

Special Award Conditions

Award Number: NT10BIX5570080

Amendment Number: 3

1) Sale and Lease IRU SAC

On February 25, 2011, NTIA granted a partial programmatic waiver of Section IX.C.2 of the First and Second Notices of Funds Availability (NOFAs) and Solicitations of Applications [74 Fed. Reg. 33104, 33123 (July 9, 2009) and 75 Fed. Reg. 3792, 3810 (January 22, 2010)]. Both NOFAs 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 NOFAs for such approvals have been met and grants a waiver of this requirement.

This programmatic waiver granted on February 25, 2011 eliminates this restriction on the sale or lease of BTOP-funded assets without prior NTIA approval to the extent that the restriction applies to the recipients provision of indefeasible rights-of-use (IRU) in BTOP-funded fiber optic networks to other broadband service providers for the provision of broadband service. The IRU arrangements must comply with the requirements described below. Fiber swaps are excluded from this programmatic waiver; recipients must continue to seek prior agency approval before entering into such arrangements.

Recipients entering into fiber IRU arrangements with other broadband service providers for the provision of broadband service shall (i) include terms that require compliance with applicable BTOP requirements, including that the purchaser will provide broadband service and adhere to BTOP's nondiscrimination and interconnection obligations, and (ii) advise their IRU purchasers 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 such fiber IRU arrangements, the recipient 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 the recipient, may use the fiber to provision broadband service. The programmatic waiver shall apply only in cases where no entity or group of affiliated entities (i) obtains IRUs in a majority share of the capacity available for purchase at the time of the transaction on any fiber route constructed with BTOP funds; and/or (ii) cumulatively obtains a majority of the initial total capacity on any such fiber routes.

The revenue the recipient or sub-recipients receive from their provision of fiber IRUs will be considered program income and must be treated in accordance with BTOP requirements governing the use of program income if it is earned during the period of performance.