



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic And Atmospheric Administration
Office of Acquisition and Grants

August 3, 2012

Ms. Suzanne Alstadt
Authorized Organizational Representative
University of Arkansas for Medical Sciences
4301 W. Markham St, #518
Little Rock, AR 72205-7199

Re: Broadband Technology Opportunities Program (BTOP)
Arkansas Healthcare, Higher Education, Public Safety and Research Integrated
Broadband Initiative Project
Grant Award # NT10BIX5570102

Dear Ms. Alstadt,

Upon acceptance of a grant from the Department of Commerce, the University of Arkansas System (UAS) agreed to comply with the requirements specified in the terms and conditions of the award. The National Telecommunications and Information Administration (NTIA) informed the National Oceanic and Atmospheric Administrative (NOAA) Grants Office of serious concerns regarding UAS's compliance with the Environmental Special Award Condition (EA SAC) of the award. Due to the serious nature of these concerns, NTIA has recommended that NOAA place your BTOP award under a temporary stop work order and corrective action plan (CAP) detailed below.

As part of the EA SAC for the BTOP grant award, the UAS was required to complete an environmental analysis in order to show compliance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*) including the completion of required consultations with U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and the Arkansas State Historic Preservation Office (SHPO) under the National Historic Preservation Act (16 U.S.C. § 470 *et seq.*). In May 2011, UAS completed and submitted an Environmental Assessment (EA), to demonstrate compliance with the NEPA and EA SAC, and on June 6, 2011, NTIA issued a Finding of No Significant Impact (FONSI) based on its review and adoption of the final EA that described the proposed action as follows:

- A 900-mile total expansion to the Arkansas Telehealth Oversight and Management (ATOM) network and the Arkansas Research and Education Optical Network (ARE-ON)
- 850 miles of the total 900-mile expansion would be acquired through leases of existing fiber

- 50 miles of new fiber would be installed in buried conduit to complete the 900 mile network, for the purposes of reaching previously unserved communities and 26 Community Anchor Institutions (CAIs) not previously connected to the ATOM or ARE-ON networks
- Approximately 40 miles (80%) of the new fiber mileage would be installed using horizontal directional boring. Approximately 7.5 miles (15%) of the new fiber would be installed using vibratory plowing. Approximately 2.5 miles (5%) of the new fiber would be installed using trenching.
- New construction (ground disturbance and fiber installation) was to take place primarily in previously disturbed Rights of Way (ROW)
- 18 new prefabricated equipment shelters would be installed
- Upgraded equipment/electronics would be installed at 474 CAIs that will connect to the network

In the EA, the UAS informed NTIA that the 850 miles of existing fiber would be leased via Indefeasible Right of Use (IRU) agreements with local internet service providers.

On December 5, 2011, a representative of the U.S. Department of Agriculture's Rural Utility Service (RUS) contacted NTIA with a concern about possible overlap or duplication of federal funds. The RUS call was initiated after RUS received a request from the Mountain View Telephone Company (MVTC) for permission to use RUS loan funds to complete construction of a new fiber segment on behalf of the recipient's BTOP project. This raised additional concerns among NTIA program staff regarding new construction in areas that were understood to be leases of existing fiber via IRU agreements.

Furthermore, in January of 2012, due to concerns over the project's schedule, NTIA instituted a Performance Improvement Plan (PIP) to gather additional information regarding the project's schedule, progress, and ability to be completed within the grant's period of performance. In its PIP Response, dated February 22, 2012, the recipient stated "[t]o accomplish the expansion of the fiber optic network, two methodologies were used: IRU acquisition was utilized to obtain dark intercity fiber, and fiber lateral construction connected the colleges and universities to the intercity fiber. IRU acquisitions were leveraged in three major areas: a fiber route that crosses the northern part of the state (in twelve separate spans), a short route that spans two cities in central Arkansas, and a fiber route that crosses the southern part of the state (in four spans), for a total of 17 separate fiber spans."¹

To supplement these actions and its regular monitoring activities (such as bi-weekly videoconferences and quarterly and annual report reviews), NTIA conducted two site visits to meet with the recipient's staff to review the project's progress and compliance with applicable guidelines. NTIA conducted the first site visit on May 10-12, 2011 and the second site visit conduct on May 8-10, 2012.

During the second site visit, as the recipient presented the status of its ongoing construction efforts, NTIA program staff became concerned with ongoing construction in areas that NTIA

¹ Letter to Anthony Wilhelm, "Performance Improvement Plan Response", p.17, Feb. 22, 2012.

previously understood to be leases of existing dark fiber via IRU. Follow-up discussions after the site visit confirmed that much – if not all – of the fiber characterized as “existing fiber” was in fact new construction undertaken by regional internet service providers with whom the recipient had entered into IRU agreements.² It should be noted that the recipient has indicated that, “All providers of our IRU's have indicated that they had (& have) a business case outside of ARE-ON's needs to justify their building of each route that contains one of our IRUs.”³

At this time, NTIA staff again reviewed the PIP Response, and noted that the recipient indicated that “[a]pproximately 690 miles of intercity IRU fiber have been contracted to augment the approximately 1500 miles of fiber in its existing network. The IRU fibers were acquired according to specific intercity routes for those cities in which the two-year community colleges are located. There are 17 routes overall awarded to four providers. In most cases, the providers must construct new fiber to deliver each route.”⁴

As a result of these concerns, NTIA held a conference call with UAS on July 11, 2012 to discuss three NTIA concerns:

- 1) UAS’s possible violation of the EA SAC, by failing to analyze all project implementation activities and areas in the EA which was relied upon by NTIA to issue the FONSI, specifically the description in the EA of “850 miles of existing fiber” that was to be leased when, in fact, the fiber was yet to be constructed or was still under construction.
- 2) Because the terms of the recipient’s IRU agreements included up-front payments to the vendors, before the facilities had been constructed, NTIA is concerned that this indicates that UAS used Federal-funds for the construction of fiber optic facilities in areas that were not evaluated in the EA and FONSI.
- 3) Whether Mountain View’s request for use of RUS loan funds may indicate that it had no independent business case for the construction of fiber facilities in north-central Arkansas, were it not for the grant-funded project.

During the call, NTIA and UAS also assessed the ongoing construction by the recipient’s IRU vendors and the approximate amount of construction that had been completed to date. The recipient provided an estimate that 60% or more of the construction by IRU vendors was complete. At the conclusion of the call, NTIA notified the recipient that it would recommend that the NOAA Grants Office issue a temporary stop-work order for the project due to the potential failure to comply with the requirements and conditions of its EA SAC.

In order to address the concerns outlined above, and to demonstrate compliance with the terms and conditions of the grant including the EA SAC, the recipient must provide sufficient documentation to address the Corrective Action Plan (CAP) items listed below:

² Following a competitive procurement, the recipient executed IRU agreements with four vendors to lease the necessary project facilities: Cox Communications, Mountain View Telephone Company, Ritter Communications, and South Arkansas Telephone Company (SATCO).

³ Email from Michael D. Abbiatti to Andrew Spurgeon on July 11, 2012

⁴ Performance Improvement Plan Response at page 23.

1.) Description of all construction activities undertaken to date by the recipient's IRU vendors associated with the grant-funded project:

The recipient should provide a detailed description of the project implementation activities that have been undertaken by its IRU vendors up to the current date. The CAP response must include:

- a. Maps of all routes for which Federal funds have been expended to lease network facilities from other owners. These maps should include all applicable fiber, including backbone, lateral, and distribution fibers. The maps should identify the segments that: (i) were completed prior to the completion of the EA and issuance of the FONSI; (ii) began construction prior to completion of the EA and the issuance of the FONSI; and (iii) began construction after completion of the EA and issuance of the FONSI
- b. An update on the total number of linear miles leased for project use
- c. Documentation showing evidence that the IRU vendors had appropriate permits for construction. Of specific interest are any permits required by the U.S. Army Corps of Engineers for construction in, or adjacent to, wetlands.

2.) Describe the IRU procurement and evaluation process:

The recipient should provide a detailed description of its process to acquire the 850 miles of leased dark fiber. The CAP response must include:

- a. A copy of the recipient's Request for Proposal (or other documentation, as appropriate)
- b. The evaluation and scoring methodology used to select the project's vendors
- c. The proposals, including any appendices or attachments, for the winning bids
- d. The resulting IRU agreements executed between the recipient and the winning bidders
- e. A description of the payment terms/milestones entered into by the recipient with each of its vendors. This must include a description of whether Federal funds were released prior to the start of construction of any network segments in areas not reviewed in the EA or referenced in the FONSI
- f. An accounting of all grant funds drawn from the Federal government and paid to these vendors for network leases, to date. If known, this should include the segment and the reason for the payment (e.g., up-front fee, acceptance of construction, acceptance of service, etc.)

3.) IRU Vendor Business Cases

The recipient has indicated that each of its vendors planned to construct facilities in the region, independently of the proposed BTOP network and funding. During the conference call of July 11, 2012, recipient staff used this explanation as the rationale under which it excluded these leased routes from the EA. Given its concerns, NTIA is

seeking further information that would justify this assertion. Specifically, the CAP response should include:

- a. Any available evidence that demonstrates that the IRU vendors planned to *construct network facilities in the region independently of the proposed BTOP network and funding*
- b. If direct evidence is not available, a narrative explaining the recipient's understanding of vendor plans -- and some information on the dates of meetings or communications that lead to that understanding -- should be presented.

4.) *Disclose any unapproved project modifications*

BTOP recipients are required to seek the approval of NTIA and the NOAA grants office for any changes to their planned activities, including the addition or removal of routes, CAIs, Points of Interconnection, or structures. Unless approved, any costs associated with such changes may be disallowed. During the conference call on July 11, 2012, it appeared that there was confusion among recipient staff regarding this requirement. As a result, the CAP response should include:

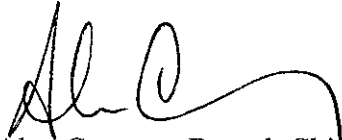
- a. A complete description of any changes that the recipient plans to make or did make to its grant-funded network. In its response, the recipient must clearly distinguish those changes already made without NTIA and NOAA consent and those it would like to make in the future
- b. This description should accompany the standard project modification checklists used by NTIA and provided by your Federal Program Officer. These are the (i) programmatic checklist and (ii) the Environmental and Historic Preservation (EHP) checklist
- c. Appropriate maps must be included, which depict the planned location of project facilities (as approved in the grant) and those modifications made or planned by the recipient

Please provide all necessary information to address these CAP items no later than Friday, August 17, 2012. This temporary stop work order is effective immediately. The recipient must suspend all project implementation activities on this BTOP project, including areas or programs unaffected by the violations described above.

Please be advised that the only allowable costs that the project may incur during the temporary suspension are: (1) costs directly associated with the security of grant-funded property to protect it against loss, damage, or theft; (2) costs directly associated with the response to this CAP; and (3) costs directly related to the management and administration of the grant. The temporary stop work order will remain in place until NOAA and NTIA receive, review and accept the recipient's completed CAP response. Failure to comply or respond to this CAP in a timely or comprehensive manner may result in additional corrective or remedial action.

If you have any questions, please contact your Federal Program Officer, Scott Woods at 202-482-1713 or swoods@ntia.doc.gov. Thank you for your cooperation and assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan Conway', with a long, sweeping underline that extends to the right.

Alan Conway, Branch Chief
NOAA Grants Management Division

cc. Arlene Simpson-Porter, NOAA
Andrea Mack, NOAA
Anthony G. Wilhelm, NTIA
Doug Kinkoph, NTIA
Scott Woods, NTIA
Aimee Meacham, NTIA
Andrew Spurgeon, NTIA
Curtis Lowery, UAS
Debbie Green, UAS