

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: February 21, 2017 **Approx. Start Time:** 3:15 **Approx. Length:** 30 min.

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

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 that are adjacent to 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.

Recently, the scope of some projects, especially those related to the Federal School E-Rate program, are such that CBX is required to utilize a formal bid process for potential construction projects. 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. These larger projects (over \$100,000) or E-Rate based projects required CBX to obtain permission to be able to bid on these projects. During the April 12th 2016 Policy Session, the Clackamas County Board of Commissioners granted CBX permission to bid on projects for public agencies within Clackamas County. A recent example of such a project is the Lake Oswego School District Fiber Project that CBX bid and won. Design is currently in progress on this project.

CBX can easily provide bids for proposed fiber construction projects. The issue is the potential risk to CBX, and the County, 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.

While CBX utilizes external professional design services to produce the most accurate bid possible, there is always the possibility of a cost overrun. CBX minimizes 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. Cost overruns would be covered by the CBX Construction Fund which is a reserve of any revenues beyond operating and project costs. Any cost overruns beyond the ability of CBX to cover would be covered by the General Fund.

CBX is now being approached by other public agencies outside of Clackamas County who are interested in both the potential financial savings in utilizing CBX resources and the potential enhanced communications between their agencies and even those agencies within Clackamas County. Related services, such as Health Care, Public Safety, Emergency Operations, Schools, Libraries and so forth, can benefit from the potential enhanced communications and secure connections. Washington County is an example of an agency currently looking at the potential benefits of extended CBX fiber connectivity to many of its agencies. The Tigard-Tualatin School District is another agency looking at CBX as a potential partner in a district wide fiber project similar to the Lake Oswego School District Project CBX is currently working on.

In order for CBX to potentially expand construction and connectivity opportunities to regional agencies / partners outside of Clackamas County, CBX needs permission from the Clackamas County Board of Commissioners to participate in the bidding and construction process for these regional agencies located in adjacent counties to Clackamas County. The bidding and construction process would be the same as the current process and projects, just expanding the scope to allow regional agencies to utilize CBX.

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. As with any bid, 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 and finally the General Fund if all other CBX resources were exhausted.

Is this item in your current budget? YES NO sz

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 itself. There is a risk to the General Fund if a project goes over budget beyond what CBX can cover and the General Fund is required to cover the overage.

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
- Increase communication potential and capability between partnering agencies and institutions throughout the County and region

- 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 and the region
- *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 in Counties adjacent to Clackamas County.

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 projects adjacent to Clackamas County, 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 adjacent to Clackamas County.

Impacts:

- CBX would not have the opportunity to make expansions into new areas of opportunity, and would be restricted to projects within Clackamas County.
- This includes the probable loss of potential communication benefits to regional partners, agencies and services.
- 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.
- CBX, and the County, would not be incurring any additional risk from a potential cost overrun of a project.

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

Impacts:

- CBX would have the opportunity to make major expansions into new areas of opportunity thus increasing overall plant size and new connection potential.
- Regional public agencies with large projects would be able to utilize CBX and take advantage of the long-term savings.
- Regional agencies would be able to increase communications potential both within and around Clackamas County thus improving services including Clackamas County agencies and schools.
- CBX, and the County, would be incurring additional risk from any potential project cost overruns.

RECOMMENDATION:

Staff respectfully requests the BCC approve Option 2, granting CBX the ability to issue bids for public agency construction projects adjacent to Clackamas County. Given the continued growth and potential expansion of CBX in the future, staff additionally recommends the BCC task staff to look into options around the long term scope of CBX services and direction.

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: Email from the NTIA on asset transfers

SUBMITTED BY:

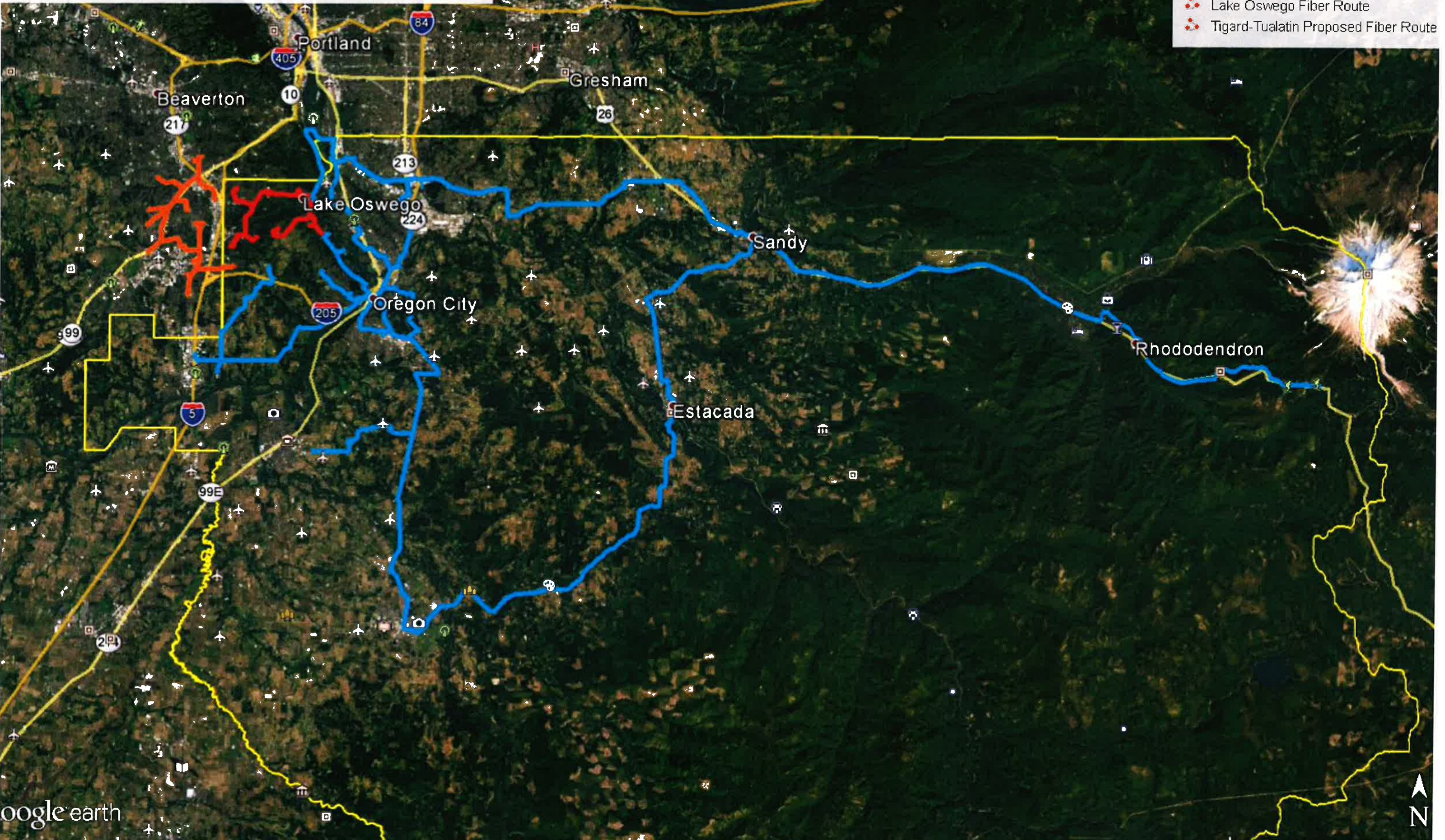
Division Director/Head Approval _____ DD
Department Director/Head Approval _____ DC
County Administrator Approval _____ LB

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

Clackamas Broadband eXchange (CBX) Map

Legend

- Current CBX Fiber Route
- Lake Oswego Fiber Route
- Tigard-Tualatin Proposed Fiber Route



From: "Moyer, Timothy" <TMoyer@ntia.doc.gov>
Date: April 1, 2016 at 6:47:30 AM CDT
To: "Dexter, Duke" <DDexter@co.clackamas.or.us>
Cc: "Sandner, Ronald" <ronaldsan@co.clackamas.or.us>
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

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www.ntia.doc.gov/broadbandusa

Download NTIA's Broadband Adoption Toolkit at <http://www.ntia.doc.gov/toolkit>

Download NTIA's Public-Private Partnership guide at <http://go.usa.gov/3fTjE>

From: Moyer, Timothy [mailto:TMoyer@ntia.doc.gov]
Sent: Tuesday, March 29, 2016 9:52 AM
To: Dexter, Duke <DDexter@co.clackamas.or.us>
Cc: Cummings, David <davidcu@co.clackamas.or.us>; Devore, David <DavidDev@co.clackamas.or.us>; Sandner, Ronald <ronaldsan@co.clackamas.or.us>
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 recipients 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

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