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Jeff Hall
State Court Administrator

November 29, 2009

Honorable Gary Locke, Secretary
United States Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Mr. Lawrence E. Strickling
Assistant Secretary for Communications and Information and
Administrator, National Telecommunications and Information Administration
U.S. Department of Commerce
HCHB Room 4887
1401 Constitution Ave., NW
Washington, DC 20230

Re: **Response to Request for Information**
Broadband Technology Opportunities Program
Docket Number 0907141137-91375-05

Dear Secretary Locke and Administrator Strickling:

The undersigned represent a broad spectrum of public, tribal, private and community based law, justice and public safety institutions working together to develop, build and maintain a statewide, broadband Washington State *JusticeNet*. The *JusticeNet* we seek to build is designed to facilitate timely and effective intra- and inter-organizational and inter-jurisdictional communication so that our law enforcement agencies, civil and criminal courts, prosecutors, public defenders, legal aid providers, state and county law libraries and community and courthouse-based public computer centers will have ready access to the services and required high speed applications that they need to promote and enhance public safety, ensure fair, effective and efficient administration of justice and protect the rights and liberties of all who are subject to our legal and justice system.

James Madison wrote in Federalist 51 that "[j]ustice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."

Our state, local and tribal law and justice systems do not exist to serve and perpetuate themselves; they are critical components of our democratic system, dedicated to protecting individual rights and liberties, defending the rights of both victims and the

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accused, ensuring due process and equal protection in the administration of our laws and enabling all persons to understand, assert and defend rights to essentials such as food, shelter, safety, health, education, and fair economic opportunity. Availability and affordable access to broadband is essential -- and at this time transformative – to our commitment to ensuring that state, local and tribal law and justice systems perform their constitutionally mandated functions for all people in all regions now and in the future. We are aware that a great deal of the rationale for full availability of broadband to all is to create and improve economic opportunities. How wonderful and even more effective it will be to have economic opportunity in a just environment!

Thus through *JusticeNet* we seek to build highly interactive broadband public access capacity, so that all residents of Washington State, including those living in Indian Country, will have high speed access to information about, among other things, their legal rights and responsibilities, the law and justice system, how to access law enforcement agencies and how to access necessary legal help regardless of where they live or their personal status. Public access will be made available from home based computers taking advantage of extensions of broadband capacity as well as from public computer centers located in a variety of centers and facilities in communities across the state. Taking advantage of the *JusticeNet* infrastructure, we will also build dedicated subnets connecting discrete components of our state and tribal law and justice systems so that they may better perform core functions in furtherance of the administration of justice, promoting public safety and the provision of essential justice-related services to low income and vulnerable populations throughout the state.

The vision of *JusticeNet* is grounded in the notion that law enforcement, the civil and criminal courts and court related service providers must operate as related components of a coherent, integrated public safety and justice system; and that the effectiveness of one component is dependent upon the capacity and effectiveness of the others. Law enforcement is inconsequential without a vital, fair and clear-sighted court system; courts cannot perform core constitutional functions and make properly informed decisions without prompt and full access to relevant and essential law enforcement information; similarly court related professional decision-makers and service providers (*e.g.,* county clerks, prosecuting attorneys, public defenders, legal aid attorneys, domestic violence and sexual assault victim advocates, Court Appointed Special Advocates (CASA's)) are indispensable participants in integrated state, tribal and local law, justice and public safety systems. Additionally, in a state with 29 federally recognized tribes each with its own tribal law and justice system, there is a high degree of need for real time broadband connectivity between tribal and state law and justice systems on matters that directly affect individual and public safety and respectful inter-jurisdictional coordination.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) offers opportunities to build dedicated high speed, broadband digital infrastructure that serves essential public purposes, promotes economic development, creates and sustains jobs, enhances sustainable use of broadband capacity in areas of a state that are unserved and underserved, and expands services to support and empower vulnerable and isolated populations and promote public safety. Section 6001(b) of the Recovery Act defines the federal objectives with respect to incremental investments in broadband capacity. These are to:

(1) provide access to broadband service to consumers residing in unserved areas of the United States;

(2) provide improved access to broadband service to consumers residing in underserved areas of the United States;

(3) provide broadband education, awareness, training, access, equipment, and support to—

(A) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture;

(4) improve access to, and use of, broadband service by public safety agencies; and

(5) stimulate the demand for broadband, economic growth, and job creation.

American Recovery and Reinvestment Act, Public Law 111-05, Section 6001(b).

Section 6001(g) grants express authority to the Department of Commerce to make grant and loan funding available for the Broadband Opportunities Technology Program (BTOP). This section authorizes the Assistant Secretary to:

(1) acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services;

(2) construct and deploy broadband service related infrastructure;

(3) ensure access to broadband service by community anchor institutions;

(4) facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(5) construct and deploy broadband facilities that improve public safety broadband communications services; and

(6) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

Id. at Section 6001(g).

We believe that the authority made available under the Recovery Act must be interpreted broadly, consistent with the goal of achieving the full range of the President's broadband policy objectives. To this end, we offer specific suggestions for the Broadband Opportunities Technology Program (BTOP) Round 2 Notice of Funding Availability (NOFA). These suggestions are designed to clarify that investment in state, tribal and local law and justice system broadband infrastructure and dedicated public computer centers falls squarely within the scope of activities eligible for investment through the BTOP. We attach to this letter specific suggested interlineations, using the July 9, 2009 Round 1 NOFA as our baseline document.

1. **Definition of "Community Support Organizations and entities" (Section 6001(b)(3)(B)).**

Through the BTOP, NTIA is authorized to provide broadband education, awareness, training, access, equipment, and support to a range of core institutions, including "community support organizations and entities." The Round 2 NOFA should expressly

recognize "state, local and tribal courts, law libraries and community based legal aid service providers" as "community support organizations" eligible for investment in enhanced broadband access, training, education, equipment and infrastructure.

2. **Definition of "organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations" (Section 6001(b)(3)(B))**

The Request for Information (74 Fed. Reg. at 58943) suggests that funding might be reserved for tribal entities and public housing authorities, recognizing that reservation based Native Americans and public housing participants have historically been underserved by broadband capacity. We agree, but suggest that the Round 2 NOFA go further, and include express reference to "state, local and tribal courts, law libraries and community based legal aid providers" as entities dedicated to meeting critical needs of historically underserved low income and vulnerable populations.

In addition to providing direct civil legal assistance to individual clients, statewide, tribal and community based legal aid programs practice not only ameliorative but preventive law as they engage in substantial outreach to and education of low income, unemployed, vulnerable and members of other isolated communities regarding their legal rights and responsibilities, financial and workplace literacy, and, in the course of doing so, promote individual, family and community security and safety. In addition, statewide, tribal and community based legal aid programs offer access to substantial on-line digital self-help legal assistance content, training, document assembly forms for legal rights protection (*e.g.,* domestic violence protection, protection against loss of shelter) and other services for which access to enhanced broadband capacity is critically important.

Increasingly, courts and law libraries are building public access capacity to provide complementary services; and it is fully anticipated that these institutions will play an even greater role in facilitating and supporting the use of broadband-based justice system services by these populations.

3. **Definition of "public safety agencies"**

As noted above, law enforcement, the civil and criminal courts and court related service providers operate as components of an integrated law, justice and public safety system. We therefore suggest that the Round 2 NOFA expressly recognize that "public safety agencies" include the full range of law and justice system entities, including state and tribal law enforcement agencies, courts, prosecuting attorneys, public defenders, legal aid providers, state and local law libraries, etc. Express inclusion of the phrase "law,

justice and" before all references to "public safety agencies" throughout the NOFA is consistent with the goals of the Recovery Act. We show such suggestions on the attached July 9, 2009 Round 1 NOFA mark-up.

4. Definition of "community anchor institutions"

The Recovery Act does not define the term "community anchor institutions." This term was defined in the July 9, 2009 NOFA for the BTOP and BIP initiatives. The definition set forth in the July 9, 2009 NOFA might be read to exclude key community-based law and justice system-related entities that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations. Similarly, community technology centers (CTC's) should also be expressly acknowledged; they have been previously recognized by the U.S. Department of Education's community technology grant program.[1] Consistent with the suggestion in paragraph 3 above, we suggest that the definition be amended to read:

> *Community anchor institutions* means schools, libraries, medical and healthcare providers, law, justice and public safety entities, community colleges and other institutions of higher education, community technology centers, and other community support organizations and agencies that provide outreach, access, equipment and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, unemployed, and the aged.

5. Definition of "critical community facilities"

Consistent with the comments above, we recommend that the definition of "critical community facilities" be amended as set forth below:

> *Critical community facilities* means public facilities that provide community services essential for supporting the safety, health, and well-being of residents, including, but not limited to, emergency response and other law, justice and public safety activities, hospitals and clinics, libraries and schools.

[1] http://www.ed.gov/programs/comtechcenters/index.html

6. Definition of "public computer center"

Courts, law libraries, community based legal aid service providers, court clerks and other related law and justice system providers are increasingly becoming places to which the public turns to access in-person and on-line information and other content relating to legal rights and remedies, operation of the courts and related criminal and civil justice systems, victims' rights, child welfare and individual and community safety and protection. These entities are close to and interface with a broad spectrum of the public, including members of low-income, aged, vulnerable and unemployed populations. These are logical entities to participate in the BTOP's public computer center initiative. We therefore suggest that the definition of "public computer center" used in the July 9, 2009 NOFA be amended to read:

> *Public computer center* means a place, including but not limited to community colleges, libraries, schools, youth centers, employment service centers, Native American chapter houses, community centers, senior centers, assistive technology centers for people with disabilities, community health centers, and Neighborhood Network Centers in public housing developments, community based legal aid offices and courthouse and other public access community justice centers that provide broadband access to the general public or a specific vulnerable population, such as low income, unemployed, aged, children, minorities and people with disabilities.

7. "Otherwise vulnerable populations" – Include express reference to persons with disabilities

The July 9, 2009 NOFA does not define the term "other vulnerable populations" as used in section 6001(b)(3)(B). Consistent with longstanding federal policy embodied in the Americans with Disabilities Act and the Rehabilitation Act of 1974, we strongly urge that the Round 2 NOFA expressly add reference to "persons with disabilities" following the term "other vulnerable populations."

Accommodating the needs of disabled persons is particularly important in the context of state, local and tribal law and justice systems – systems dedicated to the fair administration of justice. New and emerging technologies offer the means of providing such accommodations and ensuring fundamental fairness of the system. Underwriting the broadband infrastructure necessary to make these technologies available in our state and tribal justice systems furthers the express purposes of the Recovery Act.

Persons with disabilities, including the many thousands of disabled military veterans to whom we owe the greatest moral obligation to ensure fairness and justice, must have

the ability to meaningfully participate in state, local and tribal justice systems. Every day new adaptive technologies are developed, many of which have direct application to the ability of persons with disabilities to learn about, access and meaningfully participate with our public safety agencies and in our courts, administrative tribunals and related justice system forums.

Broadband is the necessary vehicle through which these applications are made available all who need them, regardless of whether they reside in a large urban community or a rural and isolated Indian reservation. For example, persons with visual disabilities or persons with dyslexia or other learning, language or print impairments require (at a minimum) streaming audio or print to audio software, which requires high speed access. High speed access is also required relative to the use of much assistive technology for persons with disabilities. There are many other examples.

The Washington State Supreme Court has enacted a rule (General Rule 33)[2] with the force of law requiring all state and local courts to provide reasonable accommodations for litigants, witnesses, jurors and appropriate others who have a disability and must use the courts. Today and, more importantly, in the coming years, these accommodations will demand the use of high speed adaptive technologies.

8. **Funding priorities and definitions: Support training, coordination, integration, penetration and affordability of Public Computer Center and Sustainable Broadband Adoption proposals**

In response to the RFI section II. A. 3 concerning targeted populations, we believe that additional investment in Public Computer Centers and Sustainable Broadband Adoption projects is warranted to ensure greater awareness of the benefits of and the skills training necessary to fully utilize broadband for vital online legal, public safety, education and health services. Infrastructure projects should be required or at least rewarded for a comprehensive approach which addresses end user training and affordability for vulnerable populations. Credit could be given to those who partner to leverage existing expertise in public access computing, broadband adoption and delivery of vital online content and services.

There should be a category or merit given to awarding funds to "broadband support networks" which group multiple public access computing and broadband adoption providers together to ensure use of best practices, staff training, common and quality evaluation metrics, cost efficiencies and sustainability capacity building. For public safety and the justice system, these support networks will assist in deploying online legal aid content and services to vulnerable populations.

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[2] http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr33

The definitions referred to in the RFI section II. B. should be modified to ensure that specific vulnerable populations in urban areas and elsewhere are reached. Broadband adoption studies, such as one recently released by the City of Seattle,[3] continue to show significant issues of affordability and lower broadband adoption for specific populations, correlated to income, education, employment, disability and ethnicity. Many of these residents require significant use of the justice system, public safety services and public health systems.

Conclusion:

State, tribal and local law, justice and public safety systems are increasingly coordinated, inter-dependent and integrated. Efforts to invest in the infrastructure supporting these systems must be similarly coordinated and inclusive. The comments offered herein are designed to ensure that BTOP approach incremental broadband infrastructure and adoption investments in a manner that reflects the reality of how state and tribal civil, criminal and administrative justice and public safety systems operate.

We believe these comments are fully consistent with and indeed specifically aid in accomplishing the spirit and purpose of the President's broadband initiative, and the letter of section 6001 of the Recovery Act. We encourage your favorable consideration of these comments and recommendations.

On behalf of the Washington State *JusticeNet* participating entities:

Gerry L. Alexander

Chief Justice Gerry Alexander
Washington Supreme Court

Mary E. Fairhurst

Justice Mary Fairhurst, Chair
Judicial Information Systems Committee

Jeffrey E. Hall
State Court Administrator

[3] City of Seattle, 2009 Information Technology Access and Adoption Report, published at www.seattle.gov/tech/indicators

Approval to be forwarded by separate letter
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