



December 18, 2015

MEMORANDUM FOR: Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration

A handwritten signature in black ink, appearing to be "RB", written over a horizontal line.

FROM: Richard Bachman
Assistant Inspector General for Audit

SUBJECT: *Broadband Technology Opportunities Program Recipients Retaining
Excess Equipment at End of Projects*
Final Memorandum No. OIG-16-012-A

This memorandum reports the results of our audit of the effectiveness of the National Telecommunications and Information Administration's (NTIA's) oversight of the Broadband Technology Opportunities Program (BTOP) comprehensive community infrastructure (CCI) awards. The purpose of our audit was to assess the effectiveness of NTIA's procedures for identifying and disposing of inventories of excess¹ BTOP equipment.

We found that NTIA's processes for identifying and disposing of BTOP-funded excess inventory were inadequate for effectively managing these awards. See "Findings and Recommendations" for further details about the BTOP recipients that we reviewed having (1) \$3.5 million in excess equipment, including equipment outside the needs of the grant projects, and (2) \$600,000 in equipment that was improperly disposed. In "Other Matters," we discuss the untimely closeout of BTOP awards.

Background

NTIA was appropriated \$4.7 billion to establish BTOP as part of the American Recovery and Reinvestment Act of 2009. The act stated that BTOP's purposes include providing and improving access to broadband, more specifically (a) service to consumers residing in unserved and underserved areas of the United States; (b) education, awareness, training, access, equipment, and support to community organizations; and (c) use by public safety agencies.

The majority of BTOP funds went to CCI projects, with NTIA awarding 123 infrastructure grants totaling \$3.5 billion from 2009 to 2010. To help manage the awards, NTIA developed the BroadbandUSA website, which posts general resources including federal regulations pertaining to the grants and fact sheets.² Additionally, the National Oceanic and Atmospheric

¹ Our definition of BTOP excess inventory is when federally purchased equipment remains unused and on hand after the award recipient and the grants office have ensured that project activity is complete and the award recipient has met all the requirements under applicable laws, regulations, Office of Management and Budget (OMB) circulars, and the award terms and conditions.

² NTIA states that the fact sheets were not a substitute for the terms and conditions of specific BTOP awards—and, should the fact sheets and the BTOP award terms differ, the terms and conditions of a specific BTOP award govern.

Administration (NOAA) assists NTIA in administering CCI grants through its grants office and electronic grants management system, Grants Online.

In a prior OIG audit, we identified more than \$3 million in excess equipment for one BTOP recipient.³ In response to that finding, NTIA required the recipient to develop a 2-year deployment plan for future use rather than requiring the sale of the excess equipment. However, this agency response puts NTIA at risk of insufficient control on government spending. This audit further examines the issue of spending: specifically, whether BTOP recipients may have purchased or retained excess equipment outside of the immediate need of the grant project.

Our objectives were to (1) determine whether grantees purchased equipment beyond program needs for commercialization (i.e., whether grantees warehoused equipment), (2) assess NTIA's procedures for identifying recipients maintaining excess inventory, and (3) evaluate NTIA's procedures for the disposition of excess BTOP award inventory, including construction equipment and vehicles. (See appendix A for further details on the objectives, scope, and methodology of this audit; see appendix B for potential monetary benefits to the government in the form of questioned costs.)

Findings and Recommendations

We found that more than half of the recipients we reviewed (i.e., five of nine) had excess equipment, \$3.5 million in total, including equipment outside the needs of completing the grant projects. Also, we found that NTIA's processes for identifying and disposing of BTOP-funded excess inventory were inadequate for effective management of these awards.

Additionally, we identified about \$600,000 that may have been improperly disposed. Finally, during the course of our review, we noted that expired projects were not closed out in a timely manner.

During the course of our audit, we provided NTIA management with interim results of our site visits, providing them an opportunity to work with grant recipients to address the issues noted. As a result, the agency stated that it has implemented additional controls, such as:

- including an additional review of a cross section of recipients for “last minute” purchases as part of their award closeout process;
- updating supplementary guidance for recipients;
- requiring all recipients to develop a deployment plan for undeployed equipment; and
- conducting offsite training for its program officers.

This memorandum reports the following findings:

I. BTOP Recipients Had \$3.5 Million in Excess Equipment

³ U.S. Department of Commerce Office of Inspector General, June 25, 2014. *Excess Equipment, Weaknesses in Inventory Management, and Other Issues in BTOP Infrastructure Projects*, OIG-14-023-A. Washington, DC: DOC OIG.

The Code of Federal Regulations (CFR) places certain requirements on grantees regarding excess equipment.⁴ With respect to BTOP recipients that are institutions of higher education, hospitals, other non-profit organizations, and commercial organizations, equipment that (a) was procured with grant funds, (b) is no longer needed by the grant recipient, and (c) has a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the government. For equipment with a current per-unit fair market value of \$5,000 or more, the recipient may retain the equipment for other uses, provided that it pays compensation to NTIA or the government. If the recipient has no need for the equipment, it must request disposition instructions from the grants officer.⁵ For BTOP recipients that are state agencies, they must follow their state laws and procedures to use, manage, and dispose of equipment acquired under the grant.⁶ However, after grant closeout, NTIA should still account for the amount of excess equipment inventory on-hand and the need or intent for the equipment.

Five of the nine recipients that we reviewed had excess equipment on hand, with a total value of \$3.5 million, even though their projects were completed. Two of the five were from state agencies. Excess equipment included items such as test equipment, fiber optic cables, transceivers, and other telecommunication equipment. For example, one recipient had over \$780,000 in transceivers and transport equipment not in use; another recipient reported having over \$250,000 in excess terminal core cards equipment on hand and not in use.

Because each of the projects reviewed, including the state agencies, was either closed or expired, the recipient had no valid need to retain the excess equipment for the project. Further, our June 2014 BTOP audit report reported that NTIA management agreed that recipients should not have a substantial amount of inventory on hand after the award is closed out. However, rather than being disposed of and having the federal share of the proceeds returned to the federal government, \$3.5 million of equipment was retained by the grantees. Table I (next page) summarizes our results (these amounts appear as potential monetary benefits in appendix B of this memorandum report).

In March 2014, NTIA re-categorized excess equipment as “undeployed equipment on hand at end of projects.” In this memorandum report, we conclude that this re-categorization of equipment does not address the underlying condition—and may lead to potential abuse, by allowing recipients to purchase equipment for future use beyond the needs of the award agreement. By the end of 2014, NTIA included an additional review of last-minute recipient purchases near the end of the project as part of their closeout procedures.

⁴ See 15 C.F.R. §§ 14.34, 24.32 (2013). Although these CFR provisions have been removed and superseded by uniform grant guidance issued by the Office of Management and Budget, it still applies to grants – including BTOP grant awards – awarded before the uniform grant guidance’s effective date.

⁵ See 15 C.F.R. § 14.34 (g) (2013). Local and Indian tribal government entities that are BTOP grantees have similar equipment disposition requirements. See 15 C.F.R. § 24.32(e) (2013).

⁶ See 15 C.F.R. § 24.32(b) (2013).

Table I. BTOP Recipients Surveyed

Recipients	Total Project (Including Match)	Reported On Hand by Recipients ^a	Additional Items Identified During Site Visits ^b	Total
1	\$128,958,031	\$0	\$329,000	\$329,000
2 ^c	\$117,318,786	\$916,800	\$0	\$916,800
3	\$181,853,680	\$442,106	N/A	\$442,106
4 ^c	\$96,382,028	\$1,075,944	\$93,578	\$1,169,522
5 ^c	\$92,907,816	\$0	N/A	\$0
6	\$64,803,350	\$0	N/A	\$0
7	\$48,673,735	\$668,628	\$0	\$668,628
8	\$38,000,000	\$0	N/A	\$0
9 ^c	\$25,033,000	\$0	N/A	\$0
Totals		\$3,103,478	\$422,578	\$3,526,056

Source: OIG questionnaire to BTOP recipients and site visits

^a Each recipient is required to submit an inventory for equipment that exceeds \$5,000 in acquisition costs as part of closeout documentation. During our site visits, we reviewed items of all costs.

^b The OIG did not conduct site visits for recipients, as indicated by “N/A.”

^c BTOP State Recipients.

During our site visits, we found that a recipient purchased two pickup trucks totaling about \$47,800 and, according to the recipient, the trucks are currently being used for both BTOP and non-BTOP funded work. Under BTOP compliance requirements, vehicles purchased should be used in the improvement or construction of the project during the award period and not for future repairs.⁷ After we brought this to the attention of NTIA officials, they concurred that some of the recipients’ vehicle purchases were not proper and took steps to recover the costs.

II. Recipients Improperly Retained Equipment Disposal Proceeds

The CFR, as applied to BTOP grants to non-state government entities, also requires grant recipients to reimburse the federal government for their share of proceeds received on the sale of excess equipment. However, we found an instance of a recipient selling equipment but not appropriately reimbursing NTIA for its share of the costs. After we notified NTIA of this, the agency has taken steps to recover the funds. However, we believe that controls should be strengthened to mitigate future occurrences.

⁷ According to these compliance requirements, activities that are unallowed for BTOP recipients include “[p]urchasing or leasing any vehicle other than those used primarily in construction or system improvements.” OMB, Circular A-133 Compliance Supplement, 4-11.557, March 2014.

According to these federal regulations, a BTOP grant recipient that is an institution of higher education, hospital, other non-profit organization, or commercial organization may retain equipment for other uses that (a) was procured with grant funds, (b) is no longer needed by the grant recipient for the project, and (c) has a current per-unit fair market value of \$5,000 or more, provided that the recipient pays compensation to the government. If the recipient has no need for the equipment, it must request disposition instructions from the grants officer. However, at the time of our review, we found that one recipient received more than \$600,000 from the sale of BTOP-funded equipment without prior government approval or returning a portion of the proceeds to NTIA. This discrepancy was not discovered until an NTIA internal closeout review.

As mentioned earlier in this memorandum, NTIA developed grantee resources including fact sheets for its BroadbandUSA website. In one BTOP fact sheet, NTIA directed recipients to follow federal regulations on the disposition of equipment.⁸ While this resource directs recipients to follow federal regulations when disposing of equipment, it does not provide recipients and program officials with a reference tool containing sufficiently detailed instructions. The Department's *Grants and Cooperative Agreements Manual* states that the program office (NTIA) is responsible for providing recipients with programmatic guidance and technical assistance.⁹ In accordance with this Departmental guidance, NTIA has taken steps to issue more detailed guidance on equipment disposition and recoup the sale proceeds from the recipients.

Other Matters

BTOP Grant Closeouts Were Not Timely

During our review, we noted that expired CCI awards were not closed out within required timeframes. The Department's *Grants and Cooperative Agreements Manual* requires completion of award closeout no later than 180 days subsequent to the end date of the award.¹⁰ As of January 2015, we found that 51 of 75 completed BTOP awards, or 68 percent, took more than the required 180 days to close, including 14 grants taking more than a year to go through closeout. Not closing out projects within the required 180 days of project completion puts the government at risk of (1) leaving remaining funds deobligated for an extended period of time, (2) placing a burden on recipients to maintain records for the extended closeout period, and (3) creating additional workload for grant officials to monitor the awards. NTIA stated that—because of limited resources with the recipients' shift of focus to running and operating the network towards the end of the award—the closing out of awards has been a lengthy process.

⁸ *BTOP Long-Term Treatment of Personal Property Fact Sheet* (March 2014) states “[i]f the equipment is no longer needed, recipients should coordinate disposition of the equipment with the appropriate Grants Office.” See 15 C.F.R. §§ 14.34 (2013), 24.32 (2013).

⁹ DOC, March 1, 2013. *Grants and Cooperative Agreements Manual*. Ch. 4, § H.1. Washington, DC: DOC.

¹⁰ DOC, March 1, 2013. *Grants and Cooperative Agreements Manual*. Ch. 12, § A.4. Washington, DC: DOC.

Recommendations

Since OIG has brought these issues to NTIA's attention, the agency has reviewed purchases made by a cross-section of recipients and initiated steps to disallow some acquisitions made. However, we recommend that the Assistant Secretary for Communications and Information of the NTIA

1. make a determination on the need for the \$3.5 million in excess inventories, including making sure that the state recipients are following their respective state laws and procedures;
2. develop procedures to address how all current and closed out recipients can itemize (in a uniform format) current excess equipment, including the use and purpose of vehicles on hand; and
3. develop additional procedures to aid recipients and program officials responsible for the disposition of excess equipment at end of projects, including methods for determining equipment transfers and values.

On October 6, 2015, OIG received NTIA's response to the draft memorandum report. In the response, NTIA acknowledges certain OIG findings and recommendations and states that it has taken steps to address these concerns. NTIA also stated that it did not agree with certain findings and recommendations and provided reasons in their response. (See "Summary of Agency Response and OIG Comments" for details and appendix C for agency response.)

In accordance with Department Administrative Order 213-3, please submit to us—within 60 calendar days of the date of this memorandum—an action plan that responds to the recommendations in this memorandum report. This final memorandum report will be posted on OIG's website pursuant to section 8M of the Inspector General Act of 1978, as amended.

cc: Douglas Kinkoph, Associate Administrator (Acting), Office of Telecommunications and Information Applications, NTIA
Aimee Meacham, Director, Program Services, BTOP
Milton Brown, Audit Liaison, NTIA

Summary of Agency Response and OIG Comments

In responding to our draft report, NTIA acknowledges certain OIG's findings and recommendations and states that it has taken steps to address these concerns. Below is our evaluation of their response: first we address NTIA's key concerns about our report findings and conclusions, then state our evaluation of NTIA's response to the report recommendations.

Section 1 of NTIA's response: In our draft report, we found instances when grantees maintained excess equipment after the grant was completed. NTIA responded that it believes that it is appropriate for the recipients to maintain the bulk of the equipment identified by OIG, because the retention of a quantity of undeployed equipment and supplies is reasonable and a best practice in the telecommunications industry in order for the recipients to have the ability to quickly repair or replace equipment. As stated in our report, we continue to believe that, at least for the BTOP recipients that are not state entities, this is contrary to federal regulations which state that certain requirements are on grantees regarding excess equipment. More specifically, as discussed in the report, with respect to BTOP recipients that are institutions of higher education, hospitals, other non-profit organizations, and commercial organizations, equipment that (a) was procured with grant funds, (b) is no longer needed by the grant recipient, and (c) has a current per-unit fair market value of more than \$5,000, the recipient may retain the equipment for other uses, provided that it pays compensation to the government. If the recipient has no need for the equipment, it must request disposition instructions from the grants officer. In addition, for all BTOP grantees, maintaining excess equipment for future maintenance or repairs is beyond the scope of the grant agreement, which provides funds for the design and construction of telecommunication systems. Generally, we have found that there are separate competitively bid agreements in place for ongoing maintenance, repair and replacement of equipment in the event of network failures. The BTOP awards were also expected to support sustainable grantee operations, and this equipment could represent NTIA financial assistance beyond that which was originally anticipated at the time of the award. If it believes such equipment maintenance practices should occur, even if commonplace in the telecommunications industry, then NTIA should have explicitly stated this requirement—including the limitations on purchasing reserve equipment—within the original solicitation. We believe that not only would this clearly set the expectations and requirements with the grantees, but such transparency would ensure fair and equitable bids from prospective grantees.

Section 2 of NTIA's response: NTIA's response challenged our use of the term "excess" equipment and has always considered this property to be "undeployed" equipment. NTIA raised the same concern in its response to our June 2014 report. Regardless of which term is used, our report clearly identifies equipment still maintained by the grantees, after the project was completed and the procurement instrument was closed out. For the reasons stated in this report, we continue to believe this practice is improper for non-state entities without reimbursing the federal share.

Section 3 of NTIA's response: In our draft report, we identified about \$800,000 worth of property purchased with BTOP funds and disposed of without prior approval from the agency. NTIA stated in its response that, for \$600,000 of this amount, the sale proceeds were returned to NTIA. Regarding the remaining \$200,000, NTIA stated that this was the

result of an error in the grantee reporting, and that questioned equipment was not purchased with BTOP funds. We agreed and adjusted our report accordingly. Although NTIA considers the \$600,000 also resolved, this action was taken subsequent to our review; thus we could not determine the reasonableness of this action. Our report accurately reflects the condition at the time our work was conducted.

Section 4 of NTIA's response: In our report, we noted that NTIA has not closed out BTOP grants in a timely manner. NTIA responded that its timeline for award closure is well ahead of other federal grant programs—and has closed out a significant number of grants since the completion of our fieldwork. However, as much of this work occurred subsequent to our audit, our report accurately reflects the condition at the time our work was conducted.

NTIA agreed with all the recommendations and considered those recommendations to be implemented. After OIG receives NTIA's action plan, we will evaluate the agency's actions taken in response to the recommendations.

Appendix A. Objectives, Scope, and Methodology

We conducted this audit as part of our continued assessment of NTIA's oversight of BTOP awards. Our purpose was to assess the effectiveness of NTIA's procedures for identifying BTOP award recipients who maintain excess inventory in warehouses, as well as disposing of excess BTOP inventories. Our objectives were to

1. determine whether grantees purchased equipment beyond program needs for commercialization (i.e., whether grantees warehoused equipment);
2. assess NTIA's procedures for identifying recipients maintaining excess inventory; and
3. evaluate NTIA's procedures for disposition of excess BTOP award inventory, including construction equipment and vehicles.

To satisfy these objectives, we reviewed NTIA's compliance with applicable laws, regulations, policies, and procedures, including:

- The American Recovery and Reinvestment Act of 2009;
- *Department of Commerce Grants and Cooperative Agreements Manual*;
- OMB Circular A-133 Compliance Supplement 4-11.557, March 2014;
- *BTOP Recipient Handbook*, February 2012;
- *Draft BTOP Federal Program Officer Handbook: Grant Monitoring Procedures*, February 2012;
- Paperwork Reduction Act of 1995: Public Law 104-13, May 22, 1995;
- *BTOP Long-Term Treatment of Property During and After Closeout Fact Sheet*, January 2014;
- *BTOP Long-Term Treatment of Property During and After Closeout Fact Sheet*, March 2014;
- *BTOP Sale, Lease, Transfer, Disposition, and Mortgage of Infrastructure Project Assets Fact Sheet*, March 2014;
- 15 C.F.R. Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations (removed and reserved, 2014); and
- 15 C.F.R. Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (removed and reserved, 2014)

We reviewed document submissions for 9 of the 116 remaining BTOP grantees. For further review of the results of NTIA's monitoring efforts, we judgmentally selected four recipients for site visits based upon the following selection factors:

- interviews with recipients
- inventory purchased list

- size of the grant award
- extensions received
- grant documents available on Grants Online
- interviews with NTIA and NOAA officials

While on site we (1) reviewed installed and uninstalled inventory, (2) visited warehouses and storage facilities, (3) tracked inventory purchases, (4) examined network design, and (5) observed vehicles and checked for vehicle log books.

To gain an understanding of internal controls and assess how NTIA monitors whether recipients are maintaining excess inventory, we interviewed pertinent staff including NTIA compliance officials, BTOP federal program officers, and grantee financial and program personnel. During these interviews, we discussed the scope of the projects, the objectives of our audit and any other project-related issues.

To assess the reliability of computer-processed data obtained from the various recipients, we directly tested and compared the data with the actual physical inventory of equipment. We determined that the recipient generated computer-processed data regarding inventory lists was adequate for the purposes of this audit.

We performed our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence that provides a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our review from March 2014 through February 2015 under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated April 26, 2013. We performed our fieldwork at NTIA offices in Washington, DC, as well as locations in Illinois, Connecticut, Pennsylvania, and New York.

Appendix B.
Potential Monetary Benefits

	Questioned Costs
Finding I, Table I	\$3,526,056 ^a

^a Includes recipients' matching share.

Appendix C. Agency Response



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

October 6, 2015

David Smith
Acting Inspector General
Office of Inspector General
United States Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Smith:

This letter responds to the Office of Inspector General's (OIG) Draft Memorandum entitled, *Broadband Technology Opportunities Program Recipients Retaining Excess Equipment at End of Projects*, which reports the results of the OIG's audit of the National Telecommunications and Information Administration's (NTIA) oversight of the Broadband Technology Opportunities Program's (BTOP) Comprehensive Community Infrastructure (CCI) awards.¹ Specifically, the OIG assessed the effectiveness of NTIA's procedures for identifying and disposing of what it calls "excess" BTOP equipment and found NTIA's processes inadequate for effectively managing these awards. The draft memorandum recommends several actions for my consideration.

NTIA thanks the OIG for providing the opportunity to comment on the Draft Memorandum. We acknowledge certain of the OIG's findings and recommendations and, as outlined below, we believe that NTIA has taken steps to effectively address these concerns. Additionally, NTIA disagrees with certain OIG findings and recommendations for the reasons detailed in this response. NTIA will continue to provide assistance to further address compliance issues throughout the completion of all BTOP projects and closeout activities.

Findings and Recommendations

NTIA appreciates the OIG's recognition of the extensive oversight that NTIA has performed throughout the BTOP program. As the OIG acknowledges in this Draft Memorandum and in previous audit reports, NTIA has executed a rigorous monitoring and oversight plan for all BTOP grants.² NTIA's regular monitoring activities include multiple reviews of BTOP

¹ The OIG provided NTIA with an initial draft of its memorandum on August 31, 2015. After meeting with NTIA staff on September 15, 2015 to discuss the contents of its Draft Memorandum, the OIG modified some of its findings and recommendations. It submitted a revised version of its Draft Memorandum to NTIA on September 24, 2015.

² In addition to the monitoring and oversight activities the OIG references, including ongoing recipient calls and site visits, NTIA has also implemented a number of additional activities that contribute to its robust monitoring program.

recipients' performance reports and risk assessment analyses to ensure that they adhere to the requirements contained in the Department of Commerce's Uniform Administrative Requirements governing property management and the maintenance of equipment inventories. NTIA has informed all BTOP recipients of their property management obligations, including those related to undeployed assets, and provided ongoing technical assistance throughout their periods of performance.

Additionally, as recipients have entered and completed the closeout phase of their awards, NTIA has provided dozens of webinars and developed substantial guidance material about the closeout process and recipients' ongoing property management requirements—in addition to the numerous other pieces of guidance material that it prepared throughout the BTOP period.³

A. BTOP Recipients Had \$3.6 Million in Excess Equipment

1. Interpretation of Applicable Grant Requirements

The Draft Memorandum reports that five of the nine BTOP recipients the OIG reviewed had undeployed property. The Draft Memorandum further asserts that, because the projects it reviewed were either closed or expired, the “recipient had no valid need to retain the excess equipment.”⁴ NTIA strongly disagrees with this finding.

NTIA has previously communicated to the OIG that it considers it appropriate for BTOP recipients to retain a reasonable quantity of spare equipment and supplies that they can use to repair their networks or to replace components that fail or become damaged.⁵ The OMB cost principles applicable to all BTOP awards require that costs be reasonable, necessary, and allocable.⁶ Retention of a quantity of undeployed equipment and supplies is reasonable and in

Specifically, NTIA staff regularly engages in quarterly desk reviews, and the BTOP Program Services team reviews all recipient audit reports to ensure compliance with federal award requirements. This review is conducted in addition to both the National Oceanic and Atmospheric Administration's (NOAA) Grants Office audit oversight responsibilities and the OIG's former audit-review processes under DAO 213-5.

³ NTIA's public guidance on these subjects has been extensive, including webinars, Fact Sheets, the *BTOP Recipient Handbook*, and the *Closeout Notification Packages*. Compliance material and programmatic guidance is publicly distributed for recipients through the BTOP website and is available at, <http://www2.ntia.doc.gov/ManagementResources>; past training and webinar presentations are available at, <http://www2.ntia.doc.gov/Workshops>.

⁴ Department of Commerce Office of Inspector General, *Broadband Technology Opportunities Program Recipients Retaining Excess Equipment at End of Projects* Draft Memorandum, August 31, 2015.

⁵ NTIA Response, *Excess Equipment, Weakness in Inventory Management, and Other Issues in BTOP Infrastructure Projects*, OIG-14-023-A, June 25, 2014.

⁶ See Office of Management and Budget, Circular A-87, App. A, para C; Circular A-122, App. A, para A; Circular A-21, App A, para C; 48 CFR Subpart 31.2.

fact is a best practice in the telecommunications industry. Networks need to operate at a high level of availability and network operators need to be able to respond as promptly as possible to repair their facilities to minimize outage times and the harm such outages cause to their customers.

Due to the significant time it would take for a network operator to order and obtain new components, it is simply not practicable to wait for outages to place such orders. Thus, undeployed equipment and supplies are necessary to ensure reliability, functionality, and sustainability. Without the ability to quickly repair or replace equipment, network users will suffer from prolonged network outages and the BTOP-funded networks would likely lose customers as they fail to deliver the benefits promised under their awards. These potential risks are particularly concerning when taking into account the numerous governmental and public safety entities relying upon BTOP-funded networks.

The majority of users on BTOP-funded networks are Community Anchor Institutions (CAIs) located in regions typically underserved by broadband providers. These CAIs include hospitals, schools, libraries, city halls, police departments, and fire stations. As such, when the network goes down, numerous users are impacted as services to these customers are severely degraded. Allowing BTOP recipients to maintain a starting inventory of undeployed equipment and supplies will help them transition into the operational phase of their taxpayer-funded projects and ensure the sustainability of their networks. Finally, the undeployed property is allocable to the award because they are to be used within the scope of the project and for the purpose of delivering the benefits of the award-funded networks.

Permitting BTOP recipients to keep this property is also in accordance with the Department's Uniform Administrative Requirements. First, the OIG's Draft Memorandum only cites to Part 14 of the Department's equipment regulations and omits reference to Part 24, which is applicable to states and local governments. Four of the awards that the OIG reviewed during its audit are not subject to the Part 14 equipment requirements; rather, they are covered by the Part 24 requirements because they are state entities. Part 24 specifically notes that states must use, manage, and dispose of grant-funded equipment in accordance with each state's own laws and procedures. Further, states must use grant-funded equipment for as long as it is needed.⁷

Moreover, even for awards covered by Part 14, the equipment management requirements clearly state that an entity must dispose of grant-funded property only when it is no longer needed.⁸ The OIG acknowledges this requirement in its Draft Memorandum. The rules do not define when the property is no longer needed. For the BTOP grants that the OIG reviewed, the recipients still need the property to maintain network resiliency or expand network operations consistent with the recipient's BTOP award. Because the Department's rules do not define when equipment is

⁷ See 15 C.F.R. § 24.32(b)-(c). The BTOP Infrastructure Special Award Conditions still require state entities to request approval for disposition, but the process for eventual disposition is governed by state requirements.

⁸ See 15 C.F.R. § 14.34(g).

no longer needed and the recipients subject to the OIG's review have a legitimate need for the equipment in question, NTIA firmly believes that it is appropriate for the recipients to maintain the bulk of the identified equipment.⁹ NTIA further believes that the safeguards and monitoring plans it has put in place for the limited number of recipients impacted by this effort sufficiently protect taxpayer resources.

2. Specific Issues Identified by the OIG's Draft Memorandum

NTIA continues to disagree with the OIG's classification of "excess equipment."¹⁰ Further, contrary to the OIG's assertion, NTIA has not re-categorized "excess" equipment as undeployed equipment. NTIA has always considered this property to be undeployed equipment and explained the reasoning supporting its position in its May 20, 2014 response to the OIG's March 24, 2014 draft audit report.¹¹ As discussed, all of the property that the OIG identifies in its Draft Memorandum meets a defined network resiliency need.

The bucket truck that the OIG identifies in its Draft Memorandum was not reimbursed by the BTOP award. The OIG obtained this information during its audit review before NTIA discovered it through its standard monitoring practices because the recipient in question had not sufficiently advanced through its closeout process and NTIA had yet to receive drafts of the recipient's SF-428 Tangible Personal Property Report (SF-428).¹² When NTIA learned that this recipient had purchased the property in question, NTIA worked with the recipient to review the purchase. The recipient then determined that the bucket truck was not paid for with BTOP

⁹ As discussed below, NTIA has worked to address specific disposition issues with recipients.

¹⁰ The revised version of the Draft Memorandum included the OIG's own description of BTOP excess inventory, characterizing it as occurring "when federally purchased equipment remains unused and on hand after the award recipient and the grants office have ensured that project activity is complete and the award recipient has met all the requirements under applicable laws, regulations, Office of Management and Budget (OMB) circulars, and the award terms and conditions." Revised Draft Memorandum at fn. 1.

¹¹ See Letter dated May 20, 2014 from Lawrence E. Strickling, Assistant Secretary for Communications and Information, to the Honorable Todd J. Zinser, Inspector General. The OIG also did not take steps to identify excess equipment until this Draft Memorandum, where the OIG has settled on a definition that has no link to the factual circumstances of BTOP awards. See OIG, Draft Memorandum *Broadband Technology Opportunities Program Recipients Retaining Excess Equipment at End of Projects*, Fn. 1, August 31, 2015; see also NTIA Response, *Excess Equipment, Weakness in Inventory Management, and Other Issues in BTOP Infrastructure Projects*, OIG-14-023-A, June 25, 2014.

¹² While BTOP recipients are required to complete an inventory of all BTOP-funded assets, the Department's grant regulations do not require them to submit these inventory lists to the Department. See 15 C.F.R. §§ 14.34, 24.32. Consequently, NTIA only receives complete information about BTOP recipients' property purchases through the submission of their SF-428 reports. Relying on recipients' submissions of their SF-428 reports permits NTIA to avoid violating the Paperwork Reduction Act (PRA) because the SF-428 form is a standardized form that has previously received PRA clearance from OMB.

funds, and it took steps to remove the cost of the bucket truck from its financial and property documentation.

3. Allegations of Improperly Retained Equipment Disposal Proceeds

The OIG's Draft Memorandum identifies a total of approximately \$800,000 worth of property purchased with BTOP funds and disposed of without prior approval from NTIA and the Grants Office. The OIG specifically refers to equipment purchased by two BTOP recipients, one of which was not identified in the OIG's audit sample. NTIA discovered one of these through its standard grant oversight practices but appreciates that the OIG shared its initial discovery on the other.

In the first instance, the OIG identifies \$600,000 in BTOP-funded property that was improperly sold while NTIA worked with the recipient to close out its award. NTIA closely examines recipients' UCC-1 filings and equipment lists as part of its closeout review to ensure their accuracy. NTIA discovered that the recipient's previous grant manager had sold certain equipment that it no longer needed to a third party and had initially used those funds for other grant purposes. The recipient had not understood that it could not add such funds to its award, so NTIA worked closely with the NOAA Grants Office to resolve this issue. Again, NTIA identified the property in question independent of any OIG action. Further, NTIA took steps to ensure that the federal share of the sale was properly accounted for and returned to NTIA. NTIA considers this issue resolved.

In the second instance, the OIG identifies approximately \$200,000 worth of equipment that it asserts was improperly transferred. NTIA appreciates that the OIG brought this to NTIA's attention so that it could resolve the issue quickly. After further review, however, NTIA learned that the recipient determined that it did not use BTOP funds to pay for this equipment. NTIA worked with the NOAA Grants Office to address this issue and permitted the recipient to revise its general ledger statements to correct this reporting error. NTIA informed the OIG of this issue and the recipient resolved the discrepancy nearly a year before the OIG issued this Draft Memorandum. Accordingly, NTIA considers this issue resolved.

4. BTOP Grant Closeouts Were Not Timely

The Draft Memorandum notes that during its audit review, the OIG found a number of awards that had not yet completed the closeout process. NTIA does not dispute that the rate of award closeouts has not met NTIA's expectations. However, given the complexity of closing out awards in the BTOP portfolio, particularly the BTOP infrastructure awards, certain delays have been reasonable and unavoidable.

Recipients of BTOP broadband infrastructure awards have experienced substantial challenges completing their property management documentation as part of closeout. Given the importance of this documentation to monitor BTOP-funded property, NTIA has permitted recipients to

request extensions of the closeout period.¹³ Throughout the closeout period, however, NTIA has continued its oversight of BTOP grantees, including providing significant technical assistance, conducting hundreds of conversations with recipients, and holding 26 webinars focused specifically on closeout. While the complexities of closing out these projects have required extensions in certain cases, the recipients have always requested these extensions and they have never been prompted by NTIA processing delays. NTIA has made significant progress towards closing out BTOP projects. For instance, to date NTIA has closed 200 awards with only 14 projects remaining in closeout.¹⁴

Even factoring in the delays associated with effectively protecting the federal interest in BTOP-funded property, NTIA has closed out BTOP awards with relative efficiency. NTIA's timeline for award closure is well ahead of other federal grant programs, which can occasionally take decades to close out awards.¹⁵ Further, NTIA anticipates that nearly all will be closed out well before the end of Fiscal Year 2016.

NTIA Response to the Draft Memorandum's Recommendations

1. *Make a determination on the allowability of the \$3.6 million in excess inventories*

NTIA agrees with this recommendation, as implemented. NTIA has already made a determination on the allowability of BTOP-funded equipment as part of its established procedures for reviewing BTOP recipients' budgets and equipment acquisitions.¹⁶ As discussed above, NTIA believes that the overwhelming majority of this property has a discrete and defined purpose consistent with the respective award and has reviewed the allowability of these costs using appropriate grant standards.¹⁷

2. *Develop procedures to ensure that award recipients are utilizing BTOP-funded purchases for BTOP-funded purposes*

¹³ Closeout period extensions are specifically contemplated by the Department's Rules, and are a recognized procedure for dealing with complex award closeouts. See 15 C.F.R. §§ 14.71, 24.50

¹⁴ This count does not include nine projects that were active as of September 18, 2015. Four of these projects will continue until December 31, 2015 and five will enter closeout on September 30, 2015.

¹⁵ See Government Accountability Office, *Improving the Timeliness of Grant Closeouts by Federal Agencies and Other Grants Management Challenges* July 25, 2012.

¹⁶ NTIA typically reviews recipients' budgets and property acquisitions to determine compliance with the applicable Office of Management and Budget (OMB) cost principles, but the appropriate Grants Office will make the ultimate determinations on the allowability of particular costs. See e.g., 15 C.F.R. § 14.2.

¹⁷ NTIA notes that the OIG reviewed projects totaling up to \$793,930,426 and identified just \$3,636,413 in questioned property costs. The questioned amount represents just 0.46 percent of the grant funds that the BTOP recipients included in the OIG's sample expended.

NTIA agrees with this recommendation, as implemented. As the OIG is aware, BTOP is a one-time, limited-term grant program. NTIA is committed to safeguarding the federal interest and protecting the public investment in BTOP-funded property. NTIA believes that it already has sufficient procedures in place to account for property that recipients no longer need to fulfill the purposes of their BTOP awards. In fact, NTIA recently updated its guidance regarding the sale or lease of BTOP-funded property.¹⁸ NTIA will continue to provide ongoing technical assistance regarding property management requirements, review updated Uniform Commercial Code documentation, and take action to recover the federal share of BTOP-funded property when NTIA discovers violations of BTOP award terms and conditions. Thus, NTIA has already addressed this OIG recommendation.

3. *Develop procedures to address how all current and closed-out recipients can itemize (in a uniform format) current excess equipment, including the use and purpose of vehicles on hand*

NTIA agrees with this recommendation, as implemented. As discussed above, NTIA developed a process to handle undeployed property and received the OIG's input regarding this process. However, that process only applies to those entities that NTIA identified as having significant undeployed property. NTIA made this determination based on its independent review of recipient SF-428 submissions during the closeout process. Because only a small number of BTOP recipients will be impacted, NTIA can implement its process without undergoing the lengthy Paperwork Reduction Act (PRA) document approval process. Implementing a policy requiring the collection and submission of data that applied to all BTOP awards, even though the vast majority of them do not have undeployed property, would violate the PRA and further burden BTOP recipients after many of them have already had their awards officially closed.

4. *Develop additional procedures to aid recipients and program officials responsible for the disposition of excess equipment at end of projects, including methods for determining equipment transfers and values*

NTIA agrees with this recommendation, as implemented. NTIA has already taken steps to address this recommendation. NTIA developed the Ongoing Post-Closeout Responsibility Fact Sheet in February 2015 and NTIA has incorporated additional property management guidance into its closeout webinars since late 2014. Additionally, NTIA has developed several pieces of internal guidance to assist Federal Program Officers with these matters.

¹⁸ See Fact Sheet, "BTOP: Sale, Lease, Transfer, Disposition, and Mortgage of Infrastructure Project Assets" (Apr. 15, 2015) available at http://www2.ntia.doc.gov/files/btop_sale-of-assets_factsheet_2015-4-15.pdf.

If you have any questions or concerns about this response to the Draft Memorandum, please contact Milton Brown, NTIA's Liaison to the OIG, at (202) 482-1853.

Sincerely,



Lawrence E. Strickling

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