Special Award Conditions

Award Number: **NT10BIX5570037**
Amendment Number: **10**

1) Sale/Lease IRU SAC

On February 25, 2011, NTIA granted a partial programmatic waiver of Section IX.C.2 of the First and Second Notices of Funds Availability (NOFAs) and Solicitations of Applications [74 Fed. Reg. 33104, 33123 (July 9, 2009) and 75 Fed. Reg. 3792, 3810 (January 22, 2010)]. Both NOFAs imposed a general prohibition on the sale or lease of the BTOP-funded project assets during their life unless NTIA first finds that the conditions enumerated in the NOFAs for such approvals have been met and grants a waiver of this requirement.

This programmatic waiver granted on February 25, 2011 eliminates this restriction on the sale or lease of BTOP-funded assets without prior NTIA approval to the extent that the restriction applies to the recipients provision of indefeasible rights-of-use (IRU) in BTOP-funded fiber optic networks to other broadband service providers for the provision of broadband service. The IRU arrangements must comply with the requirements described below. Fiber swaps are excluded from this programmatic waiver; recipients must continue to seek prior agency approval before entering into such arrangements.

Recipients entering into fiber IRU arrangements with other broadband service providers for the provision of broadband service shall (i) include terms that require compliance with applicable BTOP requirements, including that the purchaser will provide broadband service and adhere to BTOP s nondiscrimination and interconnection obligations, and (ii) advise their IRU purchasers that failure to meet these conditions will result in revocation of the IRU. The terms of the IRU also must include an acknowledgement that the property is subject to NTIA s undivided equitable reversionary interest, known as the Federal Interest, for its useful life. The terms of the IRU will not transfer legal title to the fiber to the IRU purchaser.

In entering such fiber IRU arrangements, the recipient must ensure that it retains sufficient capacity to fulfill its broadband service obligation under its award; thus, the sale of fiber may not represent such a dominant share of the available capacity such that no other service provider, including the recipient, may use the fiber to provision broadband service. The programmatic waiver shall apply only in cases where no entity or group of affiliated entities (i) obtains IRUs in a majority share of the capacity available for purchase at the time of the transaction on any fiber route constructed with BTOP funds; and/or (ii) cumulatively obtains a majority of the initial total capacity on any such fiber routes.

The revenue the recipient or sub-recipients receive from their provision of fiber IRUs will be considered program income and must be treated in accordance with BTOP requirements governing the use of program income if it is earned during the period of performance.

2) Program Income SAC

On December 17, 2010, NTIA waived the limitation on the use of program income set forth in Section V.E. of the Notice of Funds Availability [74 Fed. Reg. 33104, 33113 (July 9, 2009)] which directed recipients to use program income only to add to the funds committed to the project to further eligible project objectives. Under the waiver issued on December 17, 2010, recipients may also use program income to finance the non-Federal share of their projects in accordance with 15 CFR § 14.24 or 15 CFR § 24.25. Recipients must request approval from the Grants Office to use program income for the non-Federal share by identifying the anticipated program income and submitting revised budget documentation in the form of the Standard Form 424A along with a budget narrative and detailed budget reflecting the proposed changes.

3) Operating Lease SAC

On May 6, 2011, NTIA waived the prohibition against using BTOP grants funds to pay for the costs of broadband facilities acquired under the terms of an operating lease set forth in Section V.D.1.b.v of the BTOP Round One Notice of Funds Availability [74 Fed. Reg. 33104, 33112 (July 9, 2009)]. Under the May 6, 2011 waiver, the prohibition in Section V.D.1.b.v is waived and expenses incurred to enter into operating lease agreements will be eligible costs for BTOP Infrastructure projects, so long as the expenses are allowable under the applicable cost principles.

Under the cost principles, operating lease costs are allowable only to the extent that they are incurred during the award period and determined consistent with the relevant accounting principles. In order to receive Grants Office approval for an operating lease, recipients must identify the operating lease expenses and submit a revised budget in the form of the Standard Form 424C along with a revised budget narrative and detailed budget reflecting the proposed changes.