

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: April 12, 2016 **Approx. Start Time:** 2:00 **Approx. Length:** 60 min.

Presentation Title: Approval Granting Clackamas Broadband eXchange (CBX) the Authority to Bid on Public Agency Fiber Projects

Department: Technology Services

Presenters: Dave Cummings, Duke Dexter, Laurel Butman

Other Invitees: Dave DeVore, Chris Storey

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

The Clackamas Broadband eXchange (CBX) is requesting Board approval to offer official bids to public entities for fiber optic construction projects within Clackamas County.

EXECUTIVE SUMMARY:

In 2010, Clackamas County received a federal Broadband Technology Opportunity Program (BTOP) grant to develop a dark fiber network in Clackamas County east of the Willamette River. The grant funded a 180-mile dark fiber network that was constructed from 2010-2013. In the time since the grant expired, CBX has continued to expand the fiber footprint throughout Clackamas County connecting into areas such as Wilsonville and West Linn as well as additional connections in areas we already serve (Attachment A). This has allowed the expansion of services to many additional schools and public agencies, and opportunities for use by local commercial service providers. The National Telecommunications and Information Administration (NTIA), the federal division overseeing the BTOP grants, has issued a statement authorizing and promoting such expansion (Attachment B).

Historically, CBX has expanded the fiber optic network either by internally self-funding new construction, or through partnerships with local agencies. Typically, local agencies fund the construction build and transfer ownership of the new fiber to CBX for management and maintenance thus expanding the CBX fiber presence to serve both the funding agency and others. This process has primarily been implemented via Service Level Agreements (SLAs) that CBX has in place with all of our customers and agencies. This allows CBX to quote the agency for the build and proceed with their approval without the agency needing to use a bidding process. This is very effective because it allows CBX and the agency to make adjustments to the construction process and costs by mutual agreement.

However, from time to time, CBX may also need to utilize the bid process for potential construction projects. This may be due to agency preference or, especially in the case of schools, the procurement process required by the federal E-Rate program. E-rate is the commonly used name for the Schools and Libraries Program of the [Universal Service Fund](#) (USF), administered by the [Universal Service Administrative Company](#) (USAC) under the direction of the Federal Communication Commission (FCC). This program provides discounts that assist schools and libraries to obtain affordable telecommunications and [Internet access](#).

In December 2014, the FCC adopted its Second E-rate Modernization Order. This Second E-rate Modernization Order enacted a monumental shift in the USAC policies. For the first time, it allowed school districts and libraries to build a fiber network created for them, and then be reimbursed up to 80% of the cost of construction. In order for a school or library to be eligible for the reimbursement through the E-rate, it has to put construction out for bid through the USAC system. Thus, for CBX to be considered for any such fiber network CBX must submit a bid for

the construction services. Several school districts have approached CBX about bidding on these projects because of the long-term benefits they will receive from CBX service, coupled with the E-rate granting process.

CBX can easily provide bids for proposed fiber construction projects. The issue is the potential risk to CBX if the project goes over budget. The vast majority of CBX project costs are under \$100,000. CBX has six years of experience designing and costing (including contingency) such projects and usually comes in under projected costs. Therefore, the risk in such projects is minimal. CBX is proud of the fact that since day one, it has operated in the black.

While CBX utilizes external professional design services to produce the most accurate bid possible, there is always the possibility of a cost overrun. CBX would minimize risk exposure in these large projects by utilizing the RFP process to award the construction project, placing as much liability as possible on the construction vendor. In addition, CBX can add cost-sharing clauses to its agreements with customers should CBX sense any abnormal construction risks.

Even with all possible precautions, the risk of cost overruns in large projects still exists, especially with underground construction. Any cost overruns would be covered by the CBX Construction Fund which is a reserve of any revenues beyond operating and project costs. The Construction Fund is in the CBX capital/reserves budget (Attachment C). While CBX feels the risk is minimal in issuing construction bids, we are still seeking policy approval to provide fiber construction bids to public agencies.

For future discussion and consideration, CBX has also been approached by agencies outside the County seeking similar construction projects and expansions. We are not prepared to delve into this today, but are considering initiating a discussion with the Board about these opportunities at a later date. In anticipation of potential future discussions, we did inquire of the NTIA (Attachment D) about possibilities for transferring the fiber optic network or portions thereof to another entity (perhaps a nonprofit). This would also need the consideration of a policy session in the future if the Board wished to pursue this avenue.

FINANCIAL IMPLICATIONS (current year and ongoing):

The process of public agency funding of new fiber construction and transferring ownership to CBX is very beneficial to both entities. The agency receives significant long-term savings and services, while CBX increases its fiber presence that can be further utilized. The cost of construction is the financial responsibility of the public agency receiving connections to the fiber. CBX assumes a financial risk of an inaccurate low bid for a project which would be covered through existing contracts, contract provisions, and/or by the Construction Fund.

Is this item in your current budget? YES NO

Internally self-funded construction projects are budgeted in the CBX budget. Agency funded construction projects are added to the CBX budget as required via supplemental budgets authorizing CBX to proceed with the build and bill the agency as a reimbursement for the construction.

What is the cost? \$ *See below* What is the funding source? CBX Construction Fund

Historically, the vast majority (over 98%) of the construction projects are around or less than \$100,000. With our successful designs and cost estimates, there has been no cost to CBX because the public agency we contract with covers all costs. If a bid does go over budget, CBX must cover the cost overruns via contract provisions or the Construction Fund. On large projects, CBX utilizes project contingency, professional design assistance, and the RFP process with the construction vendors to minimize the potential of such costs. There would be no General Fund or cost allocation impact from CBX participating in the bidding process.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?

This proposed process would help CBX align with key measures:

- Increase annual savings for public agencies through their utilization of CBX
- Increase the total size (linear feet) of the CBX fiber optic network available for new and current sites

- How does this item align with the County's Performance Clackamas goals?

The proposed process aligns with the following Performance Clackamas goals:

- *Grow a Vibrant Economy*
Additional expansion will provide new economic opportunities
- *Build a Strong Infrastructure*
Fiber optic network expansion provides a stronger, more flexible and capable fiber infrastructure throughout Clackamas County
- *Ensure Safe, Healthy & Secure Community*
Fiber expansion allows critical fire, life, and safety agencies to be connected and utilize the high-speed communications capabilities of CBX

LEGAL/POLICY REQUIREMENTS:

The only legal requirement would be for CBX to participate in the bid process in accordance with the E-Rate or other public procurement procedures. For this Policy Session, the CBX project seeks approval CBX to offer bids to public agencies for the construction of fiber projects when an SLA is not sufficient.

PUBLIC/GOVERNMENTAL PARTICIPATION:

CBX works directly in partnership with many public and governmental agencies, assisting them to connect to and use the CBX network in support of their public service needs. If CBX is approved to participate in public bids for construction, this would only increase the potential partnerships available between CBX and public agencies.

OPTIONS:

Option 1: Do not approve CBX to bid on public agency construction projects in Clackamas County.

Impacts:

- CBX would not have any construction cost overrun risk.
- CBX would not have the opportunity to make expansions into new areas of opportunity, and would be restricted to small projects.
- This includes the probable loss of school districts and other community partners.
- Public agencies with large projects would still have to bid and utilize other non-CBX solutions and not be able to take advantage of the available long-term savings of Clackamas County's CBX system.

Option 2: Approve CBX request to bid on public agency construction projects in Clackamas County.

Impacts:

- CBX would have a minimal potential of large project risk but would have to mitigate using CBX revenue in the event of a cost overrun.
- CBX would have the opportunity to make major expansions into new areas of opportunity thus increasing overall plant size and new connection potential.
- Public agencies with large projects would be able to utilize CBX and take advantage of the long-term savings.

RECOMMENDATION:

Staff respectfully requests the BCC approve Option 2, granting CBX the ability to issue bids for public agency construction projects within Clackamas County.

Staff further recommends the Board delegate the authority to the Technology Services Director to sign agreements necessary in the performance of such bids, subject to County Counsel review and approval of those agreements, with Board of County Commissioners approval over \$150,000.

ATTACHMENTS:

Attachment A: Current map of CBX fiber network

Attachment B: Email from the NTIA on expansion of BTOP Fiber projects

Attachment C: Proposed FY 2016-17 Budget

Attachment D: Email from the NTIA on asset transfers

SUBMITTED BY:

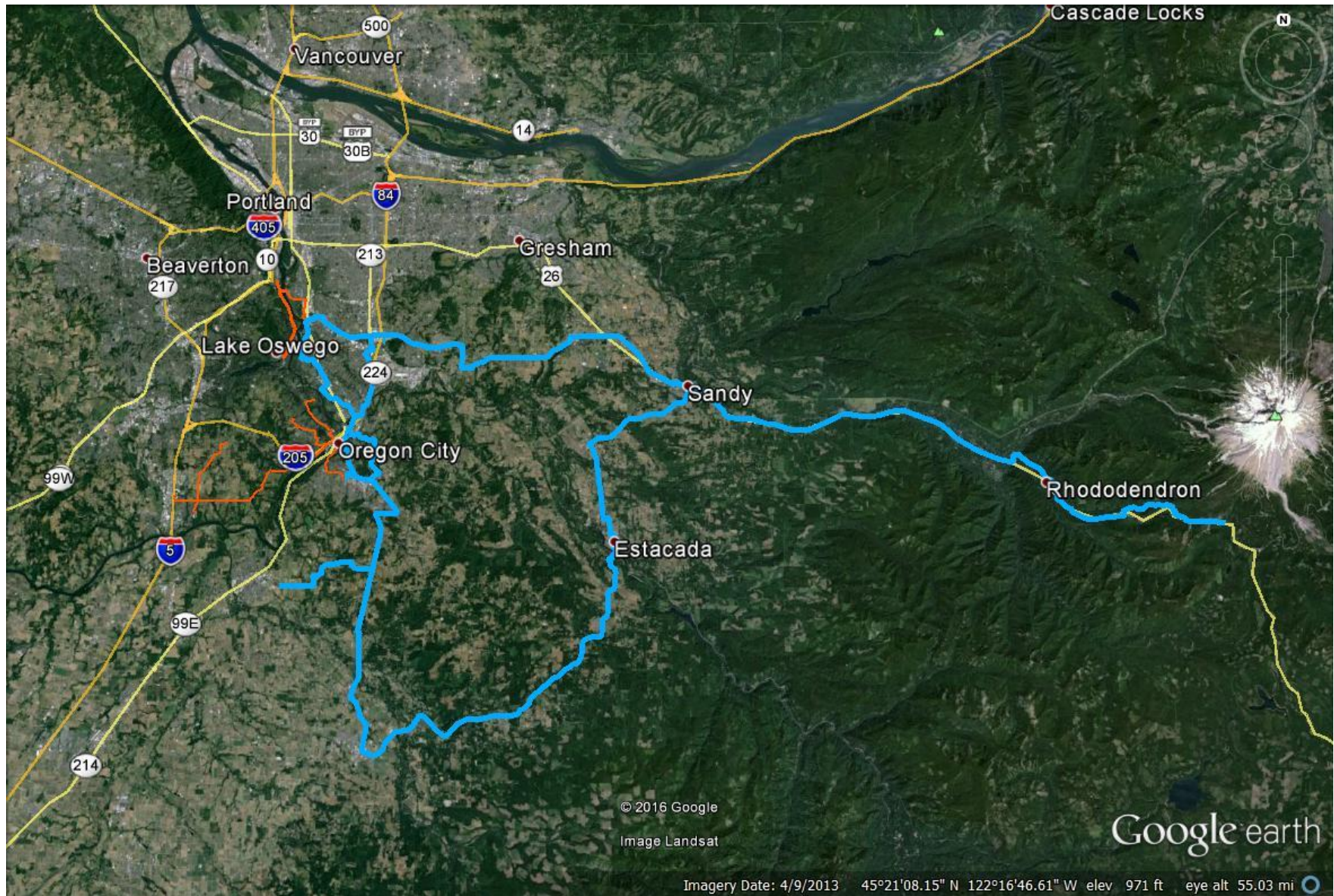
Division Director/Head Approval _____ DD

Department Director/Head Approval _____ DC

County Administrator Approval _____ LB

For information on this issue or copies of attachments, please contact Duke Dexter @ 503-722-6663

Attachment A



Legend: **Original Build** ——— | **Additional Builds Outside BTOP Grant** ———

Attachment B

From: Moyer, Timothy
Date: April 1, 2016 at 6:47:30 AM CDT
Subject: RE: Clackamas County Inquiry about BTOP Grant

Duke,

Thanks for your email. NTIA supports and encourages the expansion of BTOP networks. In addition, NTIA does not have any restrictions on local market competition. During the award period, NTIA was concerned about overbuild to ensure the best use of BTOP funding. Therefore, if there was an existing network able to provide requisite service levels NTIA did not authorize funding a BTOP network in the same area. Now that the award period is over, since Federal funding is not being used, NTIA does not have any network build out or competition restrictions.

Regards,
Tim

Timothy C. Moyer
BroadbandUSA and BTOP
National Telecommunications and Information Administration
United States Department of Commerce
www.ntia.doc.gov/broadbandusa

Attachment C

Clackamas Broadband eXchange FY 2016-17 PROPOSED BUDGET		
REVENUE		
Fund Balance	Construction Roll	154,000
User Fee	Connection Fees	535,000
Internal Service Fees		95,000
Other Agency Fees		40,000
Interest		200
Reimbursements		
Franchise Fee Collections	Pass through fees	22,000
TOTAL		846,200
EXPENSES		
PERSONAL		
FTE	1 Coordinator / 1 Network Engineer	151,097
Fringe		102,812
Other	Overtime / On call	24,076
MATERIALS & SERVICES		
Non-Capital / Supplies	Equipment / Dues / Supplies / Tools	10,000
Professional Services	Design / Marketing / External Sales	53,000
Network Support		25,000
Travel & Training		9,000
Fiber Repairs / Relocates		140,000
Equipment / Software Maintenance		3,500
Fees		22,000
ALLOCATION		
Internal Allocation		71,742
CAPITAL / RESERVES		
Construction	Construction / Build Contingency	183,973
PEG Reimbursement	1st year repayment	50,000
TOTAL		846,200

Attachment D

From: Moyer, Timothy
Sent: Tuesday, March 29, 2016 9:52 AM
Subject: RE: Clackamas County Inquiry about BTOP Grant

Duke, [Here is feedback for each question.](#)

- 1) Does the NTIA restrict Clackamas County from extending its fiber network beyond the BTOP grant fiber network and utilizing them in conjunction with one another? A question was asked if the NTIA supports the expansion of the fiber networks installed during the BTOP grant and if the NTIA encourages fiber expansion of those networks. Would there be any issues with expansion if the new fiber went beyond the borders of Clackamas County?
TCM: NTIA supports and encourages the expansion of BTOP networks. During the award period, NTIA was concerned about overbuild to ensure the best use of BTOP funding. Therefore, if there was an existing network able to provide requisite service levels NTIA did not authorize funding a BTOP network in the same area. Now that the award period is over, since Federal funding is not being used, NTIA does not have any network build out restrictions.

- 2) Does the NTIA restrict Clackamas County from transferring ownership of the grant fiber network to a different entity? If CBX could provide legitimate reasons, would the NTIA allow a BTOP grant recipient the ability to transfer the recipient's ownership in the BTOP grant fiber to a different entity?
TCM: NTIA will review requests to transfer ownership of BTOP funded assets on a case-by-case basis. Please submit a formal request on Clackamas letterhead outlining the situation, provide the business case for the change, and detail the specifics of the ownership change (e.g. new organization type, acknowledgement that the new organization retains all of the BTOP rights and obligations). For more information, please refer to the following guidance regarding the sale, lease or transfer of BTOP-funded assets. [BTOP Sale, Lease, Transfer, Disposition, and Mortgage of Infrastructure Project Assets Fact Sheet](#)

- 3) Does the NTIA restrict Clackamas County from becoming an ISP? CBX has had discussions about the idea of providing internet services to existing and new customers on the existing BTOP grant fiber network. Does the NTIA prohibit BTOP grant recipients from becoming an ISP for existing and new customers?
TCM: No, NTIA does not have any restrictions on BTOP recipients becoming ISPs.

- 4) Does the NTIA have any restrictions with a public entity competing with the private sector? CBX is wanting to further expand within Clackamas County and there have been questions about whether CBX should be competing with the private sector. What is the NTIA's stance on this issue?
TCM: NTIA does not have any restrictions on local market competition. During the award period, NTIA was concerned about overbuild to ensure the best use of BTOP funding. Therefore, if there was an existing network able to provide requisite service levels NTIA did not authorize funding a BTOP network in the same area. Now that the award period is over, since Federal funding is not being used, NTIA does not have any network build out restrictions.

- 5) Does the NTIA have any restrictions on a BTOP recipient from using the fiber installed under the grant from using it as collateral for a business loan to raise funds to expand the existing network?
TCM: NTIA has a Federal security interest in the pro rata share of the BTOP funded assets for the useful life of those assets. While we don't have restrictions, the proposed transaction must be reviewed and approved by NTIA and the Grants Officer. NTIA has established a process to review and approve such encumbrances of BTOP-funded assets. The review process generally takes 90-120 days to complete (there are several layers of internal legal reviews). For more information, you may contact Scott Woods (swoods@ntia.doc.gov) or Aimee Meacham (ameacham@ntia.doc.gov).

Regards, Tim
Timothy C. Moyer
BroadbandUSA
National Telecommunications and Information Administration
United States Department of Commerce
www.ntia.doc.gov/broadbandusa