

When Recorded Return to:
Sawtooth Technologies, LLC.
P. O. Box 857
50 SE Cascade Avenue
Stevenson, WA 98648

UTILITY EASEMENT

This Utility Easement Agreement ("Easement") is made and effective this 22 day of May, 2012 by and between CHINIDERE, LLC, a Washington limited liability company ("Grantor") and SAWTOOTH TECHNOLOGIES, LLC, Washington Limited Liability Company, ("Grantee").

RECITALS:

- A. Grantor is the owner of the real property located in Skamania County, Washington, which is legally described on Exhibit "A", attached hereto and made a part hereof (Tax ID No. 037536300) ("Property").
50000
- B. Grantee is a provider of telecommunications services in the City of Stevenson, Skamania County, Washington.
- C. Grantee desires to locate, install, maintain, access, and remove certain fiber optic lines and related equipment and appurtenances described below (the "Facilities") underneath a certain portion of the Property, approximately FIVE (5) feet in width and approximately Two Hundred Sixty Six (266) feet in length across the southern edge of the Property and within a ten (10) foot portion of the Property allocated for pedestrian use, which access area is illustrated on the map(s) attached as Exhibit "B" and incorporated herein by reference ("Easement Area").
- D. Grantor and Grantee desire to establish their respective rights to locate and access the Easement Area and establish other rights and obligations as provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, and other good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed upon by the parties as follows:

- 1. Recitals. The Recitals set forth above are hereby incorporated as material terms of this Easement.
- 2. Grant of Easement. Grantor hereby grants and conveys unto Grantee, and its successors, assigns, licensees and agents, a perpetual non-exclusive easement under and across the Easement Area as needed to construct, use, maintain, operate, upgrade, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time, at Grantee's own expense, the Facilities. The Facilities must be constructed within 15 feet of the buried Skamania County PUD utility lines or any other utility poles, markers or lines existing or to be installed within the Easement Area. Grantor further conveys to Grantee the right of ingress and egress to and from

the Easement Area during periods of surveying, construction, maintenance, installation, repair, modification, maintenance and removal of the Facilities, provided that, upon completion of installation of all Facilities required to serve the Property, the easement herein granted shall become limited to the actual locations of the Facilities as installed with reasonable rights of ingress and egress for the purposes above stated. Grantee acknowledges and agrees that the Easement Area does not include any portion of the Property which is developed or platted, or is planned to be developed or platted into subdivision lots. Grantor and Grantee agree that the map(s) attached as Exhibit B hereto shall be replaced, and the Easement re-recorded, when a map more precisely depicting the location of the Facilities is available. This Easement is subject to all exceptions, reservations, restrictions, estates, leases, limitations and encumbrances, whether or record or not, which affect the Property. For purposes of this Easement, the Facilities may include the following:

(1) Buried fiber optic cable line inside a ²~~1.25~~-inch diameter conduit running east/west and for approximately 266 feet along the Easement Area for broadband internet access and necessary appurtenant telecommunications structures; and

(2) Buried utility vault and makers to be located along the Southwest corner of the Easement Area.

3. **Purpose of Easement.** The Easement Area may be utilized for those purposes referenced in the preceding section. Nothing shall be constructed, placed or maintained in the Easement Area that would unreasonably interfere with the uses and purpose described herein. All utilities and Facilities placed within the Easement Area shall be underground.

4. **Use of Easement Area.** Notwithstanding Sections 2 and 3 above, the Easement Area may be used for the placement of (a) other utilities to serve the Property, (b) pedestrian walkways, sidewalks, paths and related improvements. In addition, the Grantor may use the Easement Area for any purpose which is consistent with the rights and privileges granted to Grantee herein. Grantee agrees to use the Easement Area in a manner that minimizes the impact on pedestrian use of the same area.

5. **Maintenance.** Grantee agrees to return any ground disturbed by its construction, installation, repair, maintenance, removal or other work to as good or better condition than existed prior to the same, and will not cause any unnecessary damage or commit any waste upon the Property. Grantee and its successors and assigns shall be solely responsible for any required repairs and maintenance on the Easement Area except for repairs and maintenance required by Grantor's activities on the Easement Area. Grantor is under no obligation whatsoever to maintain, in any particular state or condition, the Easement or Easement Area.

6. **Duration of Easement.** This Easement shall be perpetual in duration and shall run with the land, provided that the Easement shall terminate upon Grantee's or its successors or assigns abandonment of the Facilities. The rights, conditions and provisions of this Easement shall run with the land and shall inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns. It is the intent of Grantor that this Easement shall not delay, deter or prevent future subdivision development of any of Grantor's property. Therefore, Grantor specifically reserves the right to relocate the Easement in the event Grantor determines, in its sole discretion, that there is need to do so. The Grantor, its executors, agents, assigns and successors in interest agree and covenant to be solely responsible for any costs related to its relocation(s) of the Facilities required for any reason.

7. **Indemnity.** Grantee agrees to indemnify, defend and hold the Grantor and its officers, agents, representatives, employees and contractors harmless from and against any and all claims, demands, losses, damages, fines, penalties, assessments, expenses and liabilities (including reasonable attorneys fees and costs at trial and on appeal) (collectively, "Claims") (i) arising or resulting from or in any manner connected with the exercise by Grantee, its officers, directors, employees, invitees, agents, assignees or representatives, of the rights and privileges herein granted, (ii) arising from or as a result of any failure by Grantee to perform its obligations, the covenants or any other term or condition contained herein, any failure to perform Grantee's obligations under the Federal

Covenant referenced in Section 8 below, or claim by the federal government with respect to the Federal Covenant, or (iii) arising under any applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and local governments, including, but not limited to, those laws, ordinances, orders, rules, regulations and requirements relating to the environment, except to the extent that any of the foregoing results from the negligence of Grantor or was a pre-existing condition or condition caused entirely by third parties. Grantee specifically and expressly waives its immunity under Industrial Insurance (Title 51 RCW as amended and under any substitute or replacement statute) to the extent it is required to indemnify, defend, and hold harmless the Grantor and its agents or employees. Further, the indemnification obligation under this Easement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts (including, but not limited to, the Washington State Industrial Insurance Act and the Federal Employee's Liability Act), disability benefits acts or other employee benefits acts.

8. **Federal Interest Provisions.** Grantee will be using funds under a Federal Grant under the Broadband Technology Opportunities Program ("BTOP") to finance construction of broadband facilities and equipment to be located within the Easement Area. Pursuant to BTOP, Grantee holds its interest in the Easement and the Facilities located on the Easement Area as trustee for the Federal Agency administering that program, specifically, the National Telecommunications and Information Administration ("NTIA"). BTOP further requires participants in that program to file a Covenant of Purpose, Use and Ownership (the "Federal Covenant") with the County Auditor where the property is located. The Federal Covenant requires that the Grantee's interest in the Easement or in the broadband facilities or equipment located on or in the property that is subject to the Easement not be sold during the useful life of those items without the prior consent of NTIA. Nothing in this Section will restrict Grantor's right to sell the Property at any time without NTIA approval. In light of the foregoing, the Grantor agrees as follows:

- (a) Grantee may file a Federal Covenant with respect to its rights hereunder, as required by the BTOP program, in substantially the same form as the covenant attached in Exhibit C and made a part hereof; and
- (b) Grantee may assign its interest in the Easement to NTIA if required to do so under the rules and regulations of BTOP.

9. **Attorney Fees.** If suit or action is instituted to declare or enforce any provision of this Easement, the prevailing party shall be entitled to recover reasonable attorney fees from the losing party at arbitration, as well as in the trial and all appellate courts, in addition to any other recovery, expenses and costs. The attorney fee award shall include a reasonable amount in connection with enforcement of the judgment.

10. **Waiver.** The failure by either party at any time to require strict performance of any provision of this Easement shall not be a waiver of or prejudice the right to subsequently enforce that provision or any other provision of this Easement.

11. **Entire Agreement.** This Easement is the final and complete agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in this Easement. All prior and contemporaneous negotiations and agreements between the parties, verbal and written, are replaced by this Easement and are of no further force or effect. This Easement shall inure to the benefit of and be binding upon the successors and assigns of Grantor and Grantee.

In witness hereof, Grantor and Grantee have executed the foregoing Utility Easement this 22 day of May, 2012.

GRANTOR:
CHINIDERE, LLC

By: Catherine A. Sawyer
Catherine A. Sawyer
Title: Manager/Member

GRANTEE:
SAWTOOTH TECHNOLOGIES, LLC

By: _____
Printed Name: _____
Title: _____

[Notary Acknowledgements on following page.]

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In witness hereof, Grantor and Grantee have executed the foregoing Utility Easement this 22 day of May, 2012.

GRANTOR:
CHINIDERE, LLC

By: Catherine A. Sawyer
Catherine A. Sawyer
Title: Manager/Member

GRANTEE:
SAWTOOTH TECHNOLOGIES, LLC

By: Ruben Adams
Printed Name: Ruben Adams
Title: MANAGER

[Notary Acknowledgements on following page.]

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Exhibit A
Legal Description

A Tract of land in the Southwest quarter of Section 36, Township 3 North, Range 7 ½ East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Lot 2 of the Feliz Short Plat recorded in Auditor File No. 2008170088, Skamania County Records.

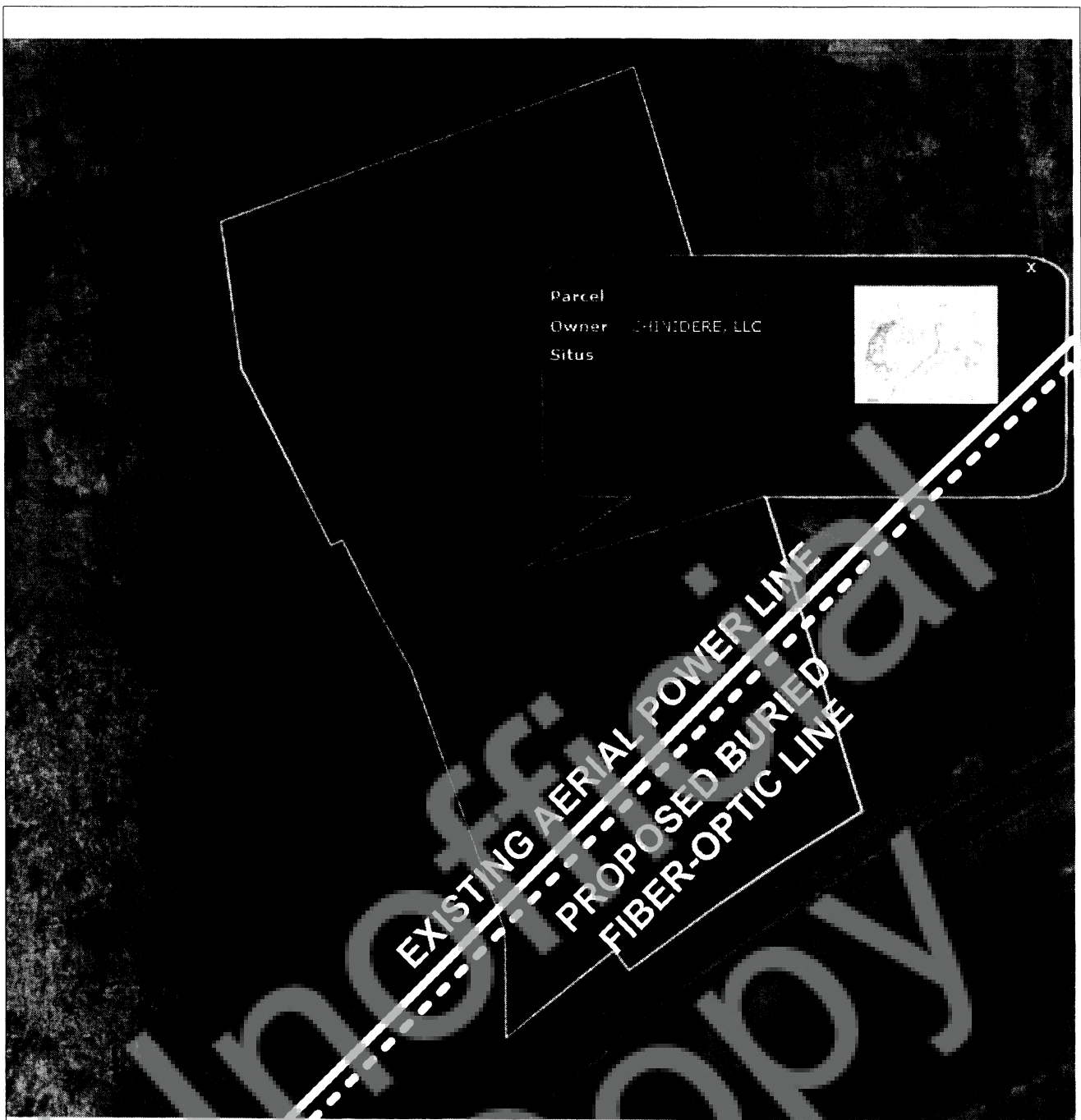
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**Exhibit B
Easement Area**

See attached.

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Exhibit B



Sawtooth Technologies easement for fiber-optic line

Parcel Number: 03753630050000

Map Number: U-R1-R3

Legal: LOT 2 OF THE FELIZ S/P #2008-170088~

Exhibit C
Covenant of Purpose, Use and Ownership

See attached

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EXHIBIT C

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this 22 day of May, 2012 by and between SAWTOOTH TECHNOLOGIES, LLC. (hereinafter with its successors and assigns called "Recipient"); and the National Telecommunications and Information Administration ("NTIA") through the [National Oceanographic and Atmospheric Administration ("NOAA")] [National Institute of Standards and Technology ("NIST")], in its capacity as the BTOP Grants Office, UNITED STATES OF AMERICA, whose address is 1401 CONSTITUTION AVE, NW (hereinafter with successors and assigns called ["NOAA"/"NIST"]): WASHINGTON, DC 20230

RECITALS

WHEREAS, Northwest Open Access Network, a Washington non-profit mutual corporation ("Applicant") submitted an application to NTIA for financial assistance under the Broadband Technology Opportunities Program ("BTOP"), pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009) (hereinafter the "Act"); and

WHEREAS, by offer of Award, dated 2/28/2010, NTIA offered to Applicant a financial assistance award designated as Award No. NT10BIX5570047 (the "Award") in the amount of \$ 84,347,997 (hereinafter called "Award Amount") to assist in financing the construction of "middle mile" fiber optic infrastructure in unserved and underserved areas of Washington State, and to perform related activities, all as set forth in the Award (hereinafter called "Project"); and

WHEREAS, Recipient is the Applicant or a first tier recipient, that is, one of the parties who will be receiving portions of the Award; and

WHEREAS, during the period of the Award, to execute such Project, Recipient has acquired or improved real property using Award funds or the Recipient or a third party has contributed real property to the Project a portion of which is described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements thereto called the "Property"); and

WHEREAS, Applicant accepted the Award by signing Form CD-450 (together with all documents attached thereto or incorporated therein, the "Award Agreement") issued in connection with the above-referenced Award Number, thereby binding itself and making itself subject to the terms and conditions contained in the Award Agreement including, without limitation, the applicable requirements of 15 C.F.R. Parts 14 or 24, as applicable, and the terms of the Notice of Funding Availability, 74 Fed. Reg. 33104 (Jul. 9, 2009); Recipient hereby ratifies that acceptance on its own behalf to the extent it receives portions of the Award; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient holds title to the Property in trust for the

public purposes of the Project, and may not sell, lease, transfer, convey, hypothecate, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), without the approval of NTIA, such alienation and use being prohibited by 15 C.F.R. Parts 14 or 24, as applicable; and

WHEREAS, NTIA is not authorized to grant such approval unless NTIA is repaid its share of the current fair market value of the Property, as set forth below;

WHEREAS, Recipient as owner of all or part of the Property, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property in the jurisdiction where the Property is located so as to constitute notice to all persons of the restrictions contained herein on title to and use of the Property for the benefit of the public purposes of the Project; and

WHEREAS, the SKAMANIA COUNTY AUDITOR'S OFFICE
located at 240 NW VANCOUVER AVE, PO BOX 790, STEVENSON, WA
is the proper office to record this covenant: 98648

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by NTIA, and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both NTIA and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of each element of the Property, as determined by the BTOP Schedule of the Useful Life of Property, is set forth in Exhibit B hereto.

2. Recipient agrees that for the useful life set forth above, Recipient will not lease, sell, transfer, convey, hypothecate, mortgage, or otherwise alienate any interest in the Property, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the [NTIA] Grants Officer, or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to NTIA the Federal Interest in the Property. The Federal Interest is that percentage of the current fair market value of the Property attributable to the NTIA participation in the Project. NTIA's percentage participation in the Project is hereby agreed to be 70% (XX%) percent. After the end of the useful life of an item, then Recipient may sell the item (or the Property if the useful life of all elements of the Property) has expired, then this restriction will no longer apply and Recipient will not be required to pay any portion of the fair market value of the property to NTIA.

3. Recipient further covenants that, except as provided in Section 2 above, in the event NTIA permits the Property to be used for purposes other than the Project Purposes, or if the Property is sold, leased, transferred, conveyed, hypothecated, mortgaged, or otherwise alienated, Recipient will compensate the Federal Government for the Federal Interest in the Property.

4. Recipient further agrees that, as a prerequisite to [or condition of – if the funds are disbursed before recordation] accepting the disbursement of any portion of the Award Amount, Recipient shall provide NTIA with evidence that it has executed and placed on record against the Property, this Covenant of Purpose, Use and Ownership. Recipient further agrees that until the end of the useful life of the Property as set forth on Exhibit A, whenever the property is sold, leased, or otherwise conveyed pursuant to 15 C.F.R. Parts 14 or 24, as applicable, if Federal Government has not been fully compensated for the Federal Interest in the Property, Recipient or the transferor shall add to the document conveying such interest a statement that title is transferred subject to this Covenant of Purpose, Use and Ownership. NTIA will in its sole discretion determine whether the Covenant is satisfactory.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the Federal Interest expressed herein.

6. This covenant shall run with the land until the Federal Interest is discharged.

IN WITNESS WHEREOF, the recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to [operating unit]. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction.)

Recipient: SANITDOTH TECHNOLOGIES

By: [Signature]

Title: MANAGER

ATTEST:

By: _____

Title: _____

Exhibit A (Legal Description of the Property)

Exhibit B (BTOP Schedule of the Useful Life of Property)

Exhibit A
Legal Description

Recipient's grantee interest in a portion of the property described below as set forth in the Utility Easement dated ~~March 22, 2012~~, 2012 between Chinidere, LLC, a Washington limited liability company as Grantor and Recipient as Grantee and recorded on _____, 2012 as Document # _____ in the real property records of Skamania County, Washington:

A Tract of land in the Southwest quarter of Section 36, Township 3 North, Range 7 ½ East of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Lot 2 of the Feliz Short Plat recorded in Auditor File No. 2008170088, Skamania County Records.

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Exhibit B
BTOP Schedule of the Useful Life of Property

[To be inserted]

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BROADBANDUSA
CONNECTING AMERICA'S COMMUNITIES

FACT SHEET
Broadband Technology Opportunities Program
Useful Life Schedule

Category	Type	Estimated Useful life
Buildings	■ Construction of new buildings, prefabricated buildings, or concrete pads	■ 20 years
	■ Modification, rehabilitation, or outfitting of existing buildings	■ 15 years
Outside Plant	■ Aerial coaxial plant, aerial copper plant, aerial fiber plant, buried copper plant, buried coaxial plant, buried fiber plant, underground plant, taps, amplifiers, drops, NIDs, etc.	■ 20 years
Towers and Poles	■ Construction of new towers or poles or modifications of existing towers or poles	■ 20 years
	■ Emergency power generation equipment at tower site	■ 10 years
Network and Access Equipment	■ Broadband switching equipment, broadband routing equipment, broadband transport equipment, network broadband access equipment (e.g., CMTSs, DSLAMs, Radio Network Controllers, etc.), wireless base stations, antennas, emergency power supply equipment	■ 10 years
Operating Equipment	■ Billing/Operations systems	■ 10 years
	■ Office furniture and fixtures	■ 10 years
	■ Work equipment and vehicles	■ Five years for non-construction related motor vehicles; 10 years for work-related motor vehicles
Customer Premise Equipment	■ Customer broadband access equipment (e.g., cable modems, DSL modems, wireless modems, etc.), general purpose computers and peripheral equipment, office machinery	■ Five years

