



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

DECEMBER 20, 2012

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

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

Subject: Extension of the BTOP Award Period through September 30, 2013 for
Merit Network Inc. (NT10BIX5570009)

ISSUE FOR DECISION: Whether Merit Network, Inc. (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 January 2010 for \$33,289,221 to implement an Infrastructure project. The purpose of the award was to develop a fiber network throughout underserved areas. This network will directly connect community anchor institutions (CAI), and enable all service providers to connect more households and businesses. The project is over 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)³ does not mandate a maximum three-year award period for BTOP projects. Rather, NTIA established the three-year award period for BTOP projects in the two BTOP NOFAs⁴ to correspond with the Recovery Act’s requirements

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 Solicitation of Applications, 75 Fed. Reg. 3792 (January 22, 2010) (Second NOFA), available at http://www.ntia.doc.gov/frnotices/2010/FR_BTofNOFA_100115.pdf.

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. The Recipient has experienced significant delays as a result of complex consultations with different stakeholders. For instance the Recipient had to deal with a highly decentralized permitting process, often dealing with understaffed local regulatory bodies, drawing out a process that was expected to take approximately six months into one that took nearly two years. Additionally, the Recipient struggled to complete the required environmental reviews and faced two brutal winter seasons with several severe blizzards. Even with these delaying factors, the Recipient has been able to complete more than two-thirds of its network miles and has connected 53 of their CAIs. Extending the award period would allow the Recipient to build on the substantial progress they have already made by giving them time to complete the remaining 15 miles in their network, connect the remaining four CAIs, and enable all CAIs to access the network. An extension will allow the Recipient to fully operate as a middle-mile network, ensuring connection for other area BTOP and BIP projects, while guaranteeing the greatest return on taxpayer investment.

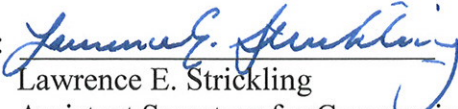
Extending the award project period until September 30, 2013 promotes BTOP's purposes and advances the interests of the Federal government, as defined in the two BTOP NOFAs, by ensuring prudent expenditure of taxpayer funds and the full delivery of the expected benefits to the communities served by the 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.

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.

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.

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

Date: 12/26/12