

Special Award Conditions

Award Number: NT10BIX5570120

Amendment Number: 4

1) Indefeasible Right of Use (IRU) Special Award Condition

On June 21, 2013, NTIA granted MCNC a partial waiver of Section IX.C.2 of the Second Notice of Funds Availability (NOFA) and Solicitation of Applications [75 Fed. Reg. 3792, 3810 (January 22, 2010)]. The NOFA 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 NOFA for such an approval have been met and grants a waiver of this requirement.

This waiver eliminates this restriction on the sale or lease of BTOP-funded assets to the extent that the restriction applies to MCNC's provision of an indefeasible right-of-use (IRU) in 12 fiber strands on a segment of its BTOP-funded fiber optic network to Brookfield Smoky Mountain Hydropower LLC and Smoky Mountain Transmission LLC in exchange for an easement as described in MCNC's waiver request. The IRU arrangement must comply with the requirements described below.

MCNC shall (i) require the purchaser to adhere to BTOP's nondiscrimination and interconnection obligations, and (ii) advise the purchaser 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 this fiber IRU arrangement, MCNC 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 MCNC, may use the fiber to provision broadband service.