

**BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM  
FREQUENTLY ASKED QUESTIONS**

**May 28, 2010**

\*New or revised questions as of 3-1-10 are marked with an asterisk.  
\*\*New or revised questions as of 3-12-10 are marked with two asterisks.  
\*\*\*New or revised questions as of 3-23-10 are marked with three asterisks.  
\*\*\*\*New or revised questions as of 5-28-10 are marked with four asterisks.

<b>I. APPLYING FOR ROUND TWO FUNDS .....</b>	<b>2</b>
A. APPLICATION PROCESS AND PROCEDURE .....	2
B. MULTIPLE ROUNDS OF FUNDING .....	3
C. BIP AND BTOP.....	3
D. NUMBER OF APPLICATIONS.....	5
E. SPECIFIC APPLICATION REQUIREMENTS .....	6
F. INFORMATION TECHNOLOGY .....	8
<b>II. COMPREHENSIVE COMMUNITY INFRASTRUCTURE (CCI) PROJECTS.....</b>	<b>8</b>
<b>III. PUBLIC COMPUTER CENTER (PCC) AND SUSTAINABLE BROADBAND     ADOPTION (SBA) PROJECTS.....</b>	<b>10</b>
<b>IV. ELIGIBILITY AND MATCHING.....</b>	<b>11</b>
A. ELIGIBLE ENTITIES .....	11
B. ELIGIBLE COSTS .....	12
C. MATCHING FUNDS.....	15
D. ELIGIBLE PROJECTS.....	15
E. PARTNERING.....	18
F. PROCUREMENT.....	20
G. NONCOMPETITIVE SUBAWARDS AND CONTRACTS .....	21
H. DAVIS-BACON WAGE REQUIREMENTS .....	21
<b>V. REVIEW AND AWARD PROCESS .....</b>	<b>22</b>
A. PROJECT VIABILITY AND TIMELINE .....	22
B. INDEPENDENT EXPERT REVIEW PROCESS .....	22
C. PUBLIC NOTICE PROCESS.....	24
<b>VI. AWARD TERMS AND CONDITIONS.....</b>	<b>24</b>
A. NON-DISCRIMINATION AND INTERCONNECTION.....	24
B. SALE/LEASE/OWNERSHIP OF FACILITIES .....	27
C. COMPLIANCE/AWARD TERMS.....	28
<b>VII. ROUND ONE ISSUES .....</b>	<b>29</b>
<b>VIII. ENVIRONMENTAL ISSUES.....</b>	<b>29</b>

## **I. Applying for Round Two Funds**

### **A. Application Process and Procedure**

#### **1. What are the major changes from the first round of funding?**

For this round of funding, the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) have published separate Notices of Funds Availability (NOFAs) for the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP) and developed separate applications to better promote each Agency's distinct objectives. NTIA has adopted a "comprehensive communities approach" to award BTOP grants for infrastructure projects that emphasize Middle Mile broadband capabilities and new or substantially upgraded connections to community anchor institutions. NTIA has removed the requirement that these infrastructure projects be located in unserved or underserved areas, although such projects will receive additional consideration in the evaluation of Project Benefits and in satisfying BTOP priorities. Applications that propose to contribute a non-federal cost match that equals or exceeds 30 percent of the total eligible costs of the project will also receive additional consideration in evaluation of Project Budget and in satisfying BTOP priorities.

NTIA has shifted its approach and will collect more data in the initial application, with less reliance on a second round of information requests. We have streamlined the online application and will require uploading of fewer attachments. BTOP applicants will also no longer be required to use the USDA's (or RUS) proposed funded service area mapping tool to delineate a service area, but may propose service areas by Census tracts and block groups rather than individual Census blocks. NTIA has also reduced the number of expert reviewers from at least three to at least two in order to make the expert review process as efficient as possible, without impacting the rigor of review. Finally, all applications must be submitted electronically.

#### **2. Will those who apply early have any advantage over those who apply later within the application window?**

No. All eligible applications will be reviewed based on objective selection criteria, and there is no additional consideration for applications based on how early within the application window they are received.

#### **3. Will NTIA staff discuss my proposed project with me before I apply?**

NTIA staff cannot pre-screen or offer any specific consultations on funding applications. Materials from Round Two workshops are available at <http://www.broadbandusa.gov/workshop.html>, and applicants should closely review the January 22, 2010 NOFA (Second NOFA) to tailor their projects to NTIA's funding priorities.

## **B. Multiple Rounds of Funding**

### **1. Is an entity whose application is denied in the first funding round eligible to reapply for funding in a subsequent round?**

If an application is not successful in the first round, the applicant may reapply for the next round of funding. Applicants resubmitting applications should tailor their applications to respond to any new or changed requirements set forth in the Second NOFA before resubmitting them.

### **2. May an applicant who receives an award in the first round submit an application in a subsequent round of funding?**

Yes. However, please note that it is not NTIA's intention to fund any application or portion thereof that substantially duplicates the construction of facilities previously funded by NTIA or RUS. For example, the fact that NTIA funded a Middle Mile project in Round One would not preclude RUS from funding a Last Mile project in Round Two in the same geographic area.

### **3. Will NTIA discuss my rejected first-round application with me so I can revise my proposal for the second round?**

Given the tremendous volume of applications received in the first round and in view of strict Program deadlines, NTIA is unable to provide individualized feedback to those first-round applicants who were not selected for an award. NTIA has made a number of changes in Round Two in order to increase efficiency, sharpen the Program's funding focus, and improve the applicant experience. Unsuccessful Round One applicants likely will need to adjust their proposal to achieve the Program's priorities in the second round. Applicants should carefully review the second round priorities, eligibility and Program requirements, and evaluation and selection criteria and make every effort to submit an application that best fulfills these objectives. Furthermore, as NTIA announces awards in the first round, the Agency is making certain information, including project summaries and maps of infrastructure projects to the extent possible, available on its website to help inform the public and stakeholders. NTIA encourages applicants to review publicly available information describing first round BTOP and BIP awards, as well as any other sources of information regarding first round grantees, to aid in the development of their second round proposal.

## **C. BIP and BTOP**

### **1. How do I decide whether to apply for BIP or BTOP funding?**

If your project fits the NTIA criteria for a Comprehensive Communities Infrastructure (CCI) project and you are not a current RUS borrower or grant recipient, you should apply to NTIA. If

your project is for a Last Mile area that is at least 75 percent rural, you should apply for BIP funding from RUS.

**\*2. How do I choose between BIP and BTOP?**

The following guidelines are intended to assist applicants as they decide to which program they should apply:

You should apply to BTOP if:

- Your application is predominantly for middle mile infrastructure and you are not a current RUS borrower or grantee.
- Your application is a middle mile project that has “comprehensive communities” components. These components, in order of priority, include: (1) a commitment to offer new or substantially upgraded service to community anchor institutions; (2) public-private partnerships; (3) intent to bolster growth in economically distressed areas; (4) a commitment to serve community colleges that have expressed a demand or indicated a need for access or improved access to broadband service; (5) a commitment to serve public safety entities that have expressed a demand or indicated a need for access or improved access to broadband service; (6) a Last Mile infrastructure component (in rural areas, however, the cost of Last Mile infrastructure to residences and non-community anchor institution businesses may not exceed more than 20 percent of the total eligible project costs).
- Your application is for Public Computer Centers or Sustainable Broadband Adoption.

You should apply to BIP if:

- Your infrastructure application is predominantly for last mile infrastructure in service areas that are at least 75 percent rural or provides last mile service in the form of satellite service.
- You are a current RUS borrower or grantee seeking infrastructure funding (last mile or middle mile).
- Your application is for rural library broadband service.
- Your application is for a Technical Assistance grant that seeks additional funding for the purpose of developing regional broadband development strategies in rural areas.

**\*3. Can I apply to both BIP and BTOP?**

Yes, you can file applications with both programs. However, your applications should meet the requirements of each program to which you apply. Given the different funding focuses of the two programs, you probably should not file the same project at both agencies.

**\*4. Why should I choose between BIP and BTOP?**

Applicants that are eligible for both BIP and BTOP have the option to apply to either agency but applicants should apply only to one agency for a given project.

**\*5. Who is a “current RUS borrower or grantee?”**

A “current RUS borrower” is an applicant with an active RUS loan. A “current RUS grantee” is an applicant who is currently receiving grant funds from RUS or who has not fully expended its most recent award.

**D. Number of Applications**

**1. Is there a limit to the number of applications one entity can submit during the application window?**

No. Also note, however, that NTIA strongly recommends that applicants request funding within the ranges specified in the NOFA. This may impact the number of applications an applicant wishes to submit.

**2. Must an applicant submit separate applications for CCI, Public Computer Center (PCC), and Sustainable Broadband Adoption (SBA) projects or include all three in one application?**

Applicants with projects in multiple funding categories (CCI, Public Computer Center (PCC), and Sustainable Broadband Adoption (SBA)) must submit separate applications. However, such Applicants should reference in the appropriate sections of each application the other relevant applications in the Project Information section of each application to the extent there are synergies between projects. NTIA will give additional consideration to projects that convincingly address multiple project categories and more than one BTOP statutory purpose.

**3. Must an applicant submit separately for Middle Mile and Last Mile Infrastructure Projects or include both in one application?**

As stated in the Second NOFA, CCI applicants should include at least a Middle Mile component in any CCI application. Proposals that also include a Last Mile component will be given selection priority and additional consideration in the evaluative review process. Applicants may

submit an exclusively Last Mile project, but if it does not include a Middle Mile component, it will receive lower priority. Applicants should designate in the same application such Middle Mile, Last Mile, and Last Mile-Rural infrastructure components of their projects as may be applicable. (Second NOFA at II.B.1.)

**4. Where service areas are not contiguous, does an applicant have to submit separate applications?**

No, one application may designate multiple proposed funded service areas, each comprised of one or more contiguous service areas that reflect the geographic areas over which a project's impact will extend.

**5. If NTIA decides to reject an application, will NTIA automatically reject the applications for other project categories that the applicant has designated as related in the Application?**

No. Applications that convincingly demonstrate synergy between multiple project categories (*e.g.*, CCI, PCC, or SBA) will receive additional consideration. For example, a SBA application might be related to a CCI application to the extent that the former provides solutions to enhance subscribership. However, if NTIA finds that only one of several related applications proposes a project that is highly responsive to the criteria, NTIA may choose to fund only the highly meritorious application.

**6. If an applicant files a CCI application found to be highly meritorious, will that fact affect the review of any related PCC or SBA application filed by the same applicant for the same service area?**

Each application will be independently reviewed and evaluated against the evaluation criteria set forth in section VII.A of the Second Round NOFA. If an applicant submits related applications for the same service area, then they should receive additional consideration by the expert reviewers. (*e.g.*, Second NOFA at VII.A.1.a.)

**7. Will one application that includes multiple projects be accepted or rejected as a whole, or will NTIA consider awarding partial grants?**

NTIA intends to select or reject each application in its entirety. NTIA reserves the right to discuss with the applicant specific modifications to the application to resolve any differences that may exist between the applicant's original request and NTIA's determination of eligible costs and funding priorities. (Second NOFA at II.C.4.)

**E. Specific Application Requirements**

**1. When an application is submitted by multiple entities, should it be filed with a single DUNS number or a new shared DUNS number?**

The application must include the DUNS number associated with the lead applicant. The DUNS numbers for other entities or a new shared DUNS number are not required for the application process. If the application receives an award, to the extent that subrecipient reporting is required, entities that will perform subrecipient reporting will need to supply DUNS numbers at that time.

**2. Is an Engineering Certification or Legal Opinion required for CCI infrastructure applications?**

No. NTIA has eliminated the previously required submission of an Engineering Certification or Legal Opinion. (Second NOFA at Appendix, “Streamlining the Application”)

**3. To satisfy the showing that the project would not have been implemented during the grant period but for federal assistance, a public or governmental entity will generally not be able to show the denial of a loan request. Is it sufficient for such an entity to show that there is not enough funding in its budget for the project?**

In addition to a lender’s rejection letter from a private or public lender, the Second Round NOFA also invites submission of a current fiscal year budget that shows the lack of available revenue options for funding the project or a business case that demonstrates that the project would not be economically feasible without grant financing. (Second NOFA at V.D.2.) The applicant’s showing will be evaluated under the totality of information provided.

**4. What is the Funding Opportunity Number for each Program?**

The Funding Opportunity Number for BTOP is the Regulatory Identification Number associated with BTOP in the NOFA: 0660–ZA28.

**5. Must BTOP applicants submit Form CD-511 and Form CD-512? These forms appear to contain the same information.**

Each BTOP applicant must submit the Form CD-511 “Certification Regarding Lobbying.” This form is required to be submitted during the due diligence phase of review and no later than the execution of the grant award, Form CD-450. The Form CD-512 “Certification Regarding Lobbying - Lower Tier Covered Transactions” must be completed by applicants for subgrants, contracts, and subcontracts exceeding \$100,000 when they have been awarded by the BTOP grant recipient. The CD-511 and CD-512, as applicable, must be submitted by the BTOP grantee and maintained in the BTOP grantee’s files.

**6. What additional forms will applicants be required to submit prior to award?**

In addition to Forms CD-511 and CD-512, as applicable, applicants must complete Form SF-LLL (see CD-511 for guidance), and the CD-346 for each key individual of the lead applicant. CCI applicants will also likely be required to submit additional environmental review materials (detailed maps, etc.).

## **F. Information Technology**

### **1. Will the electronic application allow an applicant to save an incomplete application, stop, and come back to it?**

Yes, an applicant can edit and save an application as many times as necessary until submission. After the application has been submitted, however, the electronic system will not allow further revisions.

### **2. Can applicants submit documents via fax, email, or an alternative storage device (e.g., CD or Flash Drive)?**

Applicants must submit their applications electronically at <https://applyonline.broadbandusa.gov>. NTIA will not accept alternative means for submitting applications or supplemental documentation except under extraordinary circumstances that must be documented in a waiver request. For applicants seeking a waiver to file in paper format, please refer to required procedures set forth in the Grant Guidance accessible at <http://www.broadbandUSA.gov>.

### **3. How may I contact NTIA with any general questions?**

Applicants may email questions to [BroadbandUSA@usda.gov](mailto:BroadbandUSA@usda.gov) or phone 1-877-508-8364.

## **II. Comprehensive Community Infrastructure (CCI) Projects**

### **1. Is a proposal to directly connect several community anchor institutions with high-capacity bandwidth considered a Middle Mile application or a Last Mile application?**

In general, the proposal should be considered a CCI project under BTOP deploying Middle Mile broadband infrastructure to community anchor institutions. As opposed to Round One, infrastructure projects are no longer categorized as Middle Mile or Last Mile projects. (Second NOFA at II.B.1.)

### **2. How have the definitions of Last Mile and Middle Mile changed?**

The Second Round NOFA specifically identifies the network elements that comprise Last Mile versus Middle Mile segments in infrastructure projects, and the new definitions are meant to clearly demarcate the boundaries between Last Mile and Middle Mile components. (Second



NOFA at III) This provides clearer guidance to applicants in applying for funding than did the broad functional definitions contained in the First NOFA.

**3. Can a CCI project consist exclusively of Last Mile components?**

A CCI project may exclusively contain a Last Mile component, but it will only be evaluated after all projects with Middle Mile components have been considered. (Second NOFA at II.B.1.d.)

**4. Does an applicant have to show that each census block group or tract within its proposed funded service area is unserved or underserved?**

No. Identifying an area as unserved or underserved is no longer an eligibility requirement, although reviewers will give additional consideration to proposals which intend to serve unserved or underserved areas. Moreover, the determination of whether an area is unserved or underserved is made at the level of the service area, not at the block group or tract level. Applicants will determine whether the service area as a whole meets the definitions for unserved or underserved provided in the Second Round NOFA. Applicants must also explain the methodology for determining that the proposed funded service area as a whole meets the unserved or underserved criteria. It is not necessary to show that each individual census block group or tract is unserved or underserved.

**5. How can an applicant determine which areas are unserved or underserved?**

The exact methodology is up to the applicant, but the result should be to demonstrate that the proposed funded service area is eligible based on the appropriate definition. Applicants should aim to utilize state broadband mapping data if such data exists. Otherwise, a customer or market survey, statistical sampling, or other valid methodology will be necessary.

**6. If NTIA discovers that a few census blocks within a Last Mile service area are not unserved or underserved, will the Agency reject the application in its entirety?**

No. The determination of whether an area is unserved or underserved applies to an entire service area, not to specific census block groups or tracts within the service area.

**7. Are any areas of the country, tribal lands, or territories de facto unserved or underserved?**

No areas have been identified in the Second NOFA as de facto unserved or underserved.

**\*8. Will CCI Projects that include Community Colleges be given priority in Round Two funding?**

Yes. A core purpose of the Recovery Act is to provide ‘broadband education, awareness, training, access, equipment, and support’ to community colleges and other anchor institutions of

higher learning. In addition, Congress specifically identified community colleges as types of public computer centers that would be eligible for support. To that end, the Second NOFA provides that CCI projects that deploy middle mile broadband infrastructure with a commitment to serve community colleges will be accorded priority in the initial sequencing of applications for the objective merit review. Applicants will also be evaluated by expert reviewers to determine whether they satisfy the statutory purposes, including whether the project benefits community colleges. (Second NOFA at II.B. and VII.A.1.a.)

**\*\*9. The CCI Grant Guidance states that the 11-digit Census tract ID number should include a unique 6-digit tract number. But the tract numbers found on the American FactFinder website sometimes contain as few as 1 digit, and sometimes include a decimal point. How do I convert these numbers to a 6-digit tract number?**

A Census tract number is typically four digits and may be followed by a decimal and two more digits (*e.g.*, 6059.02). In computer readable files, the decimal point does not appear (*e.g.*, 6059.02 would be represented as 605902). For tract numbers that do not include a decimal, zeros should be added for the rightmost two digits (*e.g.*, 6059 becomes 605900). Additionally, for tract numbers that have fewer than four digits to the left of the decimal, leading zeros should be added until there are four digits to the left of the decimal (*e.g.*, 132.01 becomes 013201, and 12 becomes 001200). For further discussion, please refer to <http://www.fcc.gov/form477/censustracts.html> the FCC's Form 477 Census Tract Information page.

### **III. Public Computer Center (PCC) and Sustainable Broadband Adoption (SBA) Projects**

**1. Since the PCC Program can now include “upgrading broadband facilities on a one-time, capital improvement basis,” can the PCC Program be used to fund the deployment of broadband network facilities external to the premises of the computer center?**

Applicants should determine whether to apply for CCI or PCC funds based on the major focus of the project. As a general matter, if the applicant intends to be a customer of broadband service, it should apply for PCC funds. For example, the purchase of a standard service from an existing provider to improve broadband capacity for one or more public computer centers (a typical example would be the construction of fiber laterals from nearby facilities) would be appropriate for a PCC project. If the PCC wants to own, manage, or construct broadband facilities, then it should apply for CCI funds.

## **2. Who owns copyrightable material funded by a BTOP grant?**

The grantee may copyright any copyrightable work that was developed, or for which ownership was purchased, using BTOP grant dollars. However, the Department of Commerce (DOC) reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so. (See 15 C.F.R. §§ 14.36 and 24.34.)

## **3. May a Public Computer Center apply filtering software to prevent users from accessing unsafe or obscene content? Is such filtering required?**

NTIA does not require or prohibit the use of filtering software at a public computer center. BTOP funding does not affect the obligations under the Children's Internet Protection Act that apply to schools and libraries receiving Universal Service support or Library Services and Technology Act funds. (See 47 U.S.C. § 254(h); 20 U.S.C. § 9134(f))

## **4. Is inside wiring an eligible cost for an SBA project?**

In general, renovating or upgrading inside wiring may be considered acquiring broadband-related equipment, infrastructure, and networking and thus is an eligible cost for a SBA project. Note, however, that the cost of constructing broadband facilities in a SBA project is not an eligible cost. (Second NOFA at V.E.4.)

## **\*5. Will CCI Projects that include Public Safety entities be given priority in Round Two funding?**

Yes. A core purpose of the Recovery Act is to promote the use of and access to broadband by public safety entities. To that end, the Second NOFA provides that CCI projects that deploy middle mile broadband infrastructure with a commitment to serve public safety entities will receive priority in the initial sequencing of applications for the objective merit review. Applications will also be evaluated by expert reviewers to determine whether they satisfy the statutory purposes, including whether they improve access to, and use of, broadband service by public safety agencies. (Second NOFA at II.B. and VII.A.1.a.)

## **IV. Eligibility and Matching**

### **A. Eligible Entities**

#### **1. Are public universities, community colleges, and independent school districts eligible for BTOP funding?**

Yes, these are among the entities contemplated by the Second NOFA at V.A.2.

**\*2. Can Native American, Native Hawaiian, and Alaskan Native tribes, groups, and organizations apply for BTOP funding?**

The Department of Commerce encourages tribes to apply for BTOP funding for CCI, SBA, and PCC projects. Proposals that would benefit tribal entities receive extra consideration by the program during review, and the comments of tribes are a selection factor in choosing BTOP awards.

Tribal entities can submit applications and participate in BTOP projects regardless whether there is a Title II RUS-funded service provider in the area. Please note, however, that to maximize the impact of Recovery Act investments, NTIA will not fund specific facilities in specific locations that duplicate facilities in specific locations funded by BIP or BTOP in Round One.

Tribal participation in CCI projects can take several forms:

- (1) A tribal entity can be a lead applicant in a CCI application, focusing on connecting community anchor institutions in the affected tribal areas to high-speed broadband services. To receive higher prioritization, the CCI proposal can utilize up to 20 percent of total project cost for the provision of residential broadband services to tribal residents and non-community anchor institution businesses.
- (2) A tribe can partner in another entity's CCI project by collaborating in regional broadband solutions to provide high-speed service to tribal and non-tribal areas.
- (3) A tribal entity can submit a CCI application that exclusively contains a last mile component to provide residential broadband service on reservations. Note, however, that BTOP is focusing on CCI projects with middle mile components and will prioritize last mile only projects lower for review and consideration. BIP is focusing primarily on last mile infrastructure projects.

Tribes are also encouraged to apply for SBA and PCC projects to foster the benefits of increased broadband usage and adoption in tribal areas.

**B. Eligible Costs**

**1. Are contingency fees reimbursable pre-application expenses?**

A grantee may not use BTOP funds to pay contingency fees. Costs based solely on a contingent fee basis are not authorized under the applicable OMB Cost Circulars. In particular, both OMB Circular A-87 and OMB Circular A-122 provide that costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill are allowable when reasonable in relation to the services rendered and when not contingent

upon recovery of the costs from the Federal Government. Thus, if an applicant enters into such an arrangement with a consulting firm, it will be required to pay the fee using funds not included in the award.

**2. Are research costs to evaluate economic and social impacts of a project eligible for BTOP funding?**

Research studies reasonably related to a CCI, PCC, or SBA project may be eligible as a pre-application expense or as an eligible cost as long as they are reasonable, allocable, necessary to the project, and consistent with the cost principles identified in the applicable OMB circulars. Research costs incurred after the award period are not fundable.

**\*\*3. Are BTOP grants taxable? If so, can a grantee use grant funds to pay the taxes?**

Each grantee has the right and responsibility to seek guidance from qualified advisors on the applicability of all laws, including federal, state, and local tax law. The Internal Revenue Service (IRS) recently issued a letter that provides guidance on the tax implications of payments made to recipients of grants awarded under BTOP. The letter states the opinion of the IRS that BTOP grant payments to corporations will qualify for exclusion from income under Section 118 of the Internal Revenue Code (IRC) in some, but not all, circumstances. A copy of the letter is posted at <http://www.broadbandusa.gov> and applicants are encouraged to refer to the letter and to consult a tax advisor in evaluating the extent to which BTOP grants may be taxable to their organizations. Federal taxes are not an eligible cost under federal grant programs such as BTOP. Each applicant should take into account any tax consequences when constructing its budget.

**4. Is labor ever an eligible cost for CCI projects?**

Yes. Labor costs associated with activities related to the construction, deployment, or installation of facilities required to provide broadband service are eligible costs. (Second NOFA at V.E.2.a) However, labor is not an eligible cost for CCI projects to the extent that it is an operating expense directed to the maintenance of the organization or the facilities once they are built and put into service. (Second NOFA at V.E.2.b.)

**\*5. Will indefeasible rights of use (IRU) agreements for broadband services be an eligible cost of CCI projects?**

Section V.E.2.a. of the Second NOFA describes the eligible costs for CCI projects. It provides that grant funds may be used to pay for the costs of long-term leases (for terms greater than one year) of facilities required to provide broadband service, including indefeasible right-of-use (IRU) agreements. An IRU agreement is the contractual grant of usage rights in facilities or equipment used to provision broadband service. It may combine elements of a sale, a lease, and

a service contract. An IRU is an eligible cost for BTOP CCI projects whether it is treated as a purchase of assets or as a lease arrangement that qualifies as either an operating or capital lease under GAAP, but its classification as either a purchase, capital lease or operating lease may have implications for how much of the cost of the IRU may be funded during the up to three-year BTOP funding period. The treatment of the IRU for purposes of eligible costs will be governed by the OMB cost principles applicable to the type of entity applying for the BTOP award.

The full acquisition cost of an IRU that qualifies as a purchase and transfers ownership to the grantee will be eligible for funding under BTOP provided that the obligation to pay the acquisition cost is incurred during the up to three-year BTOP funding period. Generally, an IRU may qualify as a purchase if certain elements are present in the transaction, including that: i) the grantee receives an exclusive, irrevocable right to use specific facilities for a determinate price and definite duration; ii) the term of the IRU covers the useful life of the facility; iii) the full purchase price of the IRU is paid in advance; and iv) the IRU transfers ownership of the facility, or conveys “beneficial ownership” to the grantee, even if legal title remains with the grantor. The transfer of ownership may occur at the end of the lease term, but the full cost of the IRU is eligible for recovery under BTOP provided that the obligation to pay that cost occurs during the three-year BTOP funding period.

The treatment of an IRU that qualifies as a capital lease under GAAP will depend upon the type of entity that has entered into the IRU. For non-profit organizations, educational institutions, and state and local governments, the allowable cost of the IRU may not exceed the amount that would be allowed if the entity would have purchased the asset. *See e.g.*, 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122), Appendix B at ¶ 43.d. The OMB cost principles applicable to for-profit organizations address capital leases in the context of depreciation and require these entities to account for capital leases in accordance with Statement of Financial Accounting Standard No. 13 (FAS-13), which requires that they be treated as purchased assets (*i.e.*, capitalized) and their capitalized value distributed over the lease term as amortization charges or over the useful life of the asset as depreciation charges. 48 C.F.R. § 31.205-11(h). The amortized payments incurred under the capital lease that are obligated during the up to three-year BTOP funding period are eligible for recovery under the program. Under GAAP, a lease is a capital lease from the perspective of the lessee if the lease meets any of the four criteria specified in paragraph 840-10-25-1 of the Accounting Standards Codification of the Financial Accounting Standards Board (FASB Codification). (See FASB Codification, section 840-20, “Capital Lease”).

The cost of an IRU that qualifies as an operating lease under GAAP will be eligible for BTOP funding only during the period of performance of the grant; thus, BTOP will fund payments made under an operating lease only for the three-year BTOP funding period.

Note that to the extent that an IRU also provides for Operations and Maintenance (O&M) services, the O&M component is viewed as an operating expense of the applicant and is ineligible for cost recovery under BTOP. (Second NOFA at V.E.2.b.).

**\*\*6. Can a Round Two BTOP applicant include in the proposed budget costs it incurred in preparing the Round One application, where, for example, there is overlap between the two applications?**

No. The Second NOFA states that grant funds may only be used for reasonable pre-application expenses incurred after the date of its publication. As a result, an applicant may not include costs that it incurred in connection with the Round One application process in its proposed Round Two application budget.

An applicant may, however, include in its Round Two proposed project budget any costs it incurs after publication of the Second NOFA to revise, modify, adapt, or extend material developed previously, including material it developed in the Round One application process, for use in preparing its Round Two application. Such costs would also need to conform to the other limitations on eligibility of pre-application expenses contained in the Second NOFA. For example, pre-application expenses may not include lobbying costs and contingency fees, and may not exceed five percent of the award.

### **C. Matching Funds**

**1. Can an applicant use Program income to repay a loan that was used to meet the BTOP 20 percent matching funds requirement?**

Program income may be used to meet the matching requirement. (See 15 C.F.R. §§ 14.24(b)(2) and 24.25(g))

**2. Does the explicit preference for a 30 percent match for CCI Programs apply as well to PCC Programs and SBA Programs?**

All projects featuring a cost match meeting or exceeding 30 percent will be given additional consideration during the evaluation and ultimate selection process consistent with the Second Round NOFA provisions encouraging the leveraging of federal funds with non-federal resources.

**3. May applicants apply for a waiver of the 30 percent match funding priority, or only the 20 percent minimum match requirement?**

Because the 30 percent match is a funding priority used to evaluate applications during the selection process, there is no need to seek a waiver of the 30 percent match funding priority. An

applicant only needs to apply for a waiver if it cannot meet the 20 percent minimum match requirement. Such waivers will only be granted in exceptional circumstances and only if NTIA concludes that the inability to provide a 20 percent match does not suggest that the project is not sustainable.

**\*\*4. Can funds from the Corporation for Public Broadcasting (CPB) be used to provide the required 20 percent match?**

Yes, to the extent provided below.

Funds that a BTOP applicant receives in the form of a grant award from the Corporation for Public Broadcasting (CPB) are not considered to be funds “paid by the Federal Government under another award” under Section 14.23(a)(5) of the Department of Commerce Uniform Administrative Requirements, 15 CFR § 14.23(a)(5), for purposes of determining whether the applicant may use the funds to satisfy the BTOP cost sharing or matching requirement. As with all cost-matching contributions, such funds would also need to meet the other requirements of Section 14.23.

An applicant proposing to use funds it received in a CPB grant award to satisfy the BTOP cost-sharing or matching requirement would need to document that such use of the funds is permitted under the terms of its award from CPB. Specifically, NTIA will require the applicant to submit a letter from CPB stating that the applicant’s proposed use of the CPB grant funds to satisfy the BTOP cost-matching requirement is consistent with the purposes of the CPB grant and that there is no CPB-related limitation on the applicant’s use of the CPB grant funds for that purpose.

**\*\*\*5. When may federal funds be used to finance the non-federal cost share of a BTOP project?**

Generally, federal funds may not be used to finance the non-federal cost share of a BTOP project, except as expressly authorized by federal statute. (See Second NOFA, section V.C.1.; 15 C.F.R. §§ 14.23(a)(5) and 24.24(b)(1)). For example, 40 U.S.C. § 1432(a)(4) authorizes the use of grant funds from the Appalachian Regional Commission (ARC) as matching funds if the ARC decides such use is appropriate. Similarly, 40 U.S.C. § 5305(a)(9) provides that funds distributed by the Department of Housing and Urban Development (HUD) as Community Development Block Grants (CDBG) may be used as “payment of the non-federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this chapter.” *See also* 24 C.F.R. § 570.201(g) for the regulations implementing this provision. In contrast, funds from the federal Universal Service Fund (*e.g.*, funds from the e-Rate and Rural Health Care programs) made pursuant to section 254 of the Communications Act, as amended,



are considered by NTIA to be federal funds and have not been authorized for use as matching funds for BTOP.

As with all cost matching contributions, federal funds authorized for use as matching funds would also need to meet the other cost sharing requirements set forth in the Department of Commerce's Uniform Administrative Requirements. These requirements provide that all contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost share when such contributions meet the following criteria: (i) are verifiable from the recipient's records; (ii) are not included as contributions for any other federally-assisted project or program; (iii) are necessary and reasonable for proper and efficient accomplishment of project or program objectives; (iv) are allowable under the applicable cost principles; (v) are provided for in the approved budget; and (vi) conform to other provisions of this part, as applicable. *See* 15 C.F.R. §§ 14.23(a); *See also* 15 C.F.R. § 24.24(a). Additionally, the Department of Commerce's Pre-Award Notification Requirements provide that the non-Federal share, whether in cash or in-kind, will be expected to be paid out at the same general rate as the Federal share. Grant recipients must also meet the cost share commitment over the life of the award. 73 Fed. Reg. 7696, 7699 (Feb. 11, 2008). This means that if an applicant intends to use federal funds that have been authorized for use a match, it must expend the funds during the BTOP funding period and in proportion to its expenditure of BTOP grant funds. Similarly, if a BTOP applicant has expended funds awarded under another federal grant that has been authorized for use as a match in other federal programs, it may contribute goods and services acquired with those funds as an in-kind match provided that they are allocable to its BTOP project, allowable under the applicable OMB cost principles and meet the eligible cost requirements established for the particular BTOP project for which it is applying.

Applicants that are unable to provide matching funds of at least 20 percent toward the total eligible costs of a project may file a petition requesting a waiver of this requirement. An applicant should fully explain its inability to provide the 20 percent match and provide supporting documentation that demonstrates financial need as outlined in section V.C.2. of the Second NOFA. 75 Fed. Reg. 3792, 3800 (January 22, 2010).

#### **D. Eligible Projects**

- 1. The Second Round NOFA suggests a range of expected grants for each of the three categories. Does this range refer to the overall total cost of the project or the amount of the federal funding?**

It refers to the size of the federal award, which is the total amount of federal funding. This amount does not include the applicant's non-federal cost share or matching amount.

**2. How do I determine which Round One projects have been funded to determine whether I am eligible for an award under BTOP for Round Two?**

Applicants should research publicly-available information on loans or grants previously awarded for the construction of broadband facilities to confirm that their specific proposal does not duplicate or conflict with a similar project. As NTIA announces first-round awards, the Agency is making certain information, including project summaries and maps of infrastructure projects to the extent possible, available on its website to help inform the public and stakeholders.

**\*\*\*3. Is a public safety network eligible for funding under BTOP?**

Yes. Projects that deploy broadband infrastructure to connect one or more public safety agency communications facilities, including Public Safety Answering Points (PSAPs), would be eligible for funding as a CCI project.

**E. Partnering**

**1. Can organizations apply jointly for a single award?**

Yes, organizations may file jointly for funding, but one entity must be designated as the lead applicant. BTOP encourages collaboration among partners who may bring a variety of strengths and expertise to a project. As stated in the Second Round NOFA, priority will be given to CCI projects that will deploy Middle Mile broadband infrastructure and incorporate a public-private partnership among government, non-profit and for-profit entities, and other key community stakeholders, particularly those that have expressed a demand or indicated a need for access or improved access to broadband service. The lead applicant will enter into the grant agreement with NTIA and will assume operational and financial responsibility should an award be made. (Second NOFA at IX.C.5.) Lead applicants should have experience implementing projects of similar size and scope. Applications that involve multiple organizations should identify key partnerships in the Executive Summary, Organizational Readiness, Organizational Chart, and Government and Other Key Partnerships questions on the application. Applicants should also demonstrate how these groups will work together and illustrate how the project will be financially and technologically feasible.

**2. How would an entity interested in partnering with socially and economically disadvantaged businesses go about identifying these businesses in their community?**

The Central Contractor Registration (CCR) website ([www.ccr.gov](http://www.ccr.gov)) includes a link to Dynamic Small Business Search, a function that enables applicants interested in working with socially and

economically disadvantaged businesses to search for potential partners by zip Code, North American Industry Classification System (NAICS) code, and keywords. Applicants may also search the BroadbandMatch portal available at [broadbandusa.gov](http://broadbandusa.gov).

**3. Are partners liable to fulfill the terms of the award to the same extent as the lead applicant?**

A project partner's responsibilities depend upon whether it is a sub-recipient performing substantive work to accomplish a public purpose authorized by law, as compared with a vendor simply providing goods or services to directly benefit the recipient. A sub-recipient must comply with programmatic requirements, administrative requirements in 15 CFR Part 14 or Part 24 (as applicable), cost principles, audit requirements, DOC Standard Terms and Conditions, and American Recovery and Reinvestment Act of 2009 (Recovery Act) Award Terms. In implementing sub-awards involving public-private partnerships, recipients should be aware that cost principles applicable to sub-recipients are based on the nature of the sub-recipient, *i.e.*, nonprofit, university, or commercial organization. The same cost principles may not apply to the recipient. (See OMB Circular A-21 at §A.3; OMB Circular A-122 at §3.b, and OMB Circular A-87 at §A.3.b; available at <http://www.whitehouse.gov/OMB/grants/index.html>)

**4. Under BTOP, may an applicant partner with sub-grantees or contractors?**

Yes. Grantees (also known as recipients) may work with sub-grantees (also known as sub-recipients) and contractors to assist them in completing their projects. For further background information see <http://www.ogc.doc.gov/ogc/fl/fald/itl/vol-13.doc>; and <http://broadbandusa.sc.egov.usda.gov/presentations/Compliance.pdf>.

**5. What is the difference between a sub-recipient and a contractor?**

A sub-recipient is involved in the substantive activities of the award project, and a contractor is involved in procurement. Through the recipient, a sub-recipient performs substantive work on an award project to accomplish BTOP purposes. Terms and conditions from the grant award flow down to sub-recipients. A contractor, in contrast, is merely a vendor providing goods or services to directly benefit the recipient. The vendor does not seek to accomplish a public benefit, and it does not perform substantive work on the project.

**6. How would a commercial or non-profit applicant classify the role of a subsidiary in its proposed project?**

If the subsidiary is a separate legal entity from the applicant organization, the applicant should identify the subsidiary as a sub-recipient or vendor. If the subsidiary and parent organization are

the same legal entity, the applicant should allocate costs for both the parent and subsidiary in accordance with the budget line items identified in the BTOP application.

**7. What is required if a commercial or non-profit applicant wishes to use a sub-recipient in its project?**

All sub-awards must be made in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among sub-recipients that may restrict or eliminate competition. In order to ensure objective sub-recipient performance and eliminate unfair competitive advantage, sub-recipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such sub-awards. Applicants are also required to follow their written procurement procedures and written conflict of interest procedures.

In its application, the applicant must identify the role of sub-recipients in the project and justify the need for that particular sub-recipient. The applicant should identify the costs of sub-recipient activities in its budget narrative and clearly explain the purpose. Any prior history with the sub-recipient – including subsidiary/parent relationships - should also be disclosed and copies of pre-existing agreements attached. These should highlight the sub-recipient’s prior performance and compliance with federal awards. Since all requirements flow down from the prime recipient to the sub-recipient, the sub-recipient must commit that it will comply with all laws, regulations, BTOP policies, DOC Standard Terms and Conditions, and Recovery Act Award Terms and any Special Award Conditions of the BTOP grant (including reporting, audits, etc.).

**F. Procurement**

**1. To what extent is it necessary for an applicant to complete its procurement process before submitting an application?**

NTIA recognizes that procurement requirements may prevent an applicant from establishing contracting relationships within the time available for preparation and submission of an application. Applicants facing such restrictions should describe how they will recruit and select contractors so that the project will be completed in an appropriate timeframe for the size and scope of the project. (Second NOFA at V.D.1.) Applicants should refer to Section G.1 below on noncompetitive subawards and contracts.

**2. What is required if a commercial or non-profit applicant wishes to use a contractor in its project?**

When selecting a vendor, the applicant must follow the procurement standards outlined in the Uniform Administrative Requirements for Grants and Agreements (15 CFR § 14.40-48) and any

applicable state law or regulation. All procurement transactions must be conducted in a manner to provide, to the maximum extent practicable, open and free competition. The applicant/recipient must be alert to organizational conflicts of interest as well as other practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals are excluded from competing for such procurements.

In its application, the applicant must identify and justify pre-selected contractors. The applicant should identify the vendor in its budget narrative, and the applicant should provide an explanation of the relationship with the contractor (*i.e.*, services/goods provided) and document how they selected this contractor. In addition, the applicant must attach a copy of the pre-existing contract between applicant and contractor. Finally, NTIA may request a copy of the written procurement procedures during the Due Diligence review process.

## **G. Noncompetitive Subawards and Contracts**

### **1. What Are the Requirements for Noncompetitive Sub-Awards or Contracts with BTOP Funding?**

NTIA understands that applicants may propose noncompetitive sub-awards and contracts for BTOP discretionary funding. Applicants will be required to follow their written procurement and conflicts of interest procedures. In addition, applicants must justify the rationale for deviating from any competitive requirements.

Some examples of justification for noncompetitive awards may be the urgency and compelling nature of the project due to compressed statutory and programmatic deadlines applicable to BTOP funding; the sub-award organization or vendor has made a substantial investment in the project; the sub-award organization or vendor is proposing a project that involves a unique idea, method, or approach; and/or the sub-award organization or vendor is uniquely positioned and the only organization known to possess the capability to perform the work.

The applicant must clearly present its justification(s) in the application along with a reasonable cost analysis.

## **H. Davis-Bacon Wage Requirements**

### **1. What resource should be used to determine the proper “prevailing wage” figures for a given area in order to comply with the Davis-Bacon Wage Requirements for contractors and subcontractors?**

As stated in section 1606 of the Recovery Act, Wage Rate Requirements, “notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.”

## **V. Review and Award Process**

### **A. Project Viability and Timeline**

#### **\*1. Why have requirements on the sale and lease of assets changed?**

The Second NOFA eliminates the ten-year holding rule on award-funded facilities from the First NOFA. Under the First NOFA, the government could not consent to a lease or sale within the first ten years of the award, unless a request was included with the application. Based on input from the Request for Information (RFI), the Second NOFA removes this rule and allows awardees to petition for a waiver authorizing the sale or lease of assets at any time during the life of the award-funded facilities. Moreover, each agency will consider waiver requests according to its respective rules on sale and lease, as per OMB regulations.

#### **2. Must an applicant obtain zoning approval for its proposed project before submitting an application?**

An applicant is not required to obtain zoning approval before submitting an application or before receiving an award. When evaluating Project Viability, however, reviewers will consider the uncertainty and potential delay to timely completion for a project that has not yet received zoning approval. (Second NOFA at VII.A.1.c. and VII.A.2.c.)

### **B. Independent Expert Review Process**

#### **1. Is it common for expert reviewers to participate in the review of grant applications?**

Yes, it is common for federal agencies to use independent expert reviewers as part of a grant review process. Independent analysis can strengthen the process by incorporating the experience and up-to-date knowledge of experts across the nation. This practice is especially

valuable when grant applications of a scientific or technical nature are reviewed, due to the specialized expertise needed to carefully evaluate them. In addition, subjecting each grant application to review by multiple independent experts makes the selection process more rigorous and helps ensure that the projects with the most merit are funded.

**2. Will my application receive less consideration in Round Two because the number of reviewers has been reduced from three to two?**

No. Each application will be thoroughly reviewed by at least two expert reviewers against the Evaluation Criteria set forth in the Second NOFA. To the extent that NTIA observes a large variation in scores for any particular application, it retains the discretion to add additional reviewers, as necessary, to ensure that all applicants are treated fairly.

**3. Will the expert reviewers decide which BTOP grant applications to fund?**

No. NTIA will ultimately decide which grant applications to fund. As detailed in the Second NOFA, panels of independent experts will conduct an initial merit review of BTOP grant applications.

**4. What are the confidentiality and conflict of interest policies for the independent experts who serve as BTOP reviewers?**

Generally, reviewers must agree not to divulge any nonpublic information learned during the course of their review about BTOP or BTOP applications, during or after the review process; nor retain documents or notes used or created during the BTOP review process; nor use any information learned during the review process for personal or private gain, including advising or participating in the preparation of any BTOP grant application for any party, including any existing or future employer, or on a consultancy basis.

Reviewers must also certify that they (and certain associated parties) do not have a financial or other conflict of interest and that their particular circumstances are not likely to raise the appearance of a conflict of interest, impropriety, or the appearance of impairment of objectivity with respect to any BTOP application they are asked to review or on which they are asked to comment. A reviewer may not review any BTOP application filed for a project in a state in which his or her employer has applied for a BTOP grant. Moreover, if the reviewer's employer is a broadband service provider, the reviewer may not serve as a reviewer on any BTOP application filed by an entity located within a state in which his or her employer is located or does business whether or not the reviewer's employer has filed a BTOP application.

If a reviewer discovers that he or she might have a conflict of interest, might present a conflict of interest, or might have an appearance of impairment of objectivity with any application within

the competition, the reviewer must immediately inform the appropriate BTOP official and refrain from further work as a reviewer until authorized to continue.

**5. Must expert reviewers be from the state where the project is located or demonstrate knowledge of broadband conditions in that state?**

No. Reviewers will be selected on the basis of their expertise, and all applications will be evaluated on the basis of the information provided in the application. Applications will be scored based on Evaluation Criteria in section VII in the Second Round NOFA.

**6. How will BTOP reviewers evaluate portions of the application that are outside their primary areas of expertise? For example, how will an engineer review business-related sections of the application? How can a finance expert competently review a proposed technological solution?**

While all reviewers may not have the same level of expertise on all aspects of an application, they will all thoroughly review each application. NTIA may add additional expert reviewers, as necessary, if it observes a significant variation in scores submitted for a given application.

**C. Public Notice Process**

**1. How will NTIA obtain input corroborating whether proposed funded service areas are either unserved or underserved?**

NTIA will publish a list of all of the Census block groups and tracts are contained within a Last Mile or Middle Mile Service Area of one or more CCI applications at <http://www.broadbandusa.gov>. Publication of this announcement will start a 15-day window within which existing broadband service providers may submit information to NTIA about the broadband services they currently offer in their respective service territories by Census block group or tract. If an existing broadband service provider submits a response outside of the 15-day period, NTIA does not guarantee it will consider this information in its evaluation of an applicant's Last Mile or Middle Mile service area(s) as unserved or underserved.

**VI. Award Terms and Conditions**

**A. Non-discrimination and Interconnection**

**1. Do the nondiscrimination and interconnection requirements apply to the portions of the applicant's network that are not funded by BTOP?**

No. The NOFA's nondiscrimination and interconnection requirements do not apply to the portions of the applicant's network that are not funded by BTOP. Note, however, that if an



applicant contributes existing facilities to a project to satisfy the matching requirement, such facilities specifically identified as an in-kind contribution will be subject to the nondiscrimination and interconnection obligations because they become part of the applicant's budget.

**2. Does title or ownership of the equipment used for the project impact the application of the network nondiscrimination and interconnection obligations?**

The nondiscrimination and interconnection obligations apply directly to the BTOP grantee, and are not based on the ownership of the equipment. If the grantee does not own the equipment, the grantee must have in place safeguards with the equipment owner and the network operator to ensure that the network nondiscrimination and interconnection obligations are met. (Second NOFA at V.D.3.b.)

**3. Are the BTOP interconnection requirements compatible with a telemedicine project that is subject to the confidentiality requirements of the Health Insurance Portability and Accountability Act of 1996?**

Confidentiality requirements should not preclude compliance with the interconnection requirements of BTOP. If a hospital sends encrypted data across the public Internet, opening access to local interconnection does not make the data any less confidential than the inherent intermingling of traffic on the Internet backbone. A hospital also may send its confidential data across a virtual private network, so long as the infrastructure also provides public Internet connectivity. The necessity for such services was a reason why NTIA expressly allowed private managed services as part of a funded project. (Second NOFA at V.D.3.b.)

**\*4. What are the clarifications to the nondiscrimination and interconnection requirements?**

Clarifications to grantees nondiscrimination and interconnection requirements in the NOFA include:

- That caching includes content delivery networks.
- That virtual private networks (VPNs) are included in the types of managed networks that may be offered by grantees without running afoul of the nondiscrimination and interconnection requirements.
- That the nondiscrimination and interconnection provisions do not apply to existing network arrangements or to non-grantees using the network.
- That the nondiscrimination and interconnection provisions apply only to the grantees, but that the grantee may pass these requirements on to entities deploying or operating the funded infrastructure via contract. For example, a grantee constructing a wireless tower as part of a BTOP or BIP project will be subject to the NOFA's nondiscrimination and

interconnection obligations. Even if the grantee contracts out project work, the grantee is solely and fully responsible for ensuring that these obligations are observed for the federally funded project. (The grantee may, at its option, state in a contract with a third party that the third party must comply with the obligations.) In addition, a Last Mile partner who does not receive BTOP/BIP funds but who uses that tower to offer wireless services to retail end users would not be subject to the nondiscrimination and interconnection provisions.

**\*5. What happens if the FCC issues new rules based on its open net neutrality proceeding?**

The Second NOFA requires grantees to comply with the Federal Communications Commission's (FCC) Internet Policy Statement or any subsequent ruling or statement. NTIA will be guided by any applicable rules or findings established by the FCC, whether by rulemaking or adjudication, in its evaluation of the reasonableness of network management techniques.

**\*6. The nondiscrimination and interconnection requirements in the second NOFA are not identical to the language in the first NOFA. What has changed?**

The nondiscrimination and interconnection requirements have not changed, and the same nondiscrimination and interconnection requirements apply to Round One and Round Two grantees. Any differences in language merely clarify, and do not change, grantee obligations.

**\*7. Why are you clarifying the nondiscrimination and interconnection provisions?**

The clarifications are being made to the nondiscrimination and interconnection provisions based on questions and input received from applicants during the first funding round and as part of the Request for Information (RFI) process used to gather input on the second funding round. The intent of these language changes is to provide as much clarity as possible, which will encourage the broadest possible participation in the program.

**\*\*\*\*8. Are public safety applicants required to comply with the nondiscrimination and interconnection requirements of the Second NOFA?**

The Recovery Act directs the Assistant Secretary to publish nondiscrimination and network interconnection obligations that shall be contractual conditions of BTOP grant awards, including adherence to the FCC's August 5, 2005 Internet Policy Statement. The first and second BTOP NOFAs established five nondiscrimination and interconnection requirements. Consistent with the FCC's Internet Policy Statement, these requirements are subject to the needs of law enforcement and reasonable network management. For single-purpose 700 MHz public safety networks NTIA has concluded that the "needs of law enforcement and reasonable network management" exception effectively exempts 700 MHz public safety applicants from compliance

with the nondiscrimination and interconnection obligations. With respect to such public safety networks, applicants, including public safety applicants, will have the ability to deploy secure private networks and prioritize traffic as they deem necessary. (Second NOFA at V.D.3.b.)

However, to the extent that the network is dual use, the nondiscrimination and interconnection obligations will apply to the non-public safety components of the network.

## **B. Sale/Lease/Ownership of Facilities**

### **1. Who owns the equipment and facilities acquired with BTOP grant funds? Does the federal government retain an interest?**

The grantee owns the equipment and facilities acquired with federal funds, subject to a federal interest in the property as described below. (Second NOFA at V.E.)

Title to equipment and real property acquired or improved with BTOP grant funds vests in the grantee at the time of acquisition subject to the condition that the grantee shall use the property for the authorized purpose of the project as long as it is needed for that purpose. If the grantee is not a state or local government, then real property, equipment, intangible property, and debt instruments that are acquired or improved with federal funds shall be held in trust by the grantee as trustee for the beneficiaries of the project or program under which the property was acquired or improved.

A recipient of NTIA funds may be required to execute a security interest or other statement acknowledging the federal interest in real property acquired or improved with federal funds. The recipient may not dispose of, modify the use of, mortgage, encumber, or change the terms of the real property, or other interest in the project site and facilities without permission and instructions from the DOC. Grantees are required to comply with all applicable regulations regarding the maintenance, inventory, and disposition of equipment acquired with federal funds. (See generally 15 CFR §§14.32, 14.34, 14.37, 24.31 and 24.32)

### **2. Are there any restrictions on the sale or lease of the federally-funded facilities under BTOP?**

Yes. As set forth in the Second NOFA, the sale or lease of any portion of the award-funded broadband facilities during their life is generally prohibited. There may be instances, however, in which an applicant can demonstrate that a sale or lease of the property would be in the best interest of those that are served by the project. NTIA will consider a petition for waiver of the above restriction if: (a) the transaction is for adequate consideration; (b) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such lease or sale (*e.g.*, the network non-discrimination and interconnection obligations); and (c) the transaction would be in

the best interests of those served by the project. Grantees are required to notify NTIA in the event of a proposed transfer of award-funded real property. Moreover, the restriction on leasing the facilities does not prohibit a broadband infrastructure grantee from leasing its facilities to another service provider for the provision of broadband services. (Second NOFA at V.E and IX.C.2.a)

The DOC also imposes restrictions on the disposition of property acquired or improved with BTOP funds. For further information, please see 15 C.F.R. Parts 14.32-34 and 24.31-32 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_08/15cfrv1\\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/15cfrv1_08.html).

**3. Do the restrictions on the sale or lease of award-funded facilities restrict a sale or transfer of ownership in the grantee itself? For example, if the grantee is a subsidiary, can the grantee's parent company sell the grantee?**

The restrictions on sale or lease are applicable to the grantee. Thus, the award terms do not restrict a transfer of control of the grantee (*e.g.*, via sale of the grantee's stock), provided that title to the property does not change. (Second NOFA at V. and IX.C.1.)

**4. May a grantee lease surplus capacity on its network for wireless backhaul?**

Yes, to the extent that the grantee is leasing this capacity to another service provider, and a purpose of the lease is the provision of broadband services. (Second NOFA at IX.C.2.)

**C. Compliance/Award Terms**

**1. How long is a grantee obligated to add Program income to the funds committed to the project?**

Any Program income generated by a BTOP-funded project during the grant period shall be retained by the grantee and shall be: (1) added to the funds committed to the project by NTIA and the recipient to conduct additional activities that will further eligible project objectives, including: (a) reinvestment in project facilities, (b) funding BTOP compliance costs, and (c) paying operating expenses of a PCC or SBA project; or (2) used to finance the non-federal share of the project. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award during the funding period, which will generally be three years from the date of award. (Second NOFA at IV.F.) The funding period is the period of performance of the grant, *i.e.*, the time between the award date and the end date authorized by the DOC to fully complete the project.

**2. Will BTOP-specific reporting requirements be consolidated with OMB Recovery Act reporting?**

No. Applicants must submit general Recovery Act reports at [www.FederalReporting.gov](http://www.FederalReporting.gov). NTIA maintains a separate system for BTOP-specific reporting requirements. See Second NOFA at IX.D for award administration information.

**3. Where can I find additional details concerning the compliance requirements that will apply to grantees?**

Please see the applicable rules and policies available at <http://www.broadbandusa.gov/compliance.htm>.

**VII. Round One Issues**

**1. I received a rejection letter and I am interested in appealing the decision. What should I do?**

All decisions are final and there is no formal administrative appeals process. If you wish to reapply in Round Two, carefully review the Second NOFA, the *Grant Guidance* accessible at [www.broadbandusa.gov](http://www.broadbandusa.gov), and these FAQs in preparing your application.

**2. Will the names of expert reviewers be published? Will NTIA disclose the reviewer's scores or notes?**

NTIA will not release the names of the peer/expert reviewers, their Evaluation Criteria scores, or notes or analyses undertaken in due diligence review.

**\*3. If my Round One application was rejected, will Program staff be available to discuss how to improve my application for submission in Round Two?**

Due to the high volume of applicants for Round One BTOP funding, Program staff is unable to meet individually with applicants to discuss their applications. If you are interested in applying for Round Two BTOP funds, you should read the Second NOFA and the Grant Guidance, you should watch the video of the BTOP workshop that NTIA held last month, which is available online, for an overview of the BTOP program and a discussion of compliance requirements, and you should study the success stories by reviewing the project summaries of the applications that received funding in the first round. Given NTIA's funding priorities for the second round of funding, this information is more useful and important than feedback on the first round application.

**VIII. Environmental Issues**

**\*1. What is NEPA?**

NEPA is the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.). NEPA directs all Federal agencies to use a systematic, interdisciplinary approach that integrates the use of environmental, natural, and social sciences to ensure sound planning and decision making on major Federal actions that may have an impact on the environment.

NEPA requires Federal agencies to conduct environmental impact evaluations with transparency, accountability, and public involvement. The full text of NEPA, as amended, is available at: [www.nepa.gov](http://www.nepa.gov).

**\*2. Can I choose whether NEPA applies to my BTOP project?**

No, because BTOP is funded by the Federal government, BTOP projects are subject to NEPA.

**\*3. Can NTIA exempt my BTOP project from NEPA?**

No, NTIA cannot waive the requirements of NEPA.

**\*4. What is NHPA?**

NHPA is the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 et seq.). NHPA is the primary law that governs historic preservation at the national level, through officially listing historic places, allowing for the creation of State and Tribal Historic Preservation Offices (SHPOs and THPOs, respectively), and requiring Federal agencies to evaluate the impact of their actions on historic properties.

The process by which the Federal government assesses the impacts of its actions on historic properties is described in Section 106 of the law, and is referred to as the Section 106 process.

A project that may be categorically excluded from further review under NEPA (as discussed below) is still subject to review under NHPA. The full text of NHPA, as amended, is available at: <http://www.achp.gov/docs/nhpa%202008-final.pdf>

**\*5. Can my project be exempt from NHPA?**

Yes, in two very limited and clearly defined situations. NTIA signed a Nationwide Programmatic Agreement (NPA) with the Advisory Council on Historic Preservation (ACHP), the United States Department of Agriculture's Rural Utilities Service (RUS), and the National Council of State Historic Preservation Officers (NCSHPO). This NPA allows broadband over existing power lines projects and Sustainable Broadband Adoption (SBA) projects to be exempt from Section 106 review.

**\*6. What does the BTOP pre-award environmental review entail?**

NTIA will review the environmental documentation submitted with your application. Any projects with a construction component must have a completed Environmental Questionnaire (EQ) in order to be reviewed. Projects with no construction must complete the Department of Commerce Environmental Checklist. The EQ is included with the Comprehensive Community Infrastructure (CCI) application, and the Checklist is included with the application for Public Computer Centers (PCC) and Sustainable Broadband Adoption (SBA) projects.

Some PCC projects may have a construction component and would require a completed EQ. SBA projects are not allowed to have a construction component.

The EQ is intended to provide NTIA with sufficient information to determine the level of review required to comply with NEPA, NHPA, and other applicable laws. A completed EQ must contain a thorough narrative describing: (1) what the project proposes to do; (2) how it would be constructed and implemented; and (3) what natural and human resources may be impacted. Applications that enter the next phase of review must also include maps and photographs to illustrate the site conditions and surrounding environment over the full extent of the construction project.

There are three possible outcomes from the environmental review process: (1) the project will qualify for a Categorical Exclusion (CE) under NEPA, meaning that no further review is required for NEPA compliance and will be determined to have no potential impacts to historic resources; (2) the project will be awarded with a Special Award Condition (SAC), meaning that further analysis is required. This may require the development of an Environmental Assessment (EA) and consultation with a resource agency for potential impacts to historic properties or threatened and endangered species; and (3) the project will not be able to move forward as proposed due to the potential for significant impacts to the environment.

**\*7. Can BTOP projects be broken up into sub-projects that can be categorically excluded from NEPA? Or, can BTOP project segments be evaluated individually for NEPA or categorical exclusion (CE)?**

No, doing so is referred to as “segmentation,” which is prohibited under NEPA. Segmentation occurs when individual components of a whole action are analyzed separately, thereby making the impacts of the whole action appear less adverse than they are.

**\*8. What is National Historic Preservation Act (NHPA) Section 106 consultation?**

Section 106 consultation is a process through which the Federal government works with the appropriate State Historic Preservation Office (SHPO) and the Tribal Historic Preservation Office (THPO) of relevant federally-recognized Tribes to minimize potential harm and damage to historic properties from the project (including Archaeological Resources, Architectural Resources, and Traditional Cultural Properties).

The Nationwide Programmatic Agreement (NPA) signed by NTIA allows BTOP to attach Special Award Conditions (SACs) to Comprehensive Community Infrastructure (CCI) and Public Computer Center (PCC) projects that have a construction component that allow for Section 106 compliance activities, including consultation, to be completed post-award.

Consultation is the responsibility of the Federal government. While some SHPOs may consent to work directly with applicants or grantees, this is not the case with THPOs. NTIA is responsible for all contact with THPOs.

A list of SHPOs is available here: <http://www.nps.gov/history/nr/shpolist.htm>.

A list of THPOs is available here: <http://www.nathpo.org/map.html>.

**\*9. What is Endangered Species Act (ESA) Section 7 consultation?**

ESA protects those plant and animal species that are threatened with extinction, and their habitat. Section 7 of the ESA directs the Federal government to consider the effects of its actions,

including grant-funded actions, on threatened and endangered species and to avoid harm to those species and their habitat.

Section 7 consultation is a process through which the Federal government works with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure that there will be no adverse impacts that may jeopardize the continued existence of any threatened or endangered species. A Section 7 ESA consultation is a typical Special Award Condition (SAC) for BTOP projects with construction in known or suspected habitats of Federally listed protected species.

Find USFWS offices here: <http://www.fws.gov/offices/>.

Find NMFS Office of Protected Resources here: <http://www.nmfs.noaa.gov/pr/contact.htm>.

**\*10. Are projects planned in an existing right of way (ROW) exempted from NEPA or permit requirements, if the landowner has granted permission?**

No, use of a ROW may be convenient, the least expensive, and the most environmentally preferable alternative, but it does not exempt the project from NEPA or NHPA compliance requirements. This is true for roadway, railroad, and utility ROWs.

Many ROWs were established long ago, have no available NEPA documentation, or have NEPA documentation that is not applicable to the proposed BTOP project.

**\*11. What is the process for completing an Environmental Assessment (EA)?**

The BTOP program has developed an EA Guidance document, which is posted at <http://www.broadbandusa.gov/compliance.htm> and includes procedures and advice about: (1) how to write the EA document; (2) available resources; and (3) the EA approval process and Finding of No Significant Impact (FONSI) process

**\*12. When I am considering whether to submit an application, should I assume that BTOP award funding can be used by Grantees for NEPA compliance expenses?**

Yes, grantees will be allowed to use grant funds to complete engineering design and complete environmental and historic preservation compliance requirements, including Environmental Assessments (EAs). Applicants are encouraged to use qualified expert consultants to assist them with environmental and historic preservation compliance matters if they do not have the expertise in-house. Expenses incurred for environmental consultants are allowable expenses under BTOP awards.

The use of funds other than Management and Administration (M&A) is not allowed prior to completion of NEPA and NHPA compliance activities.

**\*13. Are there “green technology” requirements for BTOP?**

The DOC Environmental Checklist asks whether any electronic equipment procured will be disposed of in an environmentally sound manner. The Green Electronics Council’s Electronic Product Environmental Assessment Tool (EPEAT) is a system that helps purchasers of electronic



equipment compare and evaluate projects based on environmental attributes, including end-of-life disposal. The tool may be found at <http://www.epeat.net/default.aspx>

**\*14. How do I access more information about NEPA and NHPA compliance?**

More information is available through <http://www.broadbandusa.gov/compliance.htm>. As NEPA and NHPA compliance support tools are developed for BTOP applicants, they will be posted or linked to this website.

**\*15. Whom do I contact if I have more questions?**

NEPA and NHPA questions can be directed to [bttop@ntia.doc.gov](mailto:bttop@ntia.doc.gov).

**\*16. How should I communicate with NTIA?**

The preferred manner to communicate with NTIA is by email. Email ensures that there is an electronic record and time-stamp of communications to and from NTIA, enabling appropriate referencing and follow-up to applicant questions.

Applicants are advised that sending correspondence by regular U.S. Mail (*e.g.*, First Class letters) may result in delivery delays because of security screening of mail delivery to the Department of Commerce.

Applicants whose applications have advanced to the Due Diligence phase will be contacted by the NTIA environmental team for any questions regarding their Environmental Questionnaire (EQ) and any supplementary information that may be needed.