

**Before the  
US. Department of Interior, Bureau of Land Management  
Washington, D.C. 20220**

In the Matter of )  
 )  
Update of the Communications Uses Program, ) RIN 1004-AE60  
Cost Recovery Fee Schedules, and Section 512 )  
of FLPMA for Rights-of-Way )

**COMMENTS  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association<sup>1</sup> hereby submits these comments in response to the Proposed Rule published in the Federal Register by the United States Department of Interior’s Bureau of Land Management (“BLM”) on November 7, 2022.<sup>2</sup> Through the Proposed Rule, BLM seeks to update its cost recovery fee schedules for its communications uses program, asserting that such measures will “better reflect the current costs of processing and monitoring minor category [rights-of-way]” and “increase operational efficiency.”<sup>3</sup> If the rates for communications applications submitted to BLM will increase, it is important that these additional revenues for the agency will in fact be utilized to create a more operationally efficient permitting process. NTCA offers herein several recommendations to tie more directly the increased fees to the stated purpose of more efficient performance.

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<sup>1</sup> NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

<sup>2</sup> Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way, US. Department of Interior, Bureau of Land Management, Proposed Rule, RIN 1004-AE60 (87 FR 67306 Nov. 7, 2022).

<sup>3</sup> *Id.*, p. 67307.

**I. THE FEE STRUCTURE IN THE PROPOSED RULE SHOULD BE MORE DIRECTLY TIED TO IMPROVED CUSTOMER SERVICE STANDARDS, INCLUDING THE HIRING OF ADDITIONAL BLM STAFF RESOURCES NECESSARY TO OPERATE A MORE EFFICIENT PERMITTING PROCESS.**

As background, NTCA's members are small businesses deploying broadband-capable networks and delivering high-quality communications services in some of the hardest-to-serve rural and remote areas of the nation. These operators typically have between 25 and 30 employees who work to build networks and deliver the best possible services to fewer than 5,000 residential and business rural subscribers, on average.<sup>4</sup> Rural operators often confront difficult terrain (such as mountains, rivers, lakes, forested areas or rocky terrain), substantial distances between customer locations, shortened construction seasons due to frozen ground, and more recently, shortages of trained technicians and supply chain disruptions that limit access to and/or increase the price of everything from fiber to consumer premises equipment.<sup>5</sup> Any extra and unnecessary costs or delays must be avoided to make it possible to complete a network construction project, given the higher costs and other challenges associated with deployment and operating in these areas.

Obtaining access to federal lands for the purposes of broadband facilities installation typically tops the list of NTCA member concerns when it comes to the specific undertaking of broadband deployment, especially in certain parts of the country. Members recount delays of a year or longer in obtaining necessary permissions from federal agencies for construction of such

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<sup>4</sup> Broadband/Internet Availability Survey Report, NTCA–The Rural Broadband Association, Dec. 2021, p. 1, available at: <https://www.ntca.org/sites/default/files/documents/2021-12/2021-broadband-survey-report-final-12-15-21.pdf>.

<sup>5</sup> See, Comments of NTCA, WT Docket No. 21-195 (fil. Jun. 10, 2021), pp. 2-5, available at: [https://www.ntca.org/sites/default/files/federal-filing/2021-06/06.10.21%20NTCA%20Equipment%20Shortage%20Comments%20WT%20Dkt%2021-195\\_FINAL.pdf](https://www.ntca.org/sites/default/files/federal-filing/2021-06/06.10.21%20NTCA%20Equipment%20Shortage%20Comments%20WT%20Dkt%2021-195_FINAL.pdf)

infrastructure. Environmental and historic preservation processes can be long and arduous, and even if a project only touches federal lands for a very short distance as part of a larger deployment, the entire project can be delayed by the time-consuming process of obtaining a permit for areas under an agency's purview. Moreover, these rural operators often have no choice but to, for example, install fiber under a road crossing BLM, Forest Service, or Fish and Wildlife Service land, as re-rerouting even that small portion of the project can be impossible due to the substantial distances involved, impassible terrain, or the inability to obtain easements on adjacent privately held land (if any exist near the area in question).

NTCA's small provider members consistently report that obtaining a permit to install communications use facilities on BLM or other federal lands is often delayed due to the agencies' lack of staff resources for processing applications. These providers report that as few as one or two full time BLM staff are typically responsible for reviewing all permitting applications for enormous geographies, whether for communications use or numerous other purposes such as oil and gas facilities. To be clear, this staffing shortage is certainly not unique to BLM, nor is staffing a new (or even Covid-related) barrier. In 2017, NTCA's Chief Executive Officer participated in the Federal Communications Commission's Broadband Deployment Advisory Committee "Streamlining Federal Siting" Working Group.<sup>6</sup> This group of stakeholders ranged from industry officials to representatives of federal and state governments and tribes, and it confirmed that the federal permitting process is time-consuming for providers of all sizes and technologies. One common theme that emerged in the group's deliberations was a lack of federal agency staff resources to process applications in a timely manner.

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<sup>6</sup> Broadband Deployment Advisory Committee, "Streamlining Federal Siting" Working Group, Final Report, (Jan. 24, 2018) ("*BDAC Federal Siting Report*"), available at: <https://www.fcc.gov/sites/default/files/bdac-federalsiting-report-012018-2.pdf>.

Unfortunately, while the Proposed Rule states that the goal is “streamlining processes and establishing new customer service standards,”<sup>7</sup> *there is no tie of any kind between the proposed fee increases and the “efficiencies” the rule promises.* The proposed Category 2 fee is a prime example of this disconnect. Feedback from NTCA members suggests that many of their BLM permitting applications fall into the current Category 2, which BLM estimates typically take between 8 to 24 work hours for the agency staff to process.<sup>8</sup> Per the Proposed Rule, the fees for this Category will increase from \$480 to \$1,084, but without any concomitant increase in “efficiency” (*i.e.*, faster processing) in terms of the time it will take to complete this work.<sup>9</sup> While the Proposed Rule states that BLM would “incorporate the new timing requirements established by the MOBILE NOW Act into [its regulations],”<sup>10</sup> this offers a prime example of the disconnect between the increased fees and purported “efficiencies.” While NTCA certainly supports the notion of compliance with the MOBILE NOW Act’s section 606 270-day “shot-clock,”<sup>11</sup> it is worth noting that this timeframe should represent the *upper bounds* of any processing timeframes. Put another way, *the Proposed Rule would more than double the fees paid for BLM staff to expend 8 to 24 total hours on reviewing a permitting application, and despite those fee increases, the “improved customer service standards” would not promise that this now more expensive (to the applicant communications provider) review will begin and end in anything less than 9 months as an absolute matter.*

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<sup>7</sup> Proposed Rule, p. 67307.

<sup>8</sup> *Id.*, p. 67312.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348 (2018).

Even worse, it is difficult to perceive, absent additional reforms to existing processes (in particular, the hiring of additional staff to process applications that is not clearly committed or tied to the fee increases), that the Proposed Rule will in fact lead to a more efficient process. NTCA members frequently face multiple requests for additional documentation coming *after* the filing of an application, such that it can take several months before an application is deemed “complete” and thus triggering the 270-day “shot clock.” To complicate matters further, processes for filing applications – in particular the specific underlying documentation that must accompany an application form and the steps necessary to have it deemed “complete” – vary from agency to agency, and even from office to office within an agency (e.g., the process in one BLM office in a state can be different from that in a BLM office in the same state). In these cases, the 270-day shot clock is of little value when it takes an undetermined period of months even just to trigger its start. Absent additional reforms, as proposed below – funded by the additional fees the Proposed Rule will generate – it is hard to see how the purported efficiencies and improved customer service standards will emerge.

To be clear, NTCA recognizes that staffing shortages may limit the ability of any federal agency to process applications and that the increased fees could be quite helpful, with sufficient clarity and specific definition of use, in securing the additional staff resources needed to expedite the current permitting process. That said, NTCA’s small, rural provider members operate in some of the nation’s least densely populated, high-cost-to-serve areas, and every increase in fees must be recovered from small customer bases. Thus, the revenue from the increased fees in the Proposed Rule should be directed exclusively and entirely to hire and train additional staff devoted specifically to processing of permit applications – this condition should be stated as the

explicit and only intended use of the increased fees, and BLM should provide transparency going forward to help confirm such use.

In addition, with such fees obtained and the purpose clearly stated, NTCA also urges BLM to amend the Proposed Rule as follows:

- The Proposed Rule should create processing timelines more commensurate with the hours spent reviewing by BLM staff; the MOBILE NOW Act’s 270-day “shot clock” should serve as nothing more than the *upper bounds/absolute limit* of processing timelines – put another way, an application that requires 8 to 24 hours of BLM staff time to review should be processed in less than 9 months;
- The use of the “common form” application should be accompanied by detailed guidance with respect to the specific underlying documentation that must accompany an application and necessary to deem it “complete,” and applications filed with the proper documentation should trigger the shot clock immediately;
- Performance metrics by which the efficiency of permitting timelines can be judged should be developed – for example, these could be based on the number of days between the *filing* of an application and the issuance of a final permit; and
- Annual reporting of compliance with such metrics.

Finally, BLM should adopt a mechanism through which communication service providers subject to the proposed fees can offer their own comments upon, and assessment of, the agency’s efficiency with respect to application processing times. Those incurring this fee and seeking access to BLM land – and assessed increased fees for the specific purpose of improving the efficiency of the permitting process – are in the best position to offer insights into the agency’s use of these fees and resulting performance. Many, if not most, NTCA members (and likely many other operators) have interacted with numerous federal agencies for the purposes of obtaining access to federal lands for network facilities siting, and they therefore have a substantial and broad base of experience from which to assess whether process improvements are delivering as promised.

## II. CONCLUSION

For the reasons stated above, the Proposed Rule should be amended to produce a more efficient BLM communications use program.

Respectfully submitted,

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