



Latah County
BOARD OF COUNTY COMMISSIONERS

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Idaho Broadband Advisory Board
c/o Ramón S. Hobdey-Sánchez, J.D.
State Broadband Program Manager
Idaho Department of Commerce
700 W. State Street, Boise, Idaho 83702

Tuesday, August 8, 2023

Re: Latah County Dark Fiber Network
Capital Projects Fund Application
Challenge Rebuttal

Dear Idaho Broadband Advisory Board:

Thank you for the opportunity to respond to Ziplly's challenge of two Latah County cities: Potlatch and Genesee.

First, it is clear that the guidelines lined out for challenges in [Program Notice #3](#) were not followed. As far as we can tell, Ziplly did not submit any documentation or evidence that would corroborate their claim that they currently serve any locations in Potlatch or Genesee. On this basis alone, we submit that Ziplly's challenges are not valid.

The specific applicable challenge guidelines are as follows:

Section 9.g – The **burden of proof rests with the challenger to demonstrate by clear and convincing evidence** that an applicant or project is ineligible for funding. Discretionary decisions by the Board or review committee, such as scoring and priority projects, shall not be subject to challenge.

Section 9.i – Any challenger that claims there is active 100/20Mbps broadband wireline service in a project area, not represented on the FCC or Idaho CPF map, **must include sufficient and documented evidence that said service exists** and that a formal challenge has been submitted to the FCC map, or the Idaho CPF grant challenge will be denied.

Section 9.j – Any challenger that challenges based on an active project **must be able to demonstrate** that broadband serviceable locations in the challenged project area will have active 100/20Mbps broadband wireline service within 12 months of the challenge. If a challenger that successfully challenges an application, subsequently cancels or modifies the identified project used as a basis for the challenge and/or is unable to demonstrate that broadband wireline service was provided to the identified area and locations, the Board may deny that challenger future state or federal grant monies.

Section 9.k – **Challengers are not permitted to challenge a proposal based on future plans of highspeed broadband wireline service if there is no state or federal requirements to complete the project or if the challenger has not already made significant progress to deploy services in the proposed project area.** The onus will be on the challenger to demonstrate its future plans of service within the proposed project area, and final determination will be made by the Board and review committee during the adjudication process.

Section 9.I – For challenges regarding existing service, construction, or future builds to be considered, **supporting evidence and documentation must be provided. Challenges with insufficient evidence or documentation, or those that include inaccurate information, will not be considered.** Challengers may be asked to provide additional information. If a challenger is found to have submitted inaccurate information, all current and future challenges may be disregarded. If a challenger submits an excessive number of challenges, as determined by the Board or review committee, the Board and review committee reserves the right to deem said challenger ineligible for future state or federal grant monies.

Since no evidence or documentation was submitted regarding existing service, construction, or future builds, these challenges should not be considered, according to the program guidelines.

However, out of respect for the Board, reviewers, and the challenge process, we are also including thorough responses related to service in these two cities.

Potlatch

In 2020, The City of Potlatch applied for CARES Act funding to build wired fiber connections to six community anchor institutions (CAIs) and a WiFi access point at a public park. Each CAI was to receive two (2) dedicated strands of fiber from a newly constructed and buried 48-strand fiber optic cable line stretching from Palouse, WA to Potlatch, ID. Additionally, the fiber infrastructure was to be openly available to other internet service providers (ISPs) to purchase broadband capacity. The six CAI locations were as follows:

1. Potlatch Jr.-Sr. High School: 130 6th St
2. Potlatch Elementary School: 510 Elm St.
3. Potlatch City Hall and Latah County Sheriff's Office: 195 6th St.
4. Latah County Library, Potlatch Branch: 1010 Onaway Rd.
5. Potlatch Family Care, Gritman Medical Center Clinic: 156 6th St.
6. Potlatch Rural Fire District: 515 Pine St.

These specific project details – a 48-strand buried fiber line from Palouse to Potlatch and 12 dedicated strands to CAIs – were the basis of the cost estimate for the grant application: \$619,728. The feasibility study conducted in 2018 and submitted with the application demonstrated the significant and ongoing effort Potlatch was making to build fiber infrastructure in their community. The study was performed in partnership with CEDA and Access Consulting, and it outlined how a fiber-to-the-premise build would be financially feasible with grant funding. The subsequent Request for Proposals (RFP) and resulting agreement reiterated the very same requirements laid out in the project application: 48-strand fiber line, 2 dedicated strands to each CAI, openly available to other ISPs with non-discriminatory, transparent pricing, etc.

The City of Potlatch's chosen partner was First Step Internet (FSI), but unfortunately, they could not commit to an operational build inside of 3 months in good faith. In reality, not a single ISP would be able to complete the project as outlined by December 15, 2020.

Nonetheless, this is when Idaho Commerce stepped in.

Zipty Fiber was offered as a replacement ISP, and they committed to building the project on October 23, 2020, giving them less than 2 months to build and light this brand-new fiber. Needless to say, Zipty Fiber *did not* complete the project as outlined within 2 months. To this day, they have not built a 48-strand fiber optic line from Palouse to Potlatch. Instead, they took over \$600,000 from the City of Potlatch and the state to build line extensions from their existing office in Potlatch – a project that would've cost a fraction of the price, under \$100,000 by our calculations.

What recourse does the City of Potlatch have now?

Capital Projects Fund rules stipulate that purchases of both outside plant as well as long-term lease agreements are eligible uses of funds. A non-exhaustive list of eligible project costs [outlined by Treasury](#) include:

- Costs of repair, rehabilitation, construction, improvement, and acquisition of real property, equipment (e.g., devices and office equipment), and facilities (e.g., telecommunications equipment, including infrastructure for backhaul, middle, and last mile networks);
- Cost of long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including indefeasible right-of-use (IRU) agreements and capital leases;

At the very least, rejecting this challenge would give Potlatch the opportunity to connect their community the way they originally intended. Allowing Potlatch locations and the cost to connect them to remain included in the grant application will give City leaders the leverage they need to create the competition they intended to have, if awarded.

Please see attached letters and documentation for more information.

Genesee

Ziply does not have an active project under construction in the City of Genesee, and they have no state or federal requirement to complete one. While they claim to have applied for a permit from Avista, they have not been granted a permit nor have they applied for or received a permit from the City of Genesee.

Further, the City of Genesee has not and will not be issuing permits to any ISP before the announcement of Capital Projects Fund grant awards. The City of Genesee has logged many complaints with Ziply about their lack of communication, lack of respect for city processes, permitting, and infrastructure, and general disregard for the wants and needs of the community. Successful partnerships are born of strong relationships, and relationships are built on trust. The City of Genesee is only asking for the opportunity to choose a partner they trust.

Please see the attached letter for more information.

We encourage the Board to listen to rural leaders who have fought to put their communities first by remaining engaged champions for their chosen broadband infrastructure model. These cities, along with their Coalition members, are eager to implement non-discriminatory, publicly owned, open access infrastructure – the broadband model they’ve identified as having the greatest public benefit and most cost-effective use of funds.

Sincerely,



Christina Mangiapani
Latah County Broadband Coalition
Grants, Latah County
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On behalf of the [Latah County Broadband Coalition](#): City of Potlatch, City of Bovill, City of Genesee, City of Kendrick, City of Juliaetta, City of Deary, City of Troy, City of Moscow, Latah County Library District, Moscow School District, Kendrick Joint School District, Genesee Joint School District, Potlatch School District, Troy School District, University of Idaho, Gritman Medical Center, Latah County, Highway Districts