



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

August 10, 2016

VIA EMAIL and
VIA U.S. POSTAL SERVICE

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Re: Void Idaho Education Network Contracts

Dear Counsel:

I understand that you represent the vendors who were awarded the Idaho Education Network contracts known as SBPOs 01308 and 01309. CenturyLink Communications Company, LLC (formerly Qwest Communications Company, LLC) ("CenturyLink") was awarded SBPO 01308 and ENA Services, LLC ("ENA") was awarded SBPO 01309.

As you know, the Idaho Supreme Court affirmed a judgment declaring SBPOs 01308 and 01309 void. The Court concluded that the SBPOs are void because they were unlawfully amended in February 2009. The Court's opinion also interpreted Idaho Code § 67-5725 to impose a legal duty on certain state officials to seek to recover from ENA and CenturyLink the "substantial funds . . . advanced by the State under the unlawfully amended SBPOs." The Court explained that

[s]ection 67-5725 does impose an obligation on the proper officer "of the state of Idaho" to seek repayment of money advanced under the void SBPOs, if repayment is refused or delayed. . . . If the

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appropriate State officer fails to perform this statutory obligation, the State's chief legal officer can step forward to make the State whole for these unfortunate violations of State law.

The Director of the Department of Administration has advised me that he does not intend to seek repayment under section 67-5725. Accordingly, the duty to do so falls to me. In deciding not to seek repayment, the Director of the Department of Administration apparently construed "money advanced" under section 67-5725 to mean money paid before services were rendered. I understand that similar arguments were made to the Supreme Court in the *Syringa* case. The Court did not appear to accept this narrow definition of "money advanced." Instead, it interpreted section 67-5725 to place a "mandatory" duty on State officials to seek repayment.

Pursuant to Idaho Code § 67-5725, the Idaho Attorney General demands that ENA and CenturyLink repay all funds they received from the State of Idaho under SBPO 01308 or 01309. I would appreciate your response at your earliest convenience, but no later than August 22, 2016. Absent a timely response and resolution of this demand, my office will file an action to have the Idaho courts resolve the issue.

If you have any questions about this demand for repayment of money advanced in consideration of the void SBPOs, please contact Deputy Attorney General Scott Zanzig. I have authorized Mr. Zanzig to act on my behalf in this matter.

Sincerely,



LAWRENCE G. WASDEN
Idaho Attorney General

LGW:jc

C: The Honorable C. L. "Butch" Otter, Governor
State of Idaho

Robert L. Geddes, Director
Idaho Department of Administration