



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
ACQUISITION AND GRANTS OFFICE

December 6, 2012

Perry Movick
Vice President, Operations
Eagle-Net Alliance
11800 Ridge Parkway, Suite 450
Broomfield, CO 80021

Subject: Broadband Technology Opportunities Program (BTOP)
EAGLE-Net Alliance (ENA) (Grant Award No. NT11BIX5570001)
Suspension of Award

Dear Mr. Movick:

Upon acceptance of a grant from the Department of Commerce, ENA agreed to comply with requirements specified in the terms and conditions of the award. The National Oceanic and Atmospheric Administration (NOAA) Grants Office received notice from the National Telecommunications and Information Administration (NTIA) Program Office that ENA may not have complied with these terms and conditions, as noted below. Due to ongoing concerns relating to your compliance with grant award terms and conditions, NOAA is suspending your award, effective immediately.

REASON FOR SUSPENSION: On August 9, 2012, NOAA placed ENA's award under a Corrective Action Plan (CAP) to address NTIA's concerns regarding certain programmatic and financial issues surrounding ENA's award. On September 14, 2012, NOAA and NTIA received ENA's CAP response. While NOAA and NTIA continue to review documentation related to ENA's September 14 CAP response, statements in the document raised additional concerns related to ENA's failure to consult with NTIA in advance on its new network design.

Because ENA did not consult with or receive approval from NTIA for its partially implemented new network design, ENA is in violation of the terms and conditions of its Environmental Special Award Condition (EA SAC) and is therefore in material noncompliance with the terms and conditions of its award. Although ENA has subsequently submitted supplemental Environmental and Historic Preservation (EHP) documentation relating to recently implemented or proposed project modifications, NTIA has identified deficiencies in this documentation that warrant further project review to determine what actions are necessary to mitigate any risks relating to EHP compliance. Currently, NTIA has concerns about several specific areas:

- Adequacy of an Environmental Assessment (EA) that meets the requirements of the National Environmental Policy Act upon which NTIA issued a Finding of No Significant Impact (FONSI).
- Completion of consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act.
- Completion of consultations with the State Historic Preservation Office (SHPO) and appropriate federally recognized Native American tribes under Section 106 of the National Historic Preservation Act.
- Demonstration that the project properly secured all permits required from other Federal Agencies, including but not limited to the USDA-Forest Service (USDA-FS), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), Bureau of Indian Affairs (BIA) and Federal Communications Commission (FCC).

RESULT: Due to material noncompliance with the terms and conditions of your award, NOAA is suspending your award, effective immediately. Unless ENA provides a revised CAP response that comprehensively addresses all of NOAA's and NTIA's concerns noted below, additional enforcement action may be taken against the award. *See* 15 C.F.R. § 24.43(a)(3).

The suspension requires you to cease all project deployment work immediately. Effective on the date of the suspension, NOAA authorizes you to incur the following costs on an agency review basis only:

- Reasonable costs required to respond to specific requests for information from NOAA and NTIA;
- Reasonable costs associated with responding to the CAP detailed below;
- Reasonable costs to comply with the reporting requirements of the grant;
- Reasonable costs necessary to secure any grant-funded property;
- Reasonable costs necessary to ensure the safety and security of the work sites;
- Reasonable costs necessary to safely halt any construction that may have begun; and
- Reasonable costs related to salaries and general expenses needed to continue operations unrelated to oversight of construction and deployment of network.

Other costs incurred while your award is suspended are allowable only under the conditions specified in 15 C.F.R. § 24.43(c).

While your award is suspended, NOAA may not process any pending or future requests for reimbursement except for the costs that are allowed pursuant to this letter.

REQUIRED CORRECTIVE ACTION: ENA must submit a detailed description of its plan to return to compliance with the terms and conditions of its award and to implement its project within its remaining award terms. While ENA has already submitted documentation related to its new network design, NTIA has determined it to be insufficient to demonstrate adherence to the EA SAC. In order to comply with the EA SAC, ENA must submit supplemental environmental documentation sufficient enough to support the analysis in the project's existing

EA or to revise the EA, as necessary and appropriate. The revised EA can then serve as the basis for an assessment of whether the previously issued FONSI continues to be valid.

To meet this burden, NTIA is initially requesting ENA provide the following: (1) a revised project description and map that includes all previously and proposed project modifications; (2) a project schedule illustrating all remaining EHP actions, interdependencies between actions, and critical paths for completing the project in the performance period; (3) a current status, including any supporting documentation, of consultations with USFWS, SHPO, and federally recognized Tribal nations; and (4) a current status, including any supporting documentation, of any permits and/or licenses required by relevant Federal entities including, but not limited to, the USDA-FS, BLM, BOR, BIA and FCC. After review of this initial submission, NTIA will provide further guidance to ENA on the actions that will be necessary to be in compliance with your EHP requirements.

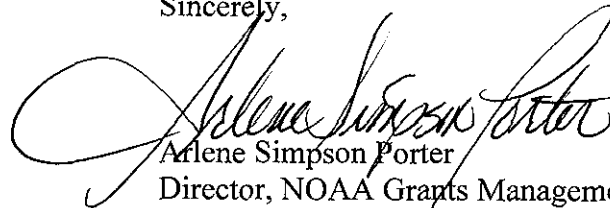
ENA should submit the requested additional information concurrent with NTIA's site visit planned for the week of December 10. Please work with your FPO, Elaine Sloan, if you have any questions or require any additional clarification. Failure to respond in a timely or comprehensive manner may result in NTIA and NOAA taking additional enforcement action for continued material noncompliance with the terms and conditions of your award.

Your award is hereby suspended. The current award will be amended to include a term and condition that will require your organization to submit a comprehensive CAP.

Should you have any questions in reference to this matter please contact Elaine Sloan, Federal Program Officer on 202-482-8231 or Andrea Mack, Grants Management Specialist on 301-628-1312.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arlene Simpson Porter', written in a cursive style.

Arlene Simpson Porter
Director, NOAA Grants Management Division

cc: Anthony Wilhelm
Laura Dodson
Aimee Meacham
Elaine Sloan
Alan Conway
Andrea Mack