

For more information, contact:
jeffrey@mayhooklaw.com
laura@mayhooklaw.com
360.263.4340
www.mayhooklaw.com



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RE: Summary of January 15, 2010 Notice of Funds Availability (“NOFA”) issued by the NTIA for its Broadband Technology Opportunities Program (“BTOP”) – Infrastructure Projects

NTIA today announced the commencement of the second and final round of funding for its BTOP program, established under the American Recovery and Reinvestment Act of 2009. The application window opens Tuesday, February 16 and closes Monday, March 15 at 5:00 p.m. EDT.

Highlights:

- BTOP funding will be concentrated on Middle Mile projects that offer new or substantially upgraded connections to community anchor institutions. Exclusively Last-Mile projects will only be considered after all projects with a Middle Mile component have been considered.
- All awards will be in the form of grants, up to 80% of the total eligible project cost (subject to waiver requests); additional consideration given to projects that contribute matching funds of 30% or more.
- Streamlined application process:
 - decrease in number of attachments
 - mapping tool eliminated
 - applicants to use census tract or census block group, rather than census blocks
 - general eligibility factors reduced to just three criteria: eligible entities, fully completed application, and matching funds.
- Applicants may not apply to both BIP and BTOP – must choose one.
- Two-step application process eliminated; Environmental Questionnaire required with application.

Category	Total Funds Allocated by NOFA	Expected Range Per Project (provide explanation if > or <)
Comprehensive Community Infrastructure	\$2.35 Billion	\$5 Million to \$150 Million
Public Computer Center	\$150 Million	\$500,000 to \$15 Million
Sustainable Broadband Adoption	\$100 Million	\$500,000 to \$15 Million

GENERAL ELIGIBILITY:

1. **Eligible Entity**
2. **Fully Completed Application**
3. **Matching Funds**

GENERAL BTOP PRIORITIES (from Recovery Act, same as First Round):

All projects must advance at least **one** of the five statutory priorities:

1. Provide access to broadband service to consumers residing in Unserved areas;
2. Provide improved access to broadband service to consumers residing in Underserved areas;
3. Provide broadband access, education, awareness, training, equipment, and support to community anchor institutions, organizations serving vulnerable populations or job-creating strategic facilities located in state/fed-designated economic development areas;
4. Improve access to, and use of, broadband service by public safety agencies;
5. Stimulate the demand for broadband, economic growth, and job creation.

NEW COMPREHENSIVE COMMUNITY INFRASTRUCTURE (CCI) PRIORITIES:

In order of importance:

(1) projects that will deploy Middle Mile broadband infrastructure with a commitment to offer **new or substantially upgraded service to community anchor institutions**. Those projects proposing to serve a significant number of community anchor institutions that have expressed a demand or indicated a need for access or improved access to broadband service will receive higher priority;

(2) projects that will deploy Middle Mile broadband infrastructure and incorporate a **public-private partnership** among government, non-profit and for-profit entities, and other key community stakeholders, particularly those that have expressed a demand or indicated a need for access or improved access to broadband service;

(3) projects that will deploy Middle Mile broadband infrastructure with the intent to **bolster growth in economically distressed areas**;

(4) projects that will deploy Middle Mile broadband infrastructure with a **commitment to serve community colleges** that have expressed a demand or indicated a need for access or improved access to broadband service;

(5) projects that will deploy Middle Mile broadband infrastructure with a **commitment to serve public safety entities** that have expressed a demand or indicated a need for access or improved access to broadband service;

(6) projects that will deploy Middle Mile broadband infrastructure that includes (i) a **Last Mile infrastructure component in unserved or underserved areas**; or (ii) **commitments or non-binding letters of intent from one or more Last Mile broadband service providers**. For Last Mile infrastructure

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components in rural areas, however, the additional costs of the Last Mile component used to offer service to residential consumers and non-community anchor institutions **may not exceed more than 20 percent** of the total eligible costs of the project; and

(7) projects that will deploy Middle Mile broadband infrastructure and propose to contribute a non-federal **cost match that equals or exceeds 30 percent** of the total eligible costs of the project.

Projects will be ranked according to these priorities. Projects meeting all priorities (1 – 7) will be ranked highest, followed by those meeting priorities (1 – 6), then (1 – 5), then (1 -4), etc., and finally applications that satisfy only the first criterion. Applicants that do not satisfy the first criterion (but satisfy other criteria) will be next in priority.

RELATIONSHIP TO BIP:

If the applicant is **currently a RUS loan or grant recipient**, OR, if the project will include a **Last Mile service area that is at least 75% rural**, NTIA strongly recommends that the applicant apply to BIP. Applications from these applicants to BTOP will not be viewed favorably and will not be a funding priority.

REQUIREMENTS FOR PROJECTS WITH LAST-MILE FACILITIES:

To the extent that a project contains a **Last Mile component in rural areas**, the additional costs of offering service to residential consumers and non-community anchor institutions may **not exceed more than 20%** of the total eligible costs of the project. Additionally, the applicant must demonstrate the cost reasonableness and effectiveness of the Last Mile component of its project. Specifically, applicants must ensure that this aspect of the proposal yields total eligible project costs that are **less than \$10,000 per household or per subscriber**, unless the applicant can demonstrate why it should be permitted to exceed the ceiling. NTIA will look more favorably upon applications with lower costs per household or per subscriber.

ELIGIBLE ENTITY:

- a. States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof;
- b. The District of Columbia;
- c. A territory or possession of the United States;
- d. An Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450b));
- e. A native Hawaiian organization;
- f. A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association;
- g. Other non-profit entities;
- h. For-profit corporations;
- i. Limited liability companies; and
- j. Cooperative or mutual organizations.

MATCHING FUNDS:

Applicants are required to provide matching funds of at least 20% toward the total eligible costs of the project. Applicants who propose to provide a cost match that is all cash will be given additional favorable consideration. Additional favorable consideration will also be given to non-federal cost matches equaling or exceeding 30%.

Waiver Requests should include (1) documents that include the applicant's assets, liabilities, operating expenses, and revenues from any existing operations; (2) denial of funding from a public or private lending institution; or (3) any other documents that demonstrate financial need.

GENERAL PROGRAM REQUIREMENTS:

- **Timely Completion** – substantially complete (67%) in two years; fully complete in three years.
- **Demonstration that Project could not be Implemented “But For” Federal Grant Assistance.**
- **Additional Requirements for Infrastructure Applicants:**
 - Broadband service (at minimum – 768kbps down, 200 kbps up)
 - Nondiscrimination and Interconnection (same as First Round)
 - If Last-Mile component, must provide service to the entire Last Mile service area (subject to waiver).
- **Announcement of Proposed Funded Service Areas** – census block groups or tracts will be made publicly available; existing broadband service providers may comment during 15-day window. No formal opportunity for applicant to respond, but NTIA may contact applicant for additional information.

ELIGIBLE COSTS:

- a. To fund the construction or improvement of all facilities required to provide broadband service;
- b. To fund the cost of long-term leases (for terms greater than one year) of facilities required to provide broadband service, including infeasible right-of-use (IRU) agreements;
- c. To fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses, which include expenses related to preparing an application, may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date of issuance of the grant award from NTIA, except that lobbying costs and contingency fees are not reimbursable from BTOP funds;
- d. To fund reasonable indirect costs associated with construction, deployment and installation of facilities and equipment used to provide broadband service, subject to process for establishing an indirect cost rate with Dept. of Commerce (see “General Indirect Cost Rate Program Guidelines for Grantee Organizations” on Dept. of Commerce website); and
- e. Undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the Program is established.

USE OF PROGRAM INCOME:

The NOFA clarifies that any program income generated by a project funded by BTOP during the grant period shall be retained by the grant recipient and shall be used in one or more of the following ways:

- (1) added to the funds committed to the project by NTIA and the recipient to conduct additional activities that will further eligible project objectives, including
 - (a) reinvestment in project facilities,
 - (b) funding BTOP compliance costs, and
 - (c) paying operating expenses of the project; or
- (2) used to finance the non-federal share of the project.

Program income means gross income earned by the recipient that is either directly generated by a supported activity or earned as a result of the award during the funding period.

GENERAL APPLICATION REQUIREMENTS:

The following application elements **will be publicly displayed** on the applicant database:

- a. The identity of the applicant and general applicant and project information;
- b. An executive summary of the project;
- c. Information regarding the proposed funded service area; and
- d. The federal grant request and cost match.

The following application requirements **will not be publicly available**:

- a. A description of the applicant's nondiscrimination, interconnection, and network management plans;
- b. Details on local community involvement and partnerships with government, community, and community anchor institutions, and involvement of socially and economically disadvantaged small business concerns (SDB) as defined in Section III of this NOFA;
- c. A description of how the applicant will advance the objectives of the Recovery Act, as well as the specific objectives of BTOP;
- d. A description of the proposed service offerings, including the pricing of the services and information on available services in the area;
- e. Technical details of the proposed project;
- f. A timeline for the implementation of the project, including key milestones for implementation of the project, preparations, and risk factors;
- g. Information regarding the organization's capacity and readiness;
- h. Details on the project budget and funding, including the level of need for federal funding, details on other federal funding received by the applicant, and information regarding matching funds;
- i. Pro forma financial analysis related to the sustainability of the project across an eight-year forecast period;
- j. Completion of the Environmental Questionnaire; and
- k. The following supplemental attachments as applicable:
 - i. Historical financial statements and Certified Public Accountant (CPA) audits if applicable;

- ii. Proposed service offerings;
- iii. Competitor data;
- iv. Network diagram and system design;
- v. Maps of the proposed service areas;
- vi. Build out timeline;
- vii. Management team resumes and organization chart;
- viii. List of community anchor institutions;
- ix. Governance and key partnerships;
- x. Pro forma financial projections and subscriber estimates; and
- xi. Authorized Organization Representation and Compliance and Assurance Certification.

APPLICATION REVIEW:

- 1. Must meet general eligibility requirements (eligible entity, completed application, matching funds).
- 2. Applications prioritized (for evaluation processing) based on Comprehensive Community Infrastructure Priorities (1 – 7) above.
- 3. State and Tribal consultation: NTIA will invite each Governor to identify geographic areas within the state for which NTIA should give priority; States may comment on specific BTOP applications; NTIA will invite tribal entities to comment on applications that propose to serve tribal communities.
- 4. Applicants may be asked to submit additional information during due diligence review.

SELECTION PROCESS:

- 1. BTOP Director will present recommended awards to the OTIA Associate Administrator.
- 2. Selection Factors:
 - a. Evaluation Criteria Review score;
 - b. Analysis of NTIA staff;
 - c. Satisfaction of the statutory purposes and BTOP priorities;
 - d. Extent to which the matching funds equal or exceed 30%;
 - e. Geographic distribution of the proposed grant awards;
 - f. Range of technologies employed by the proposed grant awards;
 - g. Avoidance of duplication with other federal programs, including universal service;
 - h. Availability of funds;
 - i. State comments;
 - j. Tribal comments.

SCORING:

Each application will be scored against the following objective criteria, and not against other applications.

CRITERIA	POINTS
1. Project Purpose Fit with Statutory Purpose; Fit with BTOP Priorities (including CCI Priorities); Potential for Job Creation; Recovery Act and Other Governmental Collaboration; Indian Tribes and Socially and Economically Disadvantaged Small Businesses	20
2. Project Benefits Level of Need in the Proposed Funded Service Area Impact on the Proposed Funded Service Area Network Capacity and Performance Affordability of Services Offered Nondiscrimination, Interconnection, and Choice of Provider	20
3. Project Viability Technical Feasibility of the Proposed Project Applicant’s Organizational Capability Level of Community Involvement in the Project	30
4. Project Budget and Sustainability Reasonableness of the Budget Sustainability of the Project Leverage of Outside Resources	30

AWARD TERMS AND CONDITIONS:

Restrictions on Sale/Lease of Project Assets – The sale or lease of any portion of the award-funded broadband facilities or equipment during the life of the facilities or equipment is prohibited, subject to the waiver conditions described below. The sale/lease prohibition is **not** meant to limit awardees from leasing facilities to another service provider for the provision of broadband services, nor is the prohibition meant to restrict a transfer of control of the awardee.

Petition for Waiver – NTIA will consider a petition for waiver of the above restriction if: (a) the transaction is for adequate consideration; (b) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and (c) the transaction would be in the best interests of those served by the project. The petition for waiver may be submitted at any time during the life of the award-funded facilities and equipment, and it must include supporting documentation and justification regarding why the petition should be granted.

Post-Award Reporting Requirements are generally commensurate with the previous First Round NOFA requirements, but include the following specific requirements for Comprehensive Community Infrastructure awardees:

1. The terms of any interconnection agreements entered into during the reporting period;
2. Any traffic exchange relationships (e.g., peering) and terms;
3. Any broadband equipment purchases;
4. The total and peak utilization of access links;
5. The total and peak utilization on interconnection links to other networks;
6. Internet protocol address utilization and IPv6 implementation;
7. Any changes or updates to network management practices;
8. Any average end-user and Middle Mile megabit per second increases;
9. The total market potential for households, businesses, and community anchor institutions in the area served;
10. The number of households and businesses passed, subscribing to broadband service, subscribing to new broadband service, and receiving improved access;
11. The number and type of community anchor institutions passed, subscribing to broadband service, subscribing to new broadband service, and receiving improved access;
12. The advertised and averaged broadband speeds;
13. The number of existing network miles deployed, new network miles deployed, and new network miles leased;
14. For projects with a Middle Mile component, the cost per mile, cost per household, and, if applicable, cost per tower to offer broadband service;
15. For projects with a Last Mile component, the cost per household and cost per subscriber to offer broadband service; and
16. The price of the broadband services.

NEW or REVISED DEFINITIONS:

Community anchor institutions means schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, the unemployed, and the aged.

Comprehensive Community Infrastructure (CCI) project means an infrastructure project that focuses primarily on providing new or substantially upgraded connections to community anchor institutions.

Economically distressed area means an area that has: (i) a per capita income of 80% or less of the national average; and (ii) an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate.

Forecast period means the time period used by NTIA to determine if an application is financially feasible. Financial feasibility of an application is based on **eight-year** projections.

Last Mile means those components of a CCI project that provide broadband service to end-user devices through an intermediate point of aggregation. That is, in most cases, the Last Mile connection goes from the end-user device through an intermediate point of aggregation (*i.e.*, a remote terminal, fiber node, wireless tower, or other equivalent access point) to a primary IP routing entity in a centralized facility (*i.e.*, in the central office, the cable headend, the wireless switching station, or other equivalent centralized facility). The Last Mile also includes equivalent services that, solely because of close proximity between the customer and centralized facility, are routed directly to the centralized facility. The Last Mile will terminate at, and include, the initial customer-facing router or aggregation switch in the centralized facility (*e.g.*, a DSLAM, CMTS, RNC, or equivalent) that is utilized to deliver Last Mile broadband service.

Last Mile service area means the service area of a Last Mile component of a CCI project, composed of one or more contiguous Census block groups or tracts, where the applicant is requesting BTOP funds to provide broadband service to end-user devices through an intermediate point of aggregation and terminating at the initial customer-facing router or aggregation switch in the centralized facility used to deliver the Last Mile broadband service.

Middle Mile means those components of a CCI project that provide broadband service from one or more centralized facilities, (*i.e.*, the central office, the cable headend, the wireless switching station, or other equivalent centralized facility) to an Internet point of presence. The Middle Mile includes, among other things, the centralized facilities and all of the equipment in those facilities, except for any equipment that would qualify as part of a Last Mile component as defined in this NOFA.

Middle Mile service area means the project service area, composed of one or more contiguous Census block groups or tracts, where the applicant is requesting BTOP funds to provide broadband service from one or more centralized facilities, (*i.e.*, the central office, the cable headend, the wireless switching station, or other equivalent centralized facility) to an Internet point of presence.