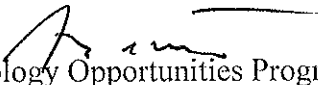




**Memorandum To:** Lawrence E. Strickling  
Assistant Secretary for Communications and Information

**From:** Anthony G. Wilhelm, Ph.D.   
Director, Broadband Technology Opportunities Program (BTOP)  
Office of Telecommunications and Information Applications

**Subject:** Review of Fiber Swap between MCNC and ERC Broadband (Award  
NT10BIX5570011)

**Date:** July 20, 2011

**ISSUE FOR DECISION:** In its BTOP Round One grant application, submitted in August 2009 and which the National Telecommunications and Information Administration (NTIA) subsequently funded (award NT10BIX5570011), MCNC described its proposal to swap certain fiber segments constructed using Federal funds with certain existing segments of fiber owned by ERC Broadband (ERC). ERC has been identified as a vendor under the Round One project awarded to MCNC and is also a subrecipient in the MCNC BTOP Round Two project (award NT10BIX5570120). On May 4, 2011, MCNC submitted its formal request for a waiver of the prohibition on the sale or lease of assets seeking NTIA approval of the fiber swap.

**BACKGROUND:** On July 9, 2009, NTIA published a Notice of Funds Availability (NOFA) to govern the implementation of BTOP that imposed a general prohibition on the sale or lease of broadband facilities or equipment funded under the BTOP award during their life.<sup>1</sup> NTIA, however, may waive this prohibition and approve the sale or lease of project assets when certain conditions are met.<sup>2</sup> Subject to NTIA and NOAA Grants Office approval, MCNC and ERC have agreed to an arrangement that involves the swap of long-term Indefeasible Rights of Use (IRU) to access fibers on their respective networks.<sup>3</sup> The term of each IRU is twenty-five (25) years. Under the proposed agreement, MCNC will provide certain fibers on two segments of its BTOP-funded network to ERC:

Segment	Fiber Count	Miles	Strand-Miles
Old Fort to Asheville, NC	6	24.0	144
Enka to Waynesville, NC	6	16.0	96

In exchange, ERC has agreed to provide MCNC with an IRU for certain fibers on the following segments of its existing network:

<sup>1</sup> See Notice of Funds Availability and Solicitation of Applications, 74 Fed. Reg. 33104 (July 9, 2009) (First NOFA) available at [http://www.ntia.doc.gov/frnotices/2009/FR\\_BBNOFA\\_090709.pdf](http://www.ntia.doc.gov/frnotices/2009/FR_BBNOFA_090709.pdf).

<sup>2</sup> First NOFA, Section IX.C.2, 74 Fed. Reg. at 33123.

<sup>3</sup> Refer to *Maps.pdf* attached to the Award Action Request for the swap, GOL ID 2235591.

Segment	Fiber Count	Miles	Strand-Miles
ERC Asheville Point of Presence on the Veach-Bailey Federal building to RENC I	2	1.0	2
ERC Asheville Point of Presence on the Veach-Bailey Federal building to RENC I	4	7.5	30
ERC Asheville Point of Presence on the Veach-Bailey Federal Building to Asheville Buncombe Technical Community College's Enka campus	14	15.0	210
Western Carolina University Entry Fiber in Cullowhee, NC	4	0.15	0.6

**STANDARD OF REVIEW:** Section IX.C.2 of the First NOFA provides that NTIA may approve a sale or lease of BTOP-funded project assets if it is: a) for adequate consideration; b) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and c) either: i) the sale or lease is set forth in the original application and is part of the BTOP applicant's proposal for funds; or ii) the agencies waive this provision for any sale or lease occurring after the tenth year from the date of issuance of the grant.<sup>4</sup>

**ANALYSIS:** BTOP Program staff's analysis of this proposed fiber swap transaction is focused on whether the three conditions set forth in the First NOFA that are necessary for NTIA to approve a sale or lease of the BTOP-funded fibers that MCNC is offering to ERC have been satisfied.

BTOP Program staff reviewed several factors to evaluate whether the first condition, that the transaction be for adequate consideration, has been met:

1. Total Mileage. The mileage between the two segments is nearly equal (240 strand-miles offered by MCNC, 242.6 strand-miles offered by ERC).
2. Fiber Pricing. Although the total strand-mileage in the proposed swap is nearly equal, it is important to note that the fiber strands that MCNC is offering to ERC are all in rural areas, while the fiber that MCNC is acquiring from ERC is primarily in metro areas. In general, the market places a higher price on metro fibers than rural fibers.

MCNC and ERC have used other recent IRU transactions to establish market values for rural and metro fibers.<sup>5</sup> These values were then used to estimate the value of each fiber segment in the proposed swap.<sup>6</sup> Their calculations indicate that the market value of the fiber being offered by ERC is \$482,168, while the market value of those fibers offered by

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<sup>4</sup> First NOFA, 74 Fed. Reg. at 33123.

<sup>5</sup> Refer to *Market Value Dark Fiber IRU June 14 2010-1 -- Redacted.pdf* attached to the Award Action Request for the swap, GOL ID 2235591.

<sup>6</sup> Refer to *Fiber Valuation.xls* attached to the Award Action Request for the swap, GOL ID 2235591.

MCNC is \$180,000. This valuation methodology indicated that the transaction favors the BTOP-funded project by \$302,168.

NTIA has been assured by MCNC that it will retain sufficient capacity, following the IRU transaction, to permit MCNC to meet the obligations in its award and the needs of its Community Anchor Institution beneficiaries.

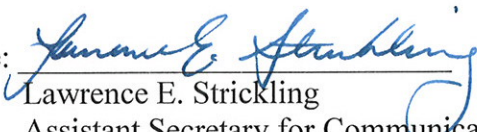
BTOP Program staff also finds that the second condition has been satisfied because MCNC and ERC have incorporated compliance with BTOP requirements as part their IRU agreement.

Finally, BTOP Program staff finds that the third condition has been satisfied because MCNC set forth its proposed fiber swap transaction in its original application and it was incorporated as part of MCNC's proposal for BTOP funds.

Moreover, BTOP Program staff finds that MCNC's acquisition of existing fibers from ERC would reduce the cost of the project (by reducing construction expenses) and would utilize existing service provider infrastructure, rather than a possible overbuild of existing network facilities. Thus, its approval would be in the best interests of the Federal government.

**RECOMMENDATION:** Based on an analysis of the documentation provided by MCNC and ERC, the inclusion of the swap in MCNC's approved BTOP Round One application, the benefits the transaction offers to the project, and the its compliance with the First NOFA's requirements for a waiver of the restriction on the sale or lease of BTOP-funded assets, BTOP's Program staff has concluded that the proposed fiber swap promotes NTIA's interest in delivering broadband services in partnership with other service providers and furthers the timely completion of the grant award. Therefore, it is recommended that this waiver be granted for Award NT10BIX5570011. I have consulted with NTIA's Office of Chief Counsel and they concur with the recommended action.

**DECISION:** If you concur with this recommendation, please indicate by signing and dating this memorandum below.

Signature:   
Lawrence E. Strickling  
Assistant Secretary for Communications  
and Information

Date: July 20, 2011

cc: Kathy Smith, Chief Counsel for NTIA  
Percy Robinson, DOC Office of General Counsel, Financial Assistance Law Division