



July 11, 2019

Ms. Kelsey Guyselman  
Executive Office of the President  
Office of Science and Technology Policy  
1650 Pennsylvania Avenue, NW  
Washington, DC 20504

Dear Ms. Guyselman:

Federal agencies charge cost recovery fees to recover the costs of processing applications and monitoring compliance with authorizations for communications use rights-of-way as well as rental fees based on fair market value for the use of federal property for communications uses, including broadband. The Streamlining Federal Permitting Work Stream of the American Broadband Initiative (ABI) is charged with ensuring cost recovery and rental fee transparency and consistency as part of the efforts to harmonize and streamline federal regulations and policies governing broadband uses (Streamlining Federal Permitting Milestone 3), with the overarching goal of promoting broadband deployment on federal lands.

Member Departments and Agencies agree that fully completing this milestone remains challenging. Most member Departments and Agencies already meet the transparency objective by publishing their cost recovery and rental fee regulations in the Code of Federal Regulations and/or posting their cost recovery and rental fee policies and schedules on their websites. Opportunities to further harmonize cost recovery and rental fees are constrained in some cases by variations in Department and Agency governing statutes, regulations, and policies.

Removing discrepancies in statutory authorities for communications use cost recovery and rental fees would require legislative change. Proposals for changes governing communications use cost recovery and rental fees would require Department and Agency coordination and leadership support to implement. When Departments are implementing the same statutory standard, it is important to coordinate rulemaking revisions for legal and programmatic sufficiency,

The Streamlining Federal Permitting Work Stream discussed the issue with the Executive Office of the President (EOP)'s Office of Science and Technology Policy (OSTP) and resolved to develop problem statements to detail the challenges currently faced by Departments and Agencies in reaching this milestone. The following Departments and Agencies have prepared problem statements summarizing their authorities and policies governing communications use cost recovery and rental fees, including recommendations for improvements in streamlining, consistency, and legal sufficiency:

- U.S. Department of Agriculture (USDA)
  - [United States Forest Service \(FS\)](#)
- U.S. Department of Defense (DOD)
  - [U.S. Department of the Navy \(DON\)](#)
- [General Services Administration \(GSA\)](#)
- U.S. Department of the Interior (DOI)
  - [Bureau of Land Management \(BLM\)](#)
  - [Bureau of Reclamation \(Reclamation\)](#)
  - [U.S. Fish and Wildlife Service \(FWS\)](#)
  - [National Park Service \(NPS\)](#)

Name of Agency	Applicable Statutes	Types of Fees and Applicable Legal Standards	Payment Method	Recommendations
<b>FS</b>	Federal Land Policy and Management Act of 1976 (FLPMA)	Cost recovery  Rental Fee Schedule (FMV)		USDA and DOI should consistently implement section 504(g) of FLPMA, which requires both BLM and the USFS to charge rent based on fair market value for communications uses, and which provides the same authority for cost recovery fees for both agencies
<b>DON</b>	10 United States Code (U.S.C.) 2667, 2668	Cost Recovery  Rental Fee (FMV)	Pay.gov	Require users to utilize the pay.gov system
<b>BLM</b>	FLPMA  43 Code of Federal Regulation (C.F.R.) 2800	Cost Recovery  Rental Fee Schedule (FMV)		Issue a rule change to propose a communications rent schedule based on the type of uses at a facility, and U.S. Census population data by county...This approach would allow for consistent and transparent application of the rental fee schedule
<b>Reclamation</b>	43 C.F.R. 429	Application Fee  Cost Recovery  Appraisal, Rental Fee schedule, or waiver valuation (FMV)		Reclamation land and realty staff will continue to use the host of tools available to determine use fees. The market value definition in the Uniform Appraisal Standards for Federal Land Acquisitions (yellow book) guides the process to meet regulation. Consistent and proven methods will be utilized to get there
<b>FWS</b>	50 C.F.R. 29.21-2(a)(2)  16 U.S.C. 668dd(d)(2)	Cost Recovery  Rental Fee set by appraisal (FMV)		Authorizing all agencies to retain cost recovery fees for permit processing could increase the amount of agency staff time / resources available to support this activity, and, consequently, decrease permit processing times
<b>NPS</b>	54 U.S.C. 103104  36 C.F.R. 14.26	Cost Recovery  Rental Fee set by appraisal (FMV)		The NPS is working with the Department of the Interior (DOI), the Office of the Solicitor, and the DOI Appraisal and Valuation Services Office to evaluate whether there is an appropriate alternative to appraisals for NPS ROW permits

**Streamlining Federal Permitting  
 Fee Sub-Working Group  
 Agency Problem Statements**

Name of Agency	Applicable Statutes	Types of Fees and Applicable Legal Standards	Payment Method	Recommendations
<b>GSA</b>	40 U.S.C. 581(h)(1) 54 U.S.C 306121, 306122 47 U.S.C. 1455(b)	Cost Recovery Negotiated commercial market rate		GSA has a number of authorities that it will continue to use to facilitate the deployment of commercial antennas on Federal property, including 40 U.S.C. 581(h)(1), section 111, section 412 of the Consolidated Appropriations Act, 2005, title V, General Services Administration, General Provisions, Public Law 108-447, and for surplus property, 40 U.S.C. 543.

The Streamlining Federal Permitting Work Stream presents these problem statements to inform the discussion and welcomes ongoing engagement with EOP to identify appropriate next steps given the challenges outlined in these summaries.

Respectfully,

Darrell Smith  
 U.S. Department of Homeland Security  
 Cybersecurity and Infrastructure Security Agency  
 Streamlining Federal Permitting Co-Chair

Karen Montgomery  
 U.S. Department of the Interior  
 Bureau of Land Management  
 Streamlining Federal Permitting Co-Chair



**USDA FS Fee Problem Statement**

**Summary of Communications Infrastructure-Related Rental Fee Procedures**

Communications uses on federal lands are managed by the U.S. Department of the Interior (DOI), Bureau of Land Management (BLM), and the U.S. Department of Agriculture, U.S. Forest Service (FS) under the same statutory authority, the Federal Land Policy and Management Act (FLPMA). FLPMA requires both agencies to charge rent for communications uses based on fair market value.

For communications uses, the FS and BLM have identical rental fee schedules (fee schedule). The current fee schedule is based off appraisals that were completed in the late 1980s and early 1990s. The Forest Service implemented the fee schedule in 1996 and it has not been updated since that time. It has been indexed annually based on the CPI-U.

Our rental fees are based on the type of use and the population of the largest community served by the communications site. The agencies calculate communications use rent by charging 100 percent of the highest-value use from the rent schedule, but only 25 percent of the scheduled rate for all other tenant uses, which involve owning, operating, and reselling a communications service. The agencies do not charge at all for customer uses, which involve owning and operating, but not reselling, a communications service. Further, the agencies do not charge for a communications facility manager’s use if it is not the highest-value use or equal to the highest-value use. These discounts and waivers are not consistent with applicable law and are not typical of the private sector.

**RENTAL FEE SCHEDULE FOR COMMUNICATIONS USES**

**Calendar Year 2019**

ZONES and POPULATION	TELEVISION	AM/FM RADIO*	CABLE TELEVISION	BROADCAST TRANSLATOR/ LPTV/LPFM	CMRS/ FACILITY MANAGER	CELLULAR TELEPHONE and PCS**	PRIVATE MOBILE RADIO SERVICE	MICROWAVE and Wireless Internet Service Provider (ISP) ***	OTHER	PASSIVE REF. & LOCAL EXCH. NETWORK
Zone 1 5,000,000 plus	\$73,850.82	\$55,798.41	INSUFFICIENT	INSUFFICIENT	\$19,693.54	\$19,693.54	\$16,411.29	\$16,411.29	\$123.08	
Zone 2 2,500,000 to 4,999,999	\$49,233.87	\$34,463.70	MARKET DATA	MARKET DATA	\$16,411.29	\$16,411.29	\$9,846.79	\$13,129.06	\$123.08	
Zone 3 1,000,000 to 2,499,999	\$29,540.36	\$22,975.82	FEE TO BE DETERMINED	FEE TO BE DETERMINED	\$13,129.06	\$13,129.06	\$9,846.79	\$11,487.90	\$123.08	RENTAL FEES FOR
Zone 4 500,000 to 999,999	\$22,975.82	\$16,411.29	BY APPRAISAL OR OTHER	BY APPRAISAL OR OTHER	\$8,205.64	\$9,846.79	\$6,564.51	\$9,026.20	\$123.08	THESE USES ARE
Zone 5 300,000 to 499,999	\$19,693.54	\$13,129.06	METHODS	METHODS	\$6,564.51	\$8,205.64	\$4,102.82	\$4,102.82	\$123.08	DETERMINED BY
Zone 6 100,000 to 299,999	\$9,846.79	\$6,564.51	\$3,938.69	\$3,938.69	\$4,923.38	\$6,564.51	\$3,282.27	\$3,282.27	\$123.08	EACH USFS REGION
Zone 7 50,000 to 99,999	\$4,923.38	\$3,282.27	\$1,969.37	\$1,969.37	\$1,969.37	\$4,923.38	\$1,641.13	\$2,461.69	\$123.08	
Zone 8 25,000 to 49,999	\$2,461.69	\$1,969.37	\$1,641.13	\$820.53	\$1,641.13	\$4,102.82	\$984.66	\$2,461.69	\$123.08	
Zone 9 LESS THAN 25,000	\$1,969.37	\$1,477.00	\$984.66	\$164.09	\$984.66	\$4,102.82	\$574.40	\$2,461.69	\$123.08	

Index Factor is 1.029

\*RENTAL FEE FOR AM RADIO IS 70% OF THE FM SCHEDULED RENT

\*\* Also includes Enhanced Specialized Mobile Radio (ESMR), Improved Mobile Telephone Service (IMTS), Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service (LMDS)

\*\*\* For ISP populations between 1-1000, use the applicable Regional Local Exchange Network schedule.

For wired uses (fiber), the FS and BLM utilize an identical linear right-of-way fee schedule. The fees are based on a per-acre rental fee by state, county and type of linear right-of-way use.

**Summary of Processing and Application Fee Procedures**

The FS and BLM charge cost recovery fees under FLPMA for processing applications for land use applications and monitoring compliance with land use authorizations.

Cost recovery fees are charged to specific applicants and holders to cover costs associated with their applications and authorizations. Cost recovery fees do not cover the programmatic costs of administering the communications uses program.

**Current Forest Service Cost Recovery Fee Schedule**

Category	Hours	Processing/Monitoring Fee CY2019
1	1-8	\$128
2	8-24	\$451
3	24-36	\$850
4	36-50	\$1218
5	Varies	As specified in the agreement.
6	>50	Full reasonable costs.

**Recommendations and Opportunities**

As the two largest federal land management agencies operating under the same statutory authority (FLPMA), it is important for the FS and BLM to have consistent regulations and policies. Industry stakeholders value this consistency and predictability in our fee schedules and policies.

As required by section 504(g) of FLPMA, the two agencies should be in alignment and develop a joint rental fee schedule based on fair market value.

**Fee Statutes and Regulations**

Fee Type	Statute/Regulation Name	Excerpt
Rental Fee	Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1764(g)  36 C.F.R. 251.57(a)(1)	Section 504(g) <i>“The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way.”</i>  <i>“The fee shall be based on the fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles.”</i>
Cost Recovery Fee	Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761-1771  36 C.F.R. 251.58(a)	Section 504(g) <i>“The Secretary concerned may,.....require an applicant for a or a holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination....”</i>  <i>“Assessment of fees to recover agency processing and monitoring costs. The Forest Service shall assess fees to recover the agency’s costs for special use applications and monitoring costs for special use authorizations....”</i>
Programmatic Administrative Fee (Proposed)	Title VIII, Subtitle G, Section 8705, of the Agriculture Improvement Act of 2018	Section 8705(c)(3) <i>“A structure of fees for—(A) submitting an application....(B) issuing communications use authorizations, based on the cost to the Forest Service of any maintenance or other activities required to be performed by the Forest Service as a result of the location or modification of the communications facility.”</i>



**Naval Facilities Engineering Command (NAVFAC) – DON Fee Problem Statement**

**Summary of Communications Infrastructure-Related Rental Fee Procedures**

The DON has three primary procedures:

1. Commercial use only: Charge the providers for all costs (Navy in-house as well as FMV). The lessee must agree to sublease to other providers if requested and a sub-lease agreement is established. A real estate agreement is the contract vehicle used for this type of requirement.
2. DON use only (DON wide SPIRAL 3 CONTRACT): DON issues a service contract under FAR authority. The real property is provided as government furnished property. DON does not charge for fees except for the electromagnetic testing through SPAWAR.
3. FIRSTNET: When the equipment is installed for the sole use of emergency notification; a real estate agreement can be issued at no-cost; however, the provider may be responsible for DON in-house costs.

DON makes real property available to all providers that request access or space onboard DON installations.

**Summary of Processing and Application Fee Procedures**

Once the requirement is forwarded to the appropriate contracting office, fees are requested. DON has begun to use pay.gov for the processing of all fees and rental payments. All monies are received electronically and typically within 7-10 days.

**Recommendations and Opportunities**

DON will continue to migrate toward the electronic payment system, pay.gov. At this time, DON has no further requests other than to require users to utilize the pay.gov system, but we are open to other recommendations.

**Fee Statutes and Regulations**

Fee Type	Statute/Regulation Name	Excerpt
Rental	10 U.S.C. 2667 Leases: non-excess property of military departments and defense agencies	All
Rental	10 U.S.C. 2668 Easements for rights-of-way	10 U.S.C. 2668(a)(11) 10 U.S.C. 2668(a)(12)
Rental	10 U.S.C 2695 - Acceptance of funds to cover administrative costs	All

## DOI BLM Fee Problem Statement

### Summary of Communications Infrastructure-Related Rental Fee Procedures

Regulations for communications use were published by the BLM in 1995 and these regulations created a new fee schedule and consistent policies between the BLM and the USFS. At the time, these regulations represented a considerable improvement in determining rental rates for the communications site program which previously relied on individual appraisals for each authorization, which was expensive and time consuming.

The current method for determining annual rent for the Communications Site program is currently based on the Communication Use Rent Schedule (see 43 C.F.R. 2806.30(a) and (b)). The schedule is a matrix that has two primary inputs: 1) type of use; 2) population zone served by the use. Once the type of use and population zone served is identified, initial rental can be calculated. BLM updates the annual rent values contained in the Communication Use Rent Schedule based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U), as of July of each year (difference in CPI-U from July of one year to July of the following year). BLM limits the annual adjustment (plus or minus) based on the Consumer Price Index to no more than 5 percent.

Currently the rents are calculated by charging 100% for the highest valued use, and 25% for each of the other billable tenants' uses in a facility. Customer uses such as internal microwave and private mobile radio service are not billed. Exhibit A is an example of the 2019 Communications Use Rent Schedule, Exhibit B is the definitions for the use types, Exhibit C is population zones by city, and Exhibit D is the rental calculation worksheet.

### Summary of Processing and Application Fee Procedures

Both FLPMA (43 U.S.C. 1734(b)) and the MLA (30 U.S.C. 185(l)) authorize the BLM and other applicable Federal agencies to collect funds from right-of-way applicants or holders to reimburse an agency for expenses incurred while working on a right-of-way. The reimbursement of costs, called cost recovery, is the monetary value of the resources the Federal Government expends or uses in processing a right-of-way application, taking administrative actions, or monitoring the construction, operation, and termination of a facility authorized by a grant, lease, or permit.

In accordance with 43 C.F.R. 2800, applicants are required to reimburse the BLM in advance for the cost of processing an application and monitoring a grant. The fees are based on the amount of time BLM estimates it will take to process or monitor an application and issue a decision to grant or deny the application. BLM will determine the appropriate Processing Category fee, once a complete application has been submitted, and will notify the applicant in writing of this fee.

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Processing and monitoring fees are divided into 6 categories:

Processing category	Federal work hours involved	2019 Fee Amount
(1) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $>1 \leq 8$	\$128
(2) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $>8 \leq 24$	\$451
(3) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $>24 \leq 36$	\$850
(4) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $>36 \leq 50$	\$1,218
(5) Master agreements	Varies	Determined by agreement
(6) Applications for new grants, assignments, renewals, and amendments to existing grants	Estimated Federal work hours are $>50$	Full cost

The BLM last revised its right-of-way processing and monitoring fee schedule regulations on April 22, 2005 (70 FR 20970). The existing right-of-way (ROW) cost recovery fee schedule for the minor categories is based on an estimate of the amount of time that a Federal entity would allocate to process an application or monitor compliance to ensure consistency with the terms and conditions of a ROW grant, lease, or Temporary Use Permit (TUP), and does not reflect actual costs incurred by the BLM.

**Recommendations and Opportunities**

There has been a rapid expansion and demand for wireless uses, along with significant advancements in technology and common industry practices. As a result, the BLM is updating the 23-year-old communications use regulations. The BLM believes that it can propose modifications to the regulations in a manner that reduces the rule's regulatory burden while still streamlining the Communications Use program and collecting the appropriate cost recovery.

The BLM plans to present an option in the proposed rule that simplifies the rental calculations and incentivizes development in rural areas. The rule proposes a communications rent schedule based on the type of uses at a facility, and U.S. Census population data by county. This approach would streamline the existing rent schedule and would use more reliable U.S. Census population data. The proposed rule would eliminate the 75% reduction, and all uses will be charged at the full rate. However, the BLM proposes to provide a 50% discount to areas where the county population is under 100,000, as provided by the U.S. Census Bureau, to incentivize development into these areas.

Under the proposed rule, the BLM would use population data (defined by the county population), as reported by the most recent U.S. Census Bureau data, for the county in which each facility is located. This approach would allow for consistent and transparent application of the rental fee schedule.

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The BLM would update the communications use rent schedule every 10 years, when new population data is available from the U.S. Census Bureau. The BLM would also update the market data used in the rental schedule, concurrently with the updates to the census population data.

The new cost recovery schedule for minor category determinations consists of 4 categories, and covers actions taking 0 to 80 hours, whereas the current schedule covers actions between 1 to 50 hours. Category 1 will be a minor fee for low complexity actions, temporary use permits, and services essential to a property, such as roads, telephone, power or waterlines, where no other reasonable alternative exists. This provision would be considered a deregulation for minor right-of-way actions and right-of-way uses essential to a property.

<b>Proposed Cost Recovery Schedule</b>		
<b>Category</b>	<b>Estimated Work Hours</b>	<b>Fee Amount</b>
1	generally under 4 hours	\$125
2	0.01 to 16	\$535
3	16.01 to 48	\$2,140
4	48.01 to 80	\$4,279
5	Varies depending on agreement	Determined by agreement
6	80+	Full cost

**Fee Statutes and Regulations**

<b>Fee Type</b>	<b>Statute/Regulation Name</b>	<b>Excerpt</b>
Cost Recovery	FLPMA (43 U.S.C. 1734(b)) and the MLA (30 U.S.C. 185(l))	43 C.F.R. 2804.14 What is the processing fee for a grant application? 43 C.F.R. 2804.21 What other factors will BLM consider in determining processing and monitoring fees? 43 C.F.R. 2805.16 If I hold a grant, what monitoring fees must I pay?
Rental	FLPMA (43 U.S.C. 1734 (b))	43 C.F.R. 2806.30 What are the rents for communication site rights-of-way? 43 C.F.R. 2806.31 How will BLM calculate rent for a right-of-way for communication uses in the schedule? 43 C.F.R. 2806.32 How does BLM determine the population strata served?

		<p>43 C.F.R. 2806.33 How will BLM calculate the rent for a grant or lease authorizing a single use communication facility?</p> <p>43 C.F.R. 2806.34 How will BLM calculate the rent for a grant or lease authorizing a multiple-use communication facility?</p> <p>43 C.F.R. 2806.35 How will BLM calculate rent for private mobile radio service (PMRS), internal microwave, and “other” category uses?</p> <p>43 C.F.R. 2806.36 If I am a tenant or customer in a facility, must I have my own grant or lease and if so, how will this affect my rent?</p> <p>43 C.F.R. 2806.37 How will BLM calculate rent for a grant or lease involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?</p> <p>43 C.F.R. 2806.38 Can I combine multiple grants or leases for facilities located on one site into a single grant or lease?</p> <p>43 C.F.R. 2806.39 How will BLM calculate rent for a lease for a facility manager's use?</p> <p>43 C.F.R. 2806.40 How will BLM calculate rent for a grant or lease for ancillary communication uses associated with communication uses on the rent schedule?</p> <p>43 C.F.R. 2806.41 How will BLM calculate rent for communication facilities ancillary to a linear grant or other use authorization?</p> <p>43 C.F.R. 2806.42 How will BLM calculate rent for a grant or lease authorizing a communication use within a federally-owned communication facility?</p> <p>43 C.F.R. 2806.43 How does BLM calculate rent for passive reflectors and local exchange networks?</p> <p>43 C.F.R. 2806.44 How will BLM calculate rent for a facility owner's or facility manager's grant or lease which authorizes communication uses?</p>
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Agency Problem Statements**

**Exhibit A**

**RENTAL FEE SCHEDULE FOR COMMUNICATIONS USES**

**Calendar Year 2019**

ZONES and POPULATION	TELEVISION	AM/FM RADIO*	CABLE TELEVISION	BROADCAST TRANSLATOR/ LPTV/LPDM	CMRS/ FACILITY MANAGER	CELLULAR TELEPHONE and PCS**	PRIVATE MOBILE RADIO SERVICE	MICROWAVE and Wireless Internet Service Provider (ISP) ***	OTHER	PASSIVE REF. & LOCAL EXCH. NETWORK
Zone 1 5,000,000 plus	\$73,850.82	\$55,798.41	INSUFFICIENT	INSUFFICIENT	\$19,693.54	\$19,693.54	\$16,411.29	\$16,411.29	\$123.08	
Zone 2 2,500,000 to 4,999,999	\$49,233.87	\$34,463.70	MARKET DATA	MARKET DATA	\$16,411.29	\$16,411.29	\$9,846.79	\$13,129.06	\$123.08	
Zone 3 1,000,000 to 2,499,999	\$29,540.36	\$22,975.82	FEE TO BE DETERMINED	FEE TO BE DETERMINED	\$13,129.06	\$13,129.06	\$9,846.79	\$11,487.90	\$123.08	RENTAL FEES FOR
Zone 4 500,000 to 999,999	\$22,975.82	\$16,411.29	BY APPRAISAL OR OTHER	BY APPRAISAL OR OTHER	\$8,205.64	\$9,846.79	\$6,564.51	\$9,026.20	\$123.08	THESE USES ARE
Zone 5 300,000 to 499,999	\$19,693.54	\$13,129.06	METHODS	METHODS	\$6,564.51	\$8,205.64	\$4,102.82	\$4,102.82	\$123.08	DETERMINED BY
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Zone 8 25,000 to 49,999	\$2,461.69	\$1,969.37	\$1,641.13	\$820.53	\$1,641.13	\$4,102.82	\$984.66	\$2,461.69	\$123.08	
Zone 9 LESS THAN 25,000	\$1,969.37	\$1,477.00	\$984.66	\$164.09	\$984.66	\$4,102.82	\$574.40	\$2,461.69	\$123.08	

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\*\* Also includes Enhanced Specialized Mobile Radio (ESMR), Improved Mobile Telephone Service (IMTS), Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service (LMDS)

\*\*\* For ISP populations between 1-1000, use the applicable Regional Local Exchange Network schedule.



## DOI Reclamation Fee Problem Statement

### Summary of Communications Infrastructure-Related Rental Fee Procedures

Reclamation's Regulation, 43 C.F.R. 429, Use of Bureau of Reclamation Land, Facilities, and Waterbodies (43 C.F.R. 429) provides clear guidance on the determination of use fees (rental). A use fee is based on a valuation or by competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions, as provided in the use authorization. Use fees must be paid in advance along with administrative costs (cost recovery) unless the proponent applying for the use has been granted a waiver under subpart F of 43 C.F.R. 429. As determined appropriate and approved and documented by the applicable Regional Director (or Delegate), the application fees may be waived, and charges for administrative costs or use fees may be waived or reduced for the following situations; use is courtesy to a foreign government, short term uses where the cost of collecting fees is equal to or greater than the value of the use, the use provides a general public benefit, applicant is a public entity or Indian tribe, applicant is a non-profit or educational entity and the use provides a general public benefit, applicant is a rural electric association or municipal utility or cooperative, use directly supports United States' programs or projects, use secures a reciprocal land use of equal or greater value, applicant for a consent document is the underlying landowner, or the use is issued under competitive bidding.

### Bureau of Reclamation Policy, Directives and Standards, & Authority

Reclamation Manual (RM), Directives and Standards (D&S), *Real Property Appraisal*, LND 05-01 (LND 05-01) Office of Management and Budget (OMB) Circular A-25, as amended July 8, 1993 RM, D&S, *Use Authorizations*, LND 08-01 (LND 08-01).

Further guidance and standards for use fees can be found in the Reclamation Manual, a series of Policy and Directives and Standards. Collectively, these releases assign program responsibility and establish and document Bureau of Reclamation-wide methods of doing business.

LND 05-01 provides the level of detail necessary to ensure consistent application and ensure compliance with appropriate authorities and regulations. Appraisals to establish use fees for uses authorized by Reclamation must be prepared by or through the Appraisal Valuation Services Office (AVSO). However, use fees valued at \$25,000 or less can be determined by waiver valuation by qualified Reclamation staff. Appraisals and waiver valuations that include calculations for use fees are subject to the provisions contained in 43 C.F.R. 429 and OMB Circular A-25 (A-25). A-25 established that use of government resources be self-sustaining, promote efficient allocation of the Nation's resources, and allows the private sector to compete without disadvantage. A-25 requires that user charges be sufficient to recover the full cost based on market prices to the Federal Government.

LND 08-01 provides standard procedures for issuing use authorizations for use of land, facilities, and waterbodies in accordance with 43 C.F.R. 429. Use authorizations are only permitted on Reclamation facilities when compatible with authorized project purposes, project operations, safety, and security. Additional criteria considerations include environmental compliance, compatibility with public interests, conflicts with Federal policies and initiatives, public health and safety, availability of other reasonable alternatives and the best interests of the United States.

### Consistency & Transparency

Reclamation has worked to develop clear guidance and adoption of fee schedules and will continue to work with other Federal Partners on this effort when appropriate. As an example, Reclamation staff often use the BLM's fee schedule for communication sites but have found instances when the fee schedule does not return market value for the use. During these instances where market value is not returned by use of a fee schedule, Reclamation Regional Realty Officers will utilize other sources to perform a waiver valuation or if complex an appraisal will be performed by AVSO.

Consistency in determining the value for a use can be a challenge for a host of reasons. Regional, State, and local circumstances along with individual appraisers and the methods of valuation are all factors. To maximize consistency, Regional Realty Officers (RROs) in each of Reclamation's five Regions have the sole responsibility with the delegated authority to approve waiver valuations and appraisals. Reclamation is obligated to use market value or competitive bidding which reflects the market value. The use of fee schedules for waiver valuations and rate determination for long-term uses are updated accordingly to meet market conditions.

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The wide array of Reclamation lands, facilities, and waterbodies in urban and rural sites demonstrate a challenge in finding the value for any use authorization. Challenges in determining value for Reclamation’s lands, facilities, and waterbodies in urban settings have led to more uses of an appraisal than a waiver valuation. These facilities have had undervalued use fees and Reclamation Managers are pushing to perform more appraisals to meet our obligation to recover full value.

**Recommendations and Opportunities**

Reclamation land and realty staff will continue to use the host of tools available to determine use fees. The market value definition in the Uniform Appraisal Standards for Federal Land Acquisitions (yellow book) guides the process to meet the regulations. Consistent and proven methods will be utilized to get there.

**43 C.F.R. 429, Use of Bureau of Reclamation Land, Facilities, and Waterbodies**

**Application Fee, Administrative Costs, Use Fees**

Fee Type	Statute/Regulation Name	Excerpt/Description
Application Fee	43 C.F.R. 429.16	Section 429.16 You must remit a nonrefundable application fee of \$100 to cover costs associated with our initial review of your application, unless the payment is waived pursuant to subpart F of this part
Administrative Costs	43 C.F.R. 429.18	Section 429.18 (a) Following the initial review, you will be notified in writing whether your application appears to be appropriate for further processing. At that time, Reclamation will give you an initial estimate of administrative costs required to continue processing your application.  (b) You must pay these initial, estimated administrative costs before Reclamation can continue to process your application, unless you are granted a waiver of administrative costs under subpart F of this part...
Use Fees / Rent	43 C.F.R. 429.23	Section 429.23 How does Reclamation determine use fees?  The use fee is based on a valuation or by competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions, as provided in the use authorization.



**DOI FWS Fee Problem Statement**

**Summary of Communications Infrastructure-Related Rental Fee Procedures**

The National Wildlife Refuge System Improvement Act of 1997 authorizes the Secretary of the Interior, acting through the Fish and Wildlife Service (FWS) Director, to issue a right-of-way (ROW) across Refuge System lands only after the applicant pays FWS the fair market value or fair market rental value of the ROW, unless the applicant is exempt from payment by another provision of Federal law. To determine the fair market value or fair market rental value, FWS is required to request appraisal services from the Department of the Interior’s Appraisal and Valuation Services Office (AVSO).

**Summary of Processing and Application Fee Procedures**

FWS application processing and application fee procedures are in 50 C.F.R. 29.21-2. By regulation, FWS waives processing and application fees for (a) State or local governments or agencies or instrumentalities thereof and (b) Federal Government agencies. FWS charges all other applicants an application fee of \$50 to \$500 according to an outdated 1977 schedule, and, if those fees are not sufficient to cover FWS application processing costs, then FWS charges the applicant the remaining amount necessary to recover its costs. FWS is preparing a proposed rule to streamline its regulations for permitting ROW and to adopt BLM’s newest cost recovery schedule.

**Recommendations and Opportunities**

Some agencies lack clear statutory authority to retain cost recovery fees for permit processing and also do not receive appropriations to cover these costs. Authorizing all agencies to retain cost recovery fees for permit processing could increase the amount of agency staff time / resources available to support this activity, and, consequently, decrease permit processing times.

There is also an opportunity to significantly streamline permitting through use of a national fee/rental schedule for ROW that reflects fair market value and/or fair market rental value. Without such a fee schedule, FWS must continue to request an appraisal from AVSO to determine a ROW’s fair market value or fair market rental value. AVSO typically requires 4 months or longer to obtain and review a contracted appraisal, significantly delaying permit issuance.

**Fee Statutes and Regulations**

Fee Type	Statute/Regulation Name	Excerpt
Application fee and cost recovery	FWS Rights-of-Way General Regulations (50 C.F.R. 29.21-2(a)(2))	“Application fees will be in accordance with the following schedule....”
Rent	National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C 668dd(d)(2))	“Notwithstanding any other provision of law, the Secretary may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary, at the option of the Secretary, either (A) in lump sum the fair market value (determined by the Secretary as of the date of conveyance to the grantee) of the right-of-way, easement, or reservation; or (B) annually in advance the fair market rental value (determined by the Secretary) of the right-of-way, easement, or reservation.”



**DOI NPS Fee Problem Statement**

**Summary of Communications Infrastructure-Related Rental Fee Procedures**

The NPS currently requires an individual appraisal for any right-of-way permits that require an annual rental fee. By regulation, there are 4 categories of ROW permit that do not have an associated annual fee. The applicable regulation is 36 C.F.R. 14.26.

**Summary of Processing and Application Fee Procedures**

The NPS collects actual costs as cost recovery when processing ROW permit applications. The NPS does not collect cost recovery for every ROW permit application – there is some agency guidance on the matter, and the decision whether or not to charge cost recovery is ultimately discretionary with the Superintendent.

**Recommendations and Opportunities**

The NPS is working with the Department of the Interior (DOI), the Office of the Solicitor, and the DOI Appraisal and Valuation Services Office to evaluate whether there is an appropriate alternative to appraisals for NPS ROW permits.

**Fee Statutes and Regulations**

Fee Type	Statute/Regulation Name	Excerpt
Processing/ application/ cost recovery	54 U.S.C. 103104	Notwithstanding any other provision of law, the Service may recover all costs of providing necessary services associated with special use permits. The reimbursements shall be credited to the appropriation current at that time.
Rental fee	36 C.F.R. 14.26	Section 14.26 Payment required; exceptions; default; revision of charges. (a) Except as provided in paragraphs (b) and (c) of this section, the charge for use and occupancy of lands under the regulations of this part will be the fair market value of the permit, right-of-way, or easement, as determined by appraisal by the authorized officer. Periodic payments or a lump-sum payment, both payable in advance, will be required at the discretion of such officer: (1) When periodic payments are required, the applicant will be required to make the first payment before the permit, right-of-way, or easement will be issued; (2) upon the voluntary relinquishment of such an instrument before the expiration of its term, any payment made for any unexpired portion of the term will be returned to the payer upon a proper application for repayment to the extent that the amount paid covers a full permit, right-of-way, or easement year or years after the formal relinquishment: Provided, That the total rental received and retained by the Government for that permit, right-of-way, or easement, shall not be less than \$25. The amount to be so returned will be the difference between the total payments made and the value of the expired portion of the term calculated on the same basis as the original payments. (b) Except as provided in paragraph (c) of this section, the charge for use and occupancy of lands under the regulations of this part shall not be less than \$25 per five-year period for any permit,

		<p>right-of-way, or easement issued. (c) No charge will be made for the use and occupancy of lands under the regulations of this part: (1) Where the use and occupancy are exclusively for irrigation projects, municipally operated projects, or nonprofit or Rural Electrification Administration projects, or where the use is by a Federal governmental agency. (2) Where the permit, right-of-way, or easement is granted under the regulations in Subpart D. (d) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to cancel the permit, right-of-way, or easement. After default has occurred, structures, buildings, or other equipment may be removed from the servient lands except upon written permission first obtained from the authorized officer. (e) At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year. (f) The provisions of this section shall not have the effect of changing, modifying, or amending the rental rates or charges imposed for existing water power projects under rights-of-way previously approved by this Department.</p>
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## ®General Services Administration Problem Statement

### Summary of Communications Infrastructure-Related Rental Fee Procedures

Leasing rooftop space and land for commercial antennas is an important part of the GSA Outlease Program. The Presidential Memorandum, "Facilitating Access to Federal Property for the Siting of Mobile Services," signed August 10, 1995, directed that Federal properties be made available for use by private telecommunication companies. The passage of the Telecommunications Act of 1996 (47 U.S.C. 332) further underscored the Federal Government's role in facilitating broader deployment of telecommunications across the Nation. More recently, Congress enacted the MOBILE NOW Act (title VI of Public Law 115-141, March 23, 2018) and President Trump issued an executive order on Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America (January 8, 2018), both of which reiterated this Administration's commitment to accelerating the development and commercialization of wireless technology. Consistent with these policies, GSA has outleased commercial antennas on many of its Federal facilities.

GSA's regulatory policy for siting antennas on Federal property is set forth in subpart B of part 102-79 of the Federal Management Regulation (FMR), specifically sections 102-79.70 through 102-79.100. This policy applies to all property under the jurisdiction, custody or control of GSA, including those properties delegated to other Federal agencies by the Administrator of General Services. The FMR sections describe in detail the policy agencies must follow concerning the placement of commercial antennas on Federal property, the criteria they must consider when evaluating antenna siting requests and the fees that may be assessed for antenna site placements. GSA's outlease antenna rates are negotiated based on current commercial market conditions and must approximate commercial charges for comparable space and services. The rates are not subject to the standard GSA pricing policy. In areas too remote to establish easily a comparable market rate, GSA's Contracting Officers work with their regional appraisers to determine a reasonable rate. Another resource GSA occasionally relies upon to set antenna rental rates in remote markets is the [antenna pricing index](#) of the Bureau of Land Management.

Due to the complexity of newer antenna installations, GSA may involve contracted engineers to assist in the installation process. When GSA incurs additional costs to retain these engineers, the costs are passed onto the telecommunications company.

GSA also charges for the square footage of ground or interior space of a facility required by the supporting electronics cabinetry. Cabinetry located within a Federal facility is subject to the prevailing rental rates for storage, mechanical, electrical closet, or penthouse space. Rooftop space used to house the supporting electronics cabinet is subject to a negotiated rate and may be blended with the antenna rate.

Pursuant to P.L. 112-96, applicants for the grant of a right-of-way or easement are charged a fee based upon direct cost recovery. Cost recovery refers to all direct costs incurred by the Federal Government, including administrative costs, materials, labor, and expenses directly related to application processing, approval, termination, and creation of the right-of-way or easement. Cost recovery fees are not land use fees. Applicants are also charged an annual fee to reimburse the Federal Government for monitoring compliance with the terms and conditions of the grant. GSA's cost recovery fees are re-evaluated every five years.

### Summary of Processing and Application Procedures

When GSA is contacted by a commercial telecommunications company interested in outleasing space for an antenna, we require the company to submit an application. GSA historically used Common Form 3729 (Wireless Telecommunication Industry Application); however, this form expired, and GSA now uses SF-299 in its current iteration pending review and approval of the updated SF-299. The telecommunications company is required to provide GSA with a copy of its current FCC license and a Radio Frequency Interference Certification Report.

If the property is listed in or eligible for listing in the National Register of Historic Places, the GSA Regional Historic Preservation Officer is involved to help determine the suitability of the location. Section 111 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306121 and 306122 (Section 111), authorizes any Federal agency to lease historic property not needed for current or projected agency purposes to non-federal entities, provided that the lease will adequately ensure the preservation of the historic property.

**Summary, Recommendations and Opportunities**

Commercial antennas located on property under the jurisdiction, custody or control of GSA are subject to the same rate setting policies and procedures that apply to any other GSA commercial outlease. That is, outlease antenna pricing is market based. GSA may charge additional fees for square footage of ground or interior space of a facility required by the supporting electronics cabinetry, and to recover its direct costs. With advances in telecommunications technologies, new antenna installs have the potential to be much more expensive than previous installations. GSA has a number of authorities that it will continue to use to facilitate the deployment of commercial antennas on Federal property, including 40 U.S.C. 581(h)(1), Section 111, section 412 of the Consolidated Appropriations Act, 2005, title V, General Services Administration, General Provisions, Public Law 108-447, and for surplus property, 40 U.S.C. 543. The charges or fees assessed by GSA for the placement of antennas and supporting services in GSA-controlled space are generally deposited into GSA’s Federal Buildings Fund, and are available for real property management and related activities as provided in annual appropriation laws.

**Fee Statutes and Regulations**

Fee Type	Statute/Regulation Name	Excerpt
Rental Fee	Cooperative Use Act - 40 U.S.C. 581(h)	<p>(h) Cooperative Use of Public Buildings.—                      (1)Leasing space for commercial and other purposes.—                      The Administrator may lease space on a major pedestrian access level, courtyard, or rooftop of a public building to a person, firm, or organization engaged in commercial, cultural, educational, or recreational activity (as defined in section 3306(a) of this title). The Administrator shall establish a rental rate for leased space equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the public building. The lease may be negotiated without competitive bids, but shall contain terms and conditions and be negotiated pursuant to procedures that the Administrator considers necessary to promote competition and to protect the public interest.</p>
Rental Fee	Adaptive Use - Section 111 of the NHPA (54 U.S.C. 306121 and 306122)	<p>Section 306121. Lease or exchange                      (a) Authority To Lease or Exchange.—Notwithstanding any other provision of law, each Federal agency, after consultation with the Council—</p> <p>(1) shall, to the extent practicable, establish and implement alternatives (including adaptive use) for historic property that is not needed for current or projected agency purposes; and</p> <p>(2) may lease historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.</p>

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		<p>(b) Proceeds of Lease.—Notwithstanding any other provision of law, the proceeds of a lease under subsection (a) may be retained by the agency entering into the lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to that property or other property that is on the National Register that is owned by, or are under the jurisdiction or control of, the agency. Any surplus proceeds from the leases shall be deposited in the Treasury at the end of the 2nd fiscal year following the fiscal year in which the proceeds are received.</p>
<p>Cost Recovery Fee – Easements &amp; Right of Way</p>	<p>47 U.S.C. 1455(b)</p>	<p>(3) FEE.—          (A) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall establish a fee for the grant of an easement or right-of-way pursuant to paragraph (1) that is based on direct cost recovery.</p>