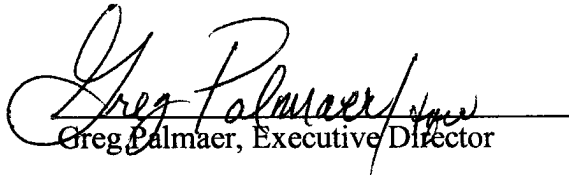
**Metropolitan Research and Education Network**

  
Joe Mambretti, Director

**Mid-Atlantic Crossroads**

  
Peter O'Neill, Executive Director

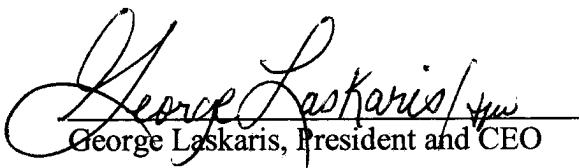
**MAGPI**

  
Greg Palmar, Executive Director

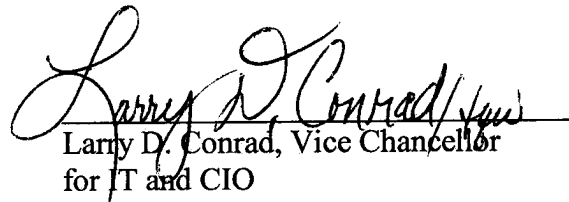
**Missouri Research and Education Network**

  
John Gillispie, Executive Director

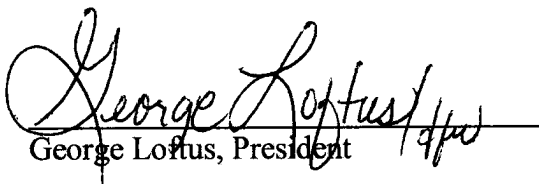
**NJEDGE.Net**

  
George Laskaris, President and CEO

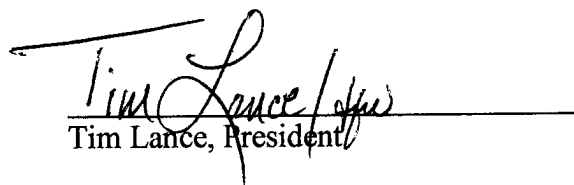
**University of North Carolina at Chapel Hill**

  
Larry D. Conrad, Vice Chancellor for IT and CIO

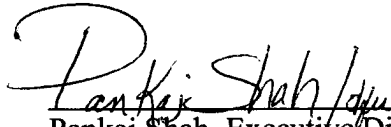
**Northeast Research and Education Network**

  
George Loftus, President

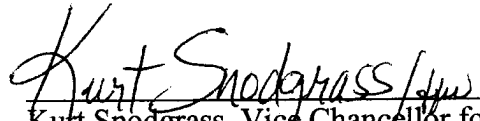
**NYSERNet**

  
Tim Lance, President

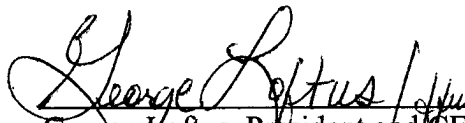
**OARnet**

  
Pankaj Shah, Executive Director


**OneNet**

  
Kurt Snodgrass, Vice Chancellor for  
Information Technology and  
Telecommunications


**OSHEAN**

  
George Loftus, President and CEO

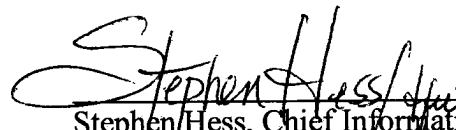
**Pacific Northwest Gigapop**

  
Amy Philipson, Executive Director

**Southern Crossroads**

  
Ron Hutchins, President

**University of Utah**

  
Stephen Hess, Chief Information Officer