



The Commonwealth of Massachusetts
Office of the Inspector General

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September 19, 2011

Mr. Dan Gallagher
Chief Executive Officer
OpenCape Corporation
Cape Cod Commission Building
3225 Main Street
Barnstable, MA 02630-2148

Dear Mr. Gallagher:

As you know, the Massachusetts Office of the Inspector General (OIG) reviewed the OpenCape Corporation's (OpenCape) receipt of a \$32,072,093 American Recovery and Reinvestment Act (ARRA) funded grant from the U.S. Department of Commerce's Broadband Technology Opportunities Program (BTOP). This grant provided funding for a project intended to:

...construct a core fiber optic backbone on Cape Cod with extensions to two major regional network connection centers in Providence and Brockton, a microwave radio overlay that included Martha's Vineyard, and a regional collocation center in Barnstable Village. These three elements combine to provide a robust, high capacity communications infrastructure for the region."¹

For this project, OpenCape has also received funding in the form of a \$1 million in-kind contribution from Barnstable County (for the use of an empty county building), a \$5 million grant from the Massachusetts Broadband Institute (MBI), and a required \$2 million contribution from CapeNet LLC (CapeNet), the entity selected by OpenCape to manage, construct and operate the broadband network.

The OIG is reviewing ARRA-related grants to identify potential vulnerabilities to fraud, waste, and abuse and other risks that could negatively impact the accountability, transparency, and anti-fraud mandates contained in the statutory language and interpretive guidance of ARRA. Our review of the provided documents should not be construed as an audit, investigation, or a comprehensive programmatic review. The OIG intends these reviews to assist recipients of ARRA funding identify and address risks.

¹ Source: OpenCape website.

This review did not include an examination of the appropriateness of this expenditure for or the cost of this broadband project. The OIG review focused on how OpenCape planned to use the ARRA funding and what safeguards OpenCape had in place to maintain the accountability and transparency of these expenditures both during the project and beyond.

Background

OpenCape is a 501(c)3 not-for-profit corporation organized in March 2007 to support efforts, begun in 2006 by a consortium of public, private and not-for-profit entities in the Cape Cod region, to discuss the availability and development of broadband options for the region. According to OpenCape's Executive Officer, "the charitable purpose [of OpenCape] is to reduce the cost of government." OpenCape's Articles of Organization state that the purpose of the corporation is to:

...support the establishment, operation, and maintenance of a regional communications network to enhance education, research, and community development, utilizing wireless and broadband technologies throughout Cape Cod, the Islands of Nantucket and Martha's Vineyard and southeastern Massachusetts....

OpenCape initially received \$250,000 in "seed" money from a combination of state and local sources to investigate the potential for a "communications network" and to apply for any federal or state funds that could support the creation of such a network. In 2009, OpenCape applied for and received the ARRA-funded BTOP grant to fund approximately 80% of the cost of the broadband project. OpenCape had estimated the cost to be approximately \$40 million.

The proposed project consisted of the design and construction of an approximately 350 mile fiber-optic network and its associated infrastructure that included a "Collocation Center"² in Barnstable. This network would be owned by OpenCape but operated and maintained by a private vendor that would provide network services to end-users on a fee basis. OpenCape would be paid license fees by the chosen vendor and receive a percentage of the vendor's "gross revenue" over a 25 year contract term.

In 2009, in anticipation of receiving the ARRA grant, OpenCape partnered with RCN Metro Optical Networks (RCN) after a Request for Information (RFI) process to assist with the BTOP grant process and for the future construction, operation and maintenance of the network. However, OpenCape did not use an open RFI process.

² The Collocation Center Request for Proposals describes the center as follows: "The Data Center shall be designed and constructed to offer standard collocation services (e.g. partial rack, rack, and cabinet leasing) within the facility as well as managed services such as disaster recovery, data storage and backup, security, monitoring, reporting, and application hosting."

Instead, OpenCape selectively provided the RFI package to a small number of firms it had identified as potential respondents. During initial inquiries with OpenCape for this review, the OIG asked about this closed RFI process and OpenCape's choice of RCN. The OIG believed that the choice of RCN could appear non-competitive and could be a possible conflict-of-interest for RCN to be the same firm that helped to prepare the scope of the project, request grant funding for the project, and then be chosen to build and operate the network. According to OpenCape, its legal counsel had expressed similar concerns. As a result, OpenCape chose to sever its relationship with RCN and initiate a new competitive Request for Proposal (RFP) process to choose the builder/operator.

In March 2010, as a result of this new RFP process, OpenCape awarded the 25 year (with three five year renewal options for a possible total of 40 years) design, construction, operation, and maintenance contract to CapeNet LLC, a joint-venture of Telecom Global Inc. (TGI) and a firm organized specifically for this project - Cape Net Partners Inc. CapeNet has agreed to provide \$2 million in funding towards the project and has agreed to pay OpenCape a \$500,000 annual licensing fee and six percent of gross network revenue on a quarterly basis.³ OpenCape will contribute almost \$31 million towards the completion of the network. Telecom Global Inc. (TGI) will manage network construction.

OpenCape has also issued an RFP for the "Design, Build, and Operation of the OpenCape Regional Collocation Data Center." OpenCape expected responses to be received in August 2011. The operator of the collocation center will receive a 10 year contract (with two-five year renewal options for a total of 20 years) and pay OpenCape \$50,000 annually plus a share (to be determined) of earned revenue from the facility.

OpenCape expects all work to be completed and to have the broadband network operational by 2013.

Summary

Based on the OIG review, OpenCape appears to have generally followed appropriate federal and state procurement rules. Although OpenCape is a not-for-profit, and therefore only obligated to follow federal grant regulations, it has decided to follow many of the same rules that local government entities must follow. For example, OpenCape has competitively procured nearly all the services it needed including insurance, surety bonds, audit services, licensing and permitting services, financial management, banking and human resource services. OpenCape has also made a significant effort to ensure transparency by posting all RFPs, contacts, schedules,

³ If OpenCape does not receive at least \$100,000 in revenue sharing in a given year, then the \$500,000 licensing fee will be adjusted pursuant to the U.S. Producer Price Index (PPI). The PPI was 7% for the 12 month period ending June 2011. Revenue for the purposes of revenue sharing is defined as "net of state sales taxes, gross receipts taxes, excise taxes, and federal USF assessments ("Net Revenues") generated by or derived from the sale, lease or licensing of services utilizing the System..."

award notices, etc. on its website and by participating in forums and summits and by making a concerted effort to inform stakeholders of project activity. The number of stakeholders involved and the breadth of this project also ensures a degree of accountability and transparency.

Despite this, the OIG has concerns that stem from the OpenCape project being an almost entirely publicly-funded revenue-generating enterprise that is privately controlled. This publicly-funded project will generate significant revenue for perhaps 40 years and will establish a communications infrastructure that will become vital for public safety, homeland security, and other public purposes. The BTOP grant allows OpenCape to keep any future income derived from the project. The OIG wants to ensure that this income, generated from a significant public investment serves the best interests of the public within the service area. As a result of these and other concerns, the OIG offers the following findings and recommendations.

Findings

1) There has been no open discussion of or planning for how OpenCape, a private not-for-profit, will manage, use, and protect from the risks of fraud, waste, and abuse the millions of dollars it will earn from this publicly funded project during the next 40 years.

The OIG review did not identify any meaningful future planning by OpenCape for the millions of dollars it will earn from this project. The \$500,000 in annual payments from CapeNet, in conjunction with CapeNet's 6% revenue sharing arrangement, will produce a dedicated revenue stream for OpenCape for up to 40 years. OpenCape officials stated they could not estimate how much income it would earn from revenue sharing but acknowledged that it could be significant, possibly generating millions of dollars annually.⁴ As a result, OpenCape could grow in a few short years from a small volunteer advocacy group to one of the largest businesses in Cape Cod.

The OIG is concerned that OpenCape - a private not-for-profit, and CapeNet - the private network operator, rather than the taxpayers, stand to gain significantly from public funding. CapeNet invested \$2 million and OpenCape only had public funding, yet both will share in what is projected to be perhaps a few hundred million dollars from this public investment. Of course the creation of the broadband network, as ARRA intended, is expected to generate economic growth and create jobs in the region and this will impact the taxpayers in a positive way. However, other than OpenCape's stated good intentions, there are currently no accountability or transparency mechanisms in place for the allocation and expenditure for the millions of dollars in potential project earnings.

While the current leadership of OpenCape appears well-intentioned and capable of effectively overseeing the collection, management, and disbursement of current

⁴ OpenCape claims that it has no current estimates for potential earnings and that any projections that may have been made by CapeNet are not in OpenCape's possession. Arguably, OpenCape should know what its future earnings potential and potential cash flow will be.

funds, there is no plan in place to address what would occur in the absence of the current leadership or to control the vulnerability to fraud, waste and abuse that will exist when millions of dollars will be controlled by a small group of individuals without safeguards, oversight, or a specific and regulated plan to spend these dollars for a charitable or public purpose. OpenCape originally portrayed itself as, in effect, a quasi-public entity with a very limited lobbying purpose. Its future is now open-ended and fueled with 40 years of potential revenue it would not have but for taxpayer funding and the full support of federal, state, and local government.

The OIG raises the following specific concerns:

- a) OpenCape board members and employees are free to use the funds with limited constraints. The regulations, controls, and oversight (including required auditing) that exist for the BTOP grant do not extend to income earned from the project. OpenCape's by-laws and articles of organization do not address how these funds will be controlled or managed. The OIG believes that revenue earned from a publicly funded project should be used for a public benefit and be protected to the greatest extent possible from fraud, waste and abuse.
- b) The OpenCape articles of organization provide that: "The Directors shall have the power to fix their compensation from time to time." As stated previously, the OIG is concerned that a group of volunteers and government officials will have significant financial resources at their disposal without the level of oversight and controls that normally exist for public entities or for not-for-profits that receive public funding. These same officials have the authority to compensate themselves, without limitation. The articles of organization also allow for board members to engage in business relationships with OpenCape (also called related party transactions) as long as the relationships are disclosed and approved by the board. OpenCape's conflict of interest policy notes that a board member owes his/her "fiduciary duty to OpenCape" but allows for possible conflicts of interest as long as there is disclosure to the board and the party in possible conflict does not "participate in any board discussion or vote" in the matter. The policy also opines that: "If a director follows these disclosure and recusal procedures, a party challenging a transaction on the grounds of a conflict of interest /breach of fiduciary duty will face a heightened burden." This policy appears to have been drafted to protect the board from a lawsuit rather than ensure that board members adhere to their "fiduciary duty" to OpenCape and the public interest.

Regarding OpenCape employees, the policy discourages potential conflicts of interest but allows for related party transactions if approved by the "Chief Executive Officer and the Board of Directors."

These potential board relationships, minimal oversight and unrestricted access

to funding creates vulnerability to fraud, waste, and abuse. As an example, the OIG recently reported about the relationship between an educational not-for-profit and an educational collaborative, a public entity. In this case, the OIG identified relationships between the two entities that led to the not-for-profit and its top management overcharging for and inappropriately benefiting from contracts with the public entity. The OIG also identified that certain former public officials, who had previous business dealings with the not-for-profit, later worked for the not-for-profit at significantly higher salaries and overall compensation. OpenCape should not allow itself to be exposed to this type of risk. A number of OpenCape board members are local government officials who could potentially work for OpenCape in the future. Two board members have already had to recuse themselves from involvement in contracts between OpenCape and Barnstable County because of potential conflicts of interest. While it may be important to have public officials on the board, board membership should not be a springboard for future employment or business relationships with OpenCape. The conflict of interest policy for OpenCape cautions Board members who are also public officials to “take care in observing Massachusetts General Laws Chapter 268A regarding “Conflict of Interest” and 930 CMR “State Ethics Commission” regulations.”

- c) There is no formal mechanism to collect and preserve project earnings such as a trust or endowment that could limit access to and safeguard these funds. OpenCape is also free to pursue other grants and other public or private funding for this project or for any other purpose. OpenCape should have a mechanism to manage, control, and audit these funds as well. If OpenCape’s intention is to accumulate earnings (a minimum target of \$10 million) for a future public investment in technology, then these funds should be protected. Officials have offered that the surplus funds could be used in the future to fund the replacement or augmentation of the broadband network with whatever technology will succeed broadband or alternatively the surplus could be used for broader purposes by expanding OpenCape’s original mission. Neither option has been defined by OpenCape.

The OIG is also concerned how OpenCape’s infrastructure assets will be handled in the future as well. OpenCape will own miles of fiber optic cables and other infrastructure and valuable license and/or lease agreements worth in the tens of millions of dollars. OpenCape will be free to transfer, sell, lease, license, or dispose of these assets with minimal public in-put. The OIG believes that the public interest and the charitable purpose of OpenCape should require greater oversight and control of the future disposition of these assets.

OpenCape is also free to “spin-off” other not-for-profit or for-profit entities. These affiliates or subsidiaries add layers to the project that could increase risks for fraud, waste, and abuse if not adequately monitored. The Board

should ensure that any entities created in the future adhere to the highest ethical, control and administrative standards. The creation and work of these entities should also be conducted under the same accountability and transparency standards that have been used to date by OpenCape.

- d) OpenCape does not appear to have an adequate mechanism in place to ensure that it receives its fair share of income from the revenue share portion of its contract with CapeNet. OpenCape expects to receive six percent of CapeNet's gross revenue but has not established the means to verify the accuracy of what CapeNet determines to be OpenCape's revenue share.
- e) OpenCape's procurements have adhered to federal guidelines and have been transparent. However, OpenCape's procurement policy states that it must be followed to meet "federal requirements regarding the expenditure of awarded funds." This appears not to cover future procurements paid for from future project earnings. The policy should clearly state that federal guidelines or other transparent and accountable process will be used in the future regardless of the source of funding for the planned procurement.

Recommendations: In addition to the recommendations made in the above narrative, the OIG makes the following additional recommendations to the OpenCape Board of Directors.

- The by-laws should be amended to clearly state what future activities OpenCape plans to engage in and for what purposes it may use its future earnings. The by-laws should also require that any income above reasonable operating expenses be held in trust for a reasonable future use.
- The by-laws should also provide that any future plans for network expansion or alteration and any significant expenditure by OpenCape receive board approval, are disclosed before expenditure to the Cape Cod Commission, Barnstable County, MTC, the Executive Office of Public Safety and Security, the Department of Public Utilities, and the Department of Energy Resources. OpenCape's annual audited financial statements should be provided to the entities named above as well as to regional stakeholders such as municipalities and state colleges and universities.
- The board should prohibit related party transactions and establish clear compensation limits. Compensation and benefits could be tied to whatever compensation and benefit structure exists for the county and municipal governments in the region. For example, the OpenCape Chief Executive Officer could be restricted to earning no more than the highest paid town manager or public administrator in the region. The Board might also consider complying with (although not required to) the provisions of the new "State Authority Accountability and Transparency Act" (M.G.L. c.29, §29K) that addresses,

amongst other things, executive compensation and auditing requirements. Although intended for quasi-public entities, OpenCape might benefit from adopting some of the provisions of this statute.

- The by-laws should be amended to incorporate OpenCape's conflict of interest/ethics, procurement, contracting, public records, and other key policies. OpenCape's personnel manual contains a code of conduct, but the manual could be changed over time. Adding rules to the by-laws gives these issues greater emphasis and helps to bolster the organization's institutional accountability. OpenCape's key policies should mirror those applicable to Barnstable County. This will help to ensure that OpenCape continues to operate in the public interest and protect public stakeholder interests.
- The composition of the Board of Directors should be changed to reflect greater state representation. Currently, only five of 11 board members are public officials and none are state or federal officials. As federal and state funding made the project possible and since the completed network will be vital to public safety and homeland security interests as well as economic development, these stakeholder interests should have greater board representation. Currently, OpenCape's agreement with the quasi-public Massachusetts Technology Collaborative (MTC), the parent entity of the Massachusetts Broadband Institute (MBI), specifies that MTC has an observer that may participate in OpenCape board meetings. MTC/MBI is a major project funder yet there is a five-year "sunset" provision for MTC/MBI's observer status on the board. The OIG believes that the public interest would be served through a greater state and oversight presence on the board that would be maintained in perpetuity. OpenCape should discuss the matter with the State Ethics Commission to determine to what extent state and local public officials can participate either directly or indirectly (through appointees) on the Board or in another capacity, such as serving on an Advisory Board that has oversight responsibility.

2) *OpenCape is reserving for its use 40% of the "fibers" to be included as part of the broadband network.⁵ OpenCape does not have guidelines in place to ensure that the future licensing, leasing, transfer etc. of these fibers will occur through a transparent and accountable process.*

These fibers could be an extremely valuable commodity. According to OpenCape's contract with CapeNet, OpenCape will retain control of 40% of the fibers for an undisclosed time period. The contract also states that OpenCape will retain these fibers for use by government, "anchor institutions" (that include public, private,

⁵ This also includes the "laterals" to "Anchor Institutions" ("nearly 50 miles of fiber optic laterals will be installed from the fiber backbone to existing buildings to anchor institutions such as libraries, town halls, and schools.")

and not-for-profit entities in the region), any owner of “underlying rights,”⁶ or to “advance the interest of the project.” As a result, OpenCape retains the ability to offer these fibers to private institutions or to “advance” the project as defined by OpenCape.

The OIG believes that these fibers, funded through a public investment, should be allocated through an open and fair process that serves a public purpose. As these are expected to become a valuable commodity, absent adequate controls and oversight, the future disposition of these fibers could be highly vulnerable to fraud, waste, and abuse. For example, these fibers could be granted to favored parties, to the highest bidder regardless of “best use,” and could be the basis of business dealings between OpenCape and private parties that do not have a direct public benefit. This could be in the best interests of OpenCape but not in the best interests of the public or the “charitable” nature of OpenCape’s not-for-profit status.

Recommendation: OpenCape should develop guidelines for a transparent and accountable process that address the future disposition of the retained fibers.

3) OpenCape chose CapeNet as the system operator through an RFP process but without a formal documented proposal evaluation process.

OpenCape issued an RFP to identify a firm to design, build, operate and maintain the network. In March 2010, OpenCape awarded the contract to CapeNet. Although OpenCape used an open RFP process that disclosed the evaluation criteria for the purpose transparency and accountability, it did not use a transparent and accountable evaluation process to choose the winning respondent. A number of firms submitted responses to the RFP. However, OpenCape chose the respondent through an undocumented closed-door process. There is no record of or meeting minutes for how the evaluation team deliberated or how each respondent complied with the evaluation criteria. According to OpenCape officials, the team discussed the responses and chose what they believed to be the “best” response. Any notes, scoring sheets other material customarily used and required to be maintained in a public procurement process have been destroyed or retained by individual team members. The only record of the evaluation is a report filed by the Chief Executive Officer (CEO) to the board for their approval of the team’s recommendation of CapeNet. According to the CEO, the board has the ultimate authority to choose the winning vendor so retaining any team records would be unnecessary. The board is under no obligation to award a contract to a vendor recommended by the evaluation team.

As a private not-for-profit, OpenCape did not violate any public procurement statutes. However, the OIG believes that since OpenCape committed itself to following an open and competitive process, it should have maintained this type of process throughout the procurement process. The OIG has no reason to believe that

⁶ According to OpenCape, “underlying rights” refers to acquired rights for the project such as easements, licenses, land use agreements, etc.

OpenCape did not choose the “best” offer. However, without a formal record of how and why OpenCape made its decision, questions could be raised about the process and the choice. Moreover, public funders may have an interest in knowing why and how the project’s primary vendor for up to 40 years had been chosen.

Also, by destroying these records, OpenCape may be in violation of ARRA’s record retention requirements and grant guidelines. OpenCape should retain all records relating to ARRA funding for at least the six year minimum requirement. A public entity would have been in violation of public records and procurement laws for destroying these valuable documents.

Recommendation: OpenCape should follow the same procurement regulations and public record retention guidelines that Barnstable County must follow. This will help to ensure a more open process that must follow a specific set of rules.

4) OpenCape only requires CapeNet to provide subscriber discounts of 30% to public entities and 20% to not-for-profits.

As the OIG stated previously, this is a publicly funded project initiated by public officials and under the control of OpenCape, a not-for-profit that has partnered with public agencies and has a number of public officials on its board of directors. OpenCape stands to earn tens of millions of dollars or more over the life of its potential 40 year contract with CapeNet for the operation of the network.

However, if taxpayers, municipalities, school districts and businesses want to take advantage of the broadband network, they must pay for the services offered by this new network by becoming subscribers and paying whatever enrollment fees and monthly charges the market will bear. In addition, some public institutions may have to expend millions of dollars to construct the “laterals” – the means to tie into the new network in order to take advantage of the network offerings.

OpenCape included a 30% discount off these market rates for public entities in CapeNet’s contract. However, the 30% is based on the market rate that will be charged for broadband services; a market rate that will be based on future decisions made by CapeNet – a private entity that will hold significant control over the market. Although unlikely, it is possible that a 30% discount on future market prices could exceed the current rates (adjusted) that public entities now pay for non-broadband services offered by other providers.

Moreover, as this is a publicly funded project, perhaps the discount rate to public entities, especially school districts and institutions of higher education, should be more than 30% or perhaps rebated entirely when OpenCape’s earning potential from the

project is fully realized. “Free”⁷ broadband for education in the region could be a significant public benefit and economic development component.

The OIG believes that OpenCape has many options available to ensure the greatest future public benefit from a nearly \$40 million investment of taxpayer funds and assets. Across the region, public institutions probably pay millions of dollars each year for internet, cell phone, and cable television services. The more these costs are reduced the more funding these entities will have for other services thereby creating a significant return on the initial public investment in the project.

Recommendation: OpenCape should consider providing public entities, including school districts, the largest discounted rates possible (including rebating fees if earned revenues exceed expectations) and should subsidize the construction of laterals so that public institutions benefit proportionally to the amount of public investment in the project.

5) Barnstable County made an in-kind contribution of a closed County-owned building to the OpenCape project that required significant project investment to make the building useable.

As part of the BTOP grant, OpenCape had to provide 20% matching funds. To satisfy part of this match, Barnstable County agreed to donate its former public safety building to the project for the so-called collocation center. The grant application and other project related-documents reflected a value of between \$750,000 and \$1 million for this building.

Although the County agreed to donate this building in 2009, M.G.L. c.30B – the Uniform Procurement Act, prohibited the County from donating a building to a private or not-for-profit entity without a fair and open procurement process. As a result, in late 2010, after the County committed to donate the building to OpenCape, the County issued an RFP entitled “Barnstable County RFP For Renovation, Construction and Operation of Collocation Center, and Lease of Main Street Property.” The RFP pre-determined the use of the building for a Collocation Center and sought a not-for-profit respondent. In January 2011, the County awarded OpenCape, as the sole respondent to the RFP, a 25 year lease for the building in exchange for renovating the building. OpenCape is financially responsible for the design of the center, the renovation of the building, and the management and operation of the building for the lease term.

At the time of the OIG review, OpenCape had not yet chosen an operator for the center but had budgeted approximately \$4 million for this part of the project.⁸ In addition, under its lease with the County, OpenCape will renovate the third floor of the

⁷ According to OpenCape, the BTOP grant does not allow free services to be provided to government entities. However, very low rates or token service fees and/or rebates or in-kind contributions may be allowable.

⁸ The, as of yet unknown, center operator will pay OpenCape a yearly fee (estimated to be \$50,000) and a share of revenue earned from the center.

building for County use (while the center uses the bottom two floors). The County will use this newly renovated space cost free for 25 years and OpenCape has agreed to invest \$200,000 in a new 48 terabyte SAN (storage area network) for County use. The SAN will store the County's GIS (geographic information system) data, municipal property assessment databases, school district software, and other items.

As a result, a contribution from the County to meet a required funding match under the federal grant will probably cost OpenCape more than the estimated value of the contribution. OpenCape will be spending millions to renovate a County building that will be partially used by the County at no cost and to upgrade the County's computer storage capacity for what was supposed to be an in-kind matching contribution from the County. All parties should be open concerning the value of and costs for these contributions.

Recommendation: OpenCape should more clearly reflect the value of in-kind contributions. Also, both the County and OpenCape should consult with the Office of the Attorney General regarding potential M.G.L. c.149 (the statute dealing with contracts for the construction, reconstruction, installation, demolition, maintenance, or repair of a building) issues whenever construction, renovation, or other alterations to public property is to be performed by a non-public party and when there will be a continued public use or a public benefit will be derived from this work. This will help OpenCape and its public entity partner avoid any potential statutory violations.

6) CapeNet may offer competitive pricing to customers that could reduce OpenCape's revenue share.

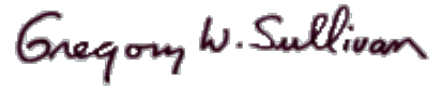
According to OpenCape officials, CapeNet may charge what it believes is appropriate for the services it will provide. This may include offering steep discounts or even free service to customers. The OIG understands that competitive pricing could be an integral part of a marketing strategy and/or a reflection of the market. However, as OpenCape's contract with CapeNet requires revenue sharing, CapeNet's pricing decisions will impact OpenCape's potential earnings.

Recommendation: The OIG does not suggest that OpenCape interfere in CapeNet's business model. The OIG suggests that OpenCape require CapeNet to disclose discounts and other foregone revenue to OpenCape for accountability purposes. For example, CapeNet could steeply discount services or offer free services to its own subsidiaries, affiliates, or partners or "barter" services with other entities. The result would be greater revenue for CapeNet at the expense of OpenCape. Disclosure would be a check against the potential risk for fraud, waste, and abuse in the revenue share agreement.

Mr. Gallagher
September 19, 2011
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I appreciate your cooperation in this review of ARRA funding. Please do not hesitate to contact my office with any questions or concerns you may have regarding this review.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, flowing style.

Gregory Sullivan
Inspector General

cc: Pamela Goldberg, Executive Director, Massachusetts Technology Collaborative
Judith Dumont, Director, Massachusetts Broadband Institute
Mary Beckman, Chief, Non-Profit/Public Charities Division, Office of the Attorney General
John Letchford, Chief Information Officer, Massachusetts Information Technology Division
Paul Niedzwiecki, Executive Director, Cape Cod Commission