



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information
Administration
Washington, DC 20230

JANUARY 23, 2013

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

From: Anthony G. Wilhelm, Ph.D. *AW*
Associate Administrator for the
Office of Telecommunications and Information Applications

Subject: Extension of the BTOP Award Period through September 30, 2013 for the
OpenCape Corporation (NT10BIX5570039)

ISSUE FOR DECISION: Whether the OpenCape Corporation (the “Recipient”) should be allowed to extend the period of performance of its BTOP project until September 30, 2013.

BACKGROUND: The Recipient received a BTOP Round One award in February 2010 to implement a Broadband Infrastructure project. The purpose of the award was to create a fiber-optic and microwave broadband network to directly connect Community Anchor Institutions (CAIs) throughout the area. These CAIs include libraries, emergency shelters, academic research facilities, and numerous local government facilities. Additionally, the network will facilitate new or improved high-speed Internet access throughout underserved areas for households and businesses. The project is nearly 70% complete. The Recipient has submitted a request for an extension of its three-year award period to September 30, 2013 to complete the implementation of its BTOP award.

STANDARD OF REVIEW: Although the financial assistance award sets forth specific award periods for each award, the Department of Commerce Uniform Administrative Requirements of 15 C.F.R. Parts 14 and 24 allow for extensions beyond the initial award period.¹ In addition, 15 C.F.R. Part 14 specifically allows recipients to initiate a no-cost extension of a financial assistance award.²

ANALYSIS: NTIA may recommend no-cost extensions on its own initiative. The American Recovery and Reinvestment Act of 2009 (Recovery Act) does not mandate a maximum three-year award period for BTOP projects.³ Rather, NTIA established the three-year award period for BTOP projects in the two BTOP NOFAs⁴ to correspond with the Recovery Act’s

¹ See 15 C.F.R. § 24.23 (allowing recipients to carry over funds from the initial award period upon approval of the grants office); 15 C.F.R. § 14.28.

² See 15 C.F.R. § 14.25(e)(2) (allowing recipients to initiate a one-time extension of the expiration date of the award of up to 12 months).

³ See Pub. L. No. 111-5, 123 Stat. 115, 128, 512 (Feb. 17, 2009) (“Recovery Act”).

⁴ Notice of Funds Availability and Solicitations of Applications, 74 Fed. Reg. 33104 (July 9, 2009) (First NOFA), available at http://www.ntia.doc.gov/frnotices/2009/FR_BBNOFA_090709.pdf; Notice of Funds Availability and

requirements that awards be made by September 30, 2010,⁵ and that the Assistant Secretary seek assurances from recipients that they will substantially complete projects within two years following the issuance of the award.⁶ More recently, the Office of Management and Budget (OMB) released memorandum M-11-34, which directs NTIA to reclaim any funds that remain unspent after September 30, 2013, but does not limit the length of BTOP award periods before this date.⁷

In this case, providing additional time for completion of the grant will allow the recipient to fully deliver the benefits promised under the award, maximize taxpayer investment in this project, and further the goals of the Recovery Act. While the Recipient has completed installation of nearly 200 miles of fiber-optic cable, the project has faced several delays as a result of factors outside the Recipient's control. The Recipient has had to overcome complex permitting issues and negotiations with utility companies, and in many instances the Recipient has had to correct existing violations, from prior occupants, on poles before deploying aerial portions of its planned network. Throughout the award period, the Recipient has also been delayed by inclement weather and suffered additional delays from Hurricane Sandy. Additionally, the Recipient was recently informed that a vendor will have to delay providing a key network component, further delaying the project. Extending the award period will allow the Recipient to complete more than 100 miles of fiber installation and complete connection, testing, and turn-up for the project's CAIs. As such, extending the award period would allow the Recipient to fully deliver on the project's goals of expanding broadband Internet services and connecting numerous CAIs—guaranteeing the efficient allocation of taxpayer funds and achievement of BTOP purposes.

Extending the award project period until September 30, 2013 promotes BTOP's purposes and advances the interests of the Federal government, as defined in the two BTOP NOFAs, by ensuring prudent expenditure of taxpayer funds and the full delivery of the expected benefits to the communities served by the project. Furthermore, this project advances the statutory objectives of the Recovery Act, which sought to increase and improve broadband access, provide community training, and stimulate broadband demand. Barring additional external obstacles to completion, the Recipient fully anticipates being able to complete the project by the new award end date. NTIA will continue to work with the Recipient to facilitate regulatory and contract challenges, environmental issues, and any other special circumstances that may arise.

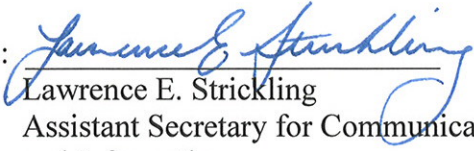
Solicitation of Applications, 75 Fed. Reg. 3792 (January 22, 2010) (Second NOFA), available at http://www.ntia.doc.gov/frnotices/2010/FR_BTOPNOFA_100115.pdf.

⁵ Recovery Act § 6001(d)(2).

⁶ *Id.* at § 6001(d)(3).

⁷ OMB memorandum M-11-34 (Sept. 15, 2011), entitled "Accelerating Spending of Remaining Funds from the American Recovery and Reinvestment Act for Discretionary Grant Programs," directs Federal agencies to accelerate the spending of remaining Recovery Act funds in discretionary grant programs consistent with existing laws and regulations and programmatic objectives. Funds that have not been spent by September 30, 2013 must be reclaimed by Federal agencies to the extent permitted by law, unless OMB issues a waiver from this requirement.

RECOMMENDATION: For the reasons discussed above, I recommend you approve this recommendation to allow the Recipient to extend its project period through a no-cost extension until September 30, 2013. 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: 1/23/13