



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

MAY 11 2012

Darryl Ackley, Cabinet Secretary & State Chief Information Officer
New Mexico Department of Information Technology
715 Alta Vista St.
Santa Fe, NM 87502-0110

Re: Broadband Technology Opportunities Program (BTOP)
New Mexico Department of Information Technology (Grant Award #NT10BIX5570097)
Notice of Partial Suspension of Long Term Evolution (LTE) activities

Dear Mr. Ackley:

Upon acceptance of a grant from the U.S. Department of Commerce (Grant Award No. NT10BIX5570097), your organization agreed to comply with requirements specified in the terms and conditions of the Broadband Technology Opportunities Program (BTOP) award. Although we understand that you have made every effort to comply with the terms and conditions of your award, Congress has enacted subsequent legislation that will prevent you from remaining in compliance with certain terms and conditions of your award. As a result, the National Telecommunications and Information Administration (NTIA) recommended that the National Oceanic and Atmospheric Administration (NOAA) Grants Office partially suspend your project in order to address the potential effect of Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 ("Act") on your award. This letter addresses the steps that you must take in the next 45 days to provide information in order to proceed with your project.

BACKGROUND:

In 2007, the FCC designated the Public Safety Spectrum Trust (PSST) as the Public Safety Broadband Licensee for the ten megahertz (MHz) of 700 MHz public safety broadband spectrum.¹ On May 11, 2010, the FCC adopted FCC 10-79, an order that permits certain state and local governmental entities to deploy public safety broadband systems using the 700 MHz spectrum licensed to PSST.²

In 2010, NTIA made the decision to award seven BTOP grants to build public safety networks that would utilize the 700 MHz public safety broadband spectrum.

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Order, 22 F.C.C. Rcd. 20453 (2007).

² Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, Order, PS Dkt. No. 06-229, FCC 10-79 (adopted May 11, 2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-79A1.pdf.

The seven BTOP public safety recipients have the legal authority to use the 700 MHz spectrum only through the waivers of FCC rules and through lease agreements executed with the PSST. Accordingly, NTIA and NOAA incorporated a special award condition (SAC) into each of the awards that requires the recipients to comply with FCC's extant requirements and all subsequent orders and public notices regarding the use of the 700 MHz public safety broadband spectrum. The SAC further provides that "[i]f any future regulatory requirement (from the FCC or other governmental entity) results in a material technical or financial change in the project, the recipient must submit a revised budget, associated documentation, and other material, as applicable, for review and approval by the Grants Office."³

On February 22, 2012, the President signed the Act, Title VI of which created the First Responder Network Authority (FirstNet), an independent authority within NTIA, and requires the FCC to reallocate and grant a license for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum to FirstNet.⁴ In effect, this statutory mandate requires the FCC to transfer or rescind the current 700 MHz license for ten megahertz of spectrum from PSST and to grant a single license for 20 megahertz of 700 MHz spectrum to FirstNet.

New Mexico Department of Information Technology spectrum lease agreement with the PSST will expire in September 2012, by which time the 700 MHz license authority is likely to have been granted to FirstNet or to be in the process of being granted to FirstNet. You will need to work with FirstNet to seek to use the 700 MHz spectrum. However, when — and under what conditions — FirstNet will allow such use is currently unknown.

In summary, once the current public safety lease agreements expire in September 2012, or when PSST or the FCC takes other action, the New Mexico Department of Information Technology will lose access to the 700 MHz public safety spectrum that is necessary to operate its BTOP-funded network. Moreover, the likelihood that new minimum technical standards to be developed for operation in the 700 MHz band may conflict with your existing network designs

³ BTOP Public Safety Award, Special Award Condition, "FCC Compliance and Notification SAC":

The recipient shall comply with the requirements established in the Federal Communications Commission's (FCC) Order in PS Docket 06-229, adopted on May 11, 2010 (FCC 10-79), and all subsequent orders and public notices regarding the use of the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz). If any future regulatory requirement (from the FCC or other governmental entity) results in a material technical or financial change in the project, the recipient must submit a revised budget, associated documentation, and other material, as applicable, for review and approval by the Grants Office.

⁴ Title VI, Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, § 6201(a):

Reallocation and Grant of License.- Notwithstanding any other provision of law, and subject to the provisions of the Act, the Commission shall reallocate and grant a license to the First Responder Network Authority for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum.

creates a significant risk that further BTOP expenditures for Long Term Evolution (LTE) infrastructure may result in stranded investments.⁵

REASON FOR PARTIAL SUSPENSION:

Under the Department of Commerce Uniform Administrative Requirements at 15 C.F.R. § 14.62 and 15 C.F.R. § 24.43, as a remedy for material noncompliance, the Grants Office may “[w]holly or partly suspend or terminate the current award.”⁶ Although Title VI of the Act does not immediately place New Mexico Department of Information Technology out of compliance with the terms and conditions of your award, it is clear that you will, through no fault of your own, be in material noncompliance with the terms and conditions of your grant award in being unable to comply fully with FCC rules as required by the SAC incorporated into your award.

RESULT:

The NOAA Grants Office has placed New Mexico Department of Information Technology’s Automated Standard Application for Payments (ASAP) account on agency review status. In addition, the NOAA Grants Office will partially suspend your award with respect to all LTE-related activities (including, for example, the acquisition of LTE-related equipment, such as eNodeB and the evolved packet core, and end-user devices). During this partial suspension, you will not be allowed to incur any costs for LTE-related activities.

REQUIRED RECIPIENT ACTION:

Within 45 days, New Mexico Department of Information Technology must provide NOAA and NTIA an initial detailed accounting of the scope of LTE-related and non-LTE-related activities and the associated budget with the amounts obligated and expended in each category to date.

You will have the opportunity to propose revisions to the activities and budget for the current project to reallocate funds from LTE-related items to non-LTE-related items. The BTOP staff has developed a list of “low risk” project activities that each recipient’s revised statement of work and budget can address. This list is included as Attachment 1.

To the extent that you cannot identify appropriate, non-LTE uses for some or all of your remaining grant funds, you will need to provide a statement acknowledging that the LTE portion of the project associated with those funds will be on suspension (*i.e.*, no costs will be incurred and no work will be performed) until New Mexico Department of Information Technology regains authority to utilize the 700 MHz public safety spectrum.

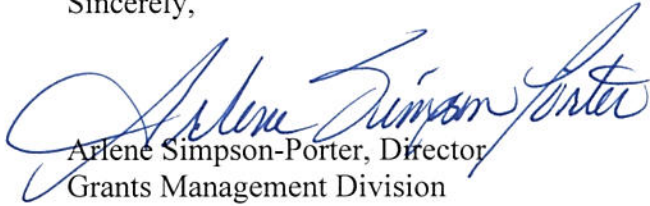
Please provide all necessary information by **Monday, June 25, 2012**. Please contact Mr. Lance Johnson at 202-482-5032 or ljohnson@ntia.doc.gov if you have any questions or require any

⁵ See *id.*, § 6203 (establishing the Public Safety Interoperability Board to recommend minimum technical standards to FirstNet); *id.*, § 6206(b)-(c) (authorizing FirstNet to issue requests for proposals using these minimum technical standards).

⁶ 15 C.F.R. §§ 24.43(a)(3). The Grants Office may impose special conditions such as payment on a reimbursement only basis where a grantee “is otherwise not responsible.” 15 C.F.R. §§ 24.12. Here, NOAA and NTIA note that your organization is unable to be “responsible” for a reason completely outside your control.

additional clarification. Failure to respond to this letter in a timely or comprehensive manner may result in additional enforcement action being taken. Thank you for your cooperation.

Sincerely,



Arlene Simpson-Porter, Director
Grants Management Division

Cc: Anthony G. Wilhelm, Ph.D.
Laura Pettus
Lance Johnson
Aimee Meacham