

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

In the Matter of)	
)	
Bureau of Land Management (BLM))	RIN 1004-AE92
Federal Land Policy and Management Act of)	
1976 (FLPMA))	

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

NTCA–The Rural Broadband Association¹ 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” or “the agency”) on April 3, 2023.² Through the Proposed Rule, BLM seeks to update its regulations implementing the Federal Land Policy and Management Act of 1976 (“FLPMA”).³ The Notice asserts this is necessary to “advance the BLM’s mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands” and would “clarify that conservation is a ‘use’ within FLPMA’s multiple-use framework.”⁴ Any rules established via this proceeding must also recognize the public benefits that flow to millions of Americans from access to the Internet – and should do so by explicitly incorporating broadband providers’ use of BLM managed lands for the purpose of network construction as one of the many important “multiple

¹ NTCA–The Rural Broadband Association represents approximately 850 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.

² *Conservation and Landscape Health*, US. Department of Interior, Bureau of Land Management, Proposed Rule, RIN 1004-AE92 (88 FR 19583, Apr. 3, 2022) (“Notice” or “Proposed Rule”).

³ Codified at 43 U.S. Code § 1701, *et seq.*

⁴ Notice at 19584.

uses” of lands under the agency’s purview. Doing so requires accounting for processes already in place – including those required by the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”) – that broadband providers must comply with when using BLM lands and that already serve to protect the environment and preserve and respect culturally and historically significant areas. NTCA further proposes guardrails around the use of “conservation leases” to protect existing uses of BLM lands.

As background, NTCA members are small, community-based broadband providers of voice and broadband services to some of the nation’s most remote and rural areas. These small businesses collectively serve nearly one third of the United States’ land mass but less than 5% of the population, and they often must confront rocky and mountainous terrain and weather-shortened construction seasons, in addition to low population densities and significant distances, as they build, operate, and maintain their network infrastructure. Most relevant to this proceeding, reaching these far-flung rural communities and connecting them to the larger world often necessitates the installation of network facilities on federally managed land (BLM included).⁵ Even as NTCA members strive to design their network construction projects in such a way as to avoid federally managed lands where possible (as permitting timelines can be lengthy),⁶ the need to cross federally managed lands is often unavoidable where re-routing

⁵ In many cases, NTCA members touch federal lands for only a very short portion of a larger overall project. As one example, a member in a Western state buried fiber-optic cable as part of a project to provide a redundant connection to the outside world for its subscribers and for public safety traffic. This project intersected with a BLM managed road, and boring under the two-lane road represented only a few hundred feet of the larger 30-mile project. Alternate routes would have made the project economically infeasible.

⁶ See Statement by Michael Romano, Executive Vice President NTCA–The Rural Broadband Association, Before the United States House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology “Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment” Washington, DC (April 19, 2023), available at:

deployment can add perhaps dozens of miles of network construction. In other cases, locations to be served simply cannot be reached except by crossing federal lands. Where network construction on federally managed lands cannot be avoided, these undertakings are obviously subject to NEPA and NHPA reviews.

Turning to the Notice, NTCA urges BLM to consider broadband providers' compliance with NEPA and NHPA as sufficient for the purposes of the conservation goals the proposed rules are intended to achieve and to ensure that conservation uses do not preclude other productive uses of BLM land that are in the public interest, such as for broadband connectivity. Such perspectives will further the objectives of the proposed rules, avoid an overlapping compliance regime that bogs down important uses of BLM managed lands, and will further the "multiple use" structure that is a vital part of the FLPMA.⁷ Even as NEPA and NHPA are separate statutory provisions, there are certain parallels in terms of the underlying objectives of these and the FLPMA. At their core, NEPA and NHPA are intended to protect and preserve the natural environment and maintain the integrity of Tribally/historically important areas of our nation as "multiple uses" (such as broadband deployment, mining, etc.) take place on or near these areas. In fact, the FLPMA and the conservation goals underlying the proposed rules are strikingly similar to these other statutory provisions: as the Notice states, the statute is intended to ensure that public lands are managed by BLM in such a way as to further "the nation's need for natural resources from those lands" while also providing for "outdoor recreation and other human uses"

<https://www.ntca.org/ruraliscool/newsroom/press-releases/2023/19/ntca-executive-vice-president-mike-romano-testifies>.

⁷ 43 U.S. Code § 1701(7) (stating that with respect to public lands, it is the policy of the United States that "goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of *multiple use* and sustained yield unless otherwise specified by law") (emphasis added).

and maintaining “habitat for fish and wildlife, preserving certain public lands in their natural condition, and protecting the quality of the scientific, scenic, historical, ecological, environmental, water-resource, and archaeological values of the nation's lands.”⁸ BLM’s current NEPA and NHPA rules and processes applicable to broadband providers’ access can ensure that conservation is indeed “on par with other uses of the public lands under FLPMA's multiple-use and sustained-yield framework.”⁹ The former, like the Proposed Rule, are intended to minimize the impact to the environment that comes with any human activity (broadband network construction included) and conserve intact, native landscapes and maintain overall land health.¹⁰

As just one specific example to highlight how existing processes can further the FLPMA objectives at issue herein, the provisions that would adopt a “co-stewardship” process between Tribal entities and parties permitted access to BLM¹¹ lands would be duplicative of existing NHPA processes. Co-stewardship of Tribal lands is already a necessary part of NHPA compliance that carries over here – broadband providers touching BLM lands already need to work with Tribal authorities to ensure that any network construction does not disturb areas of significance to the tribe in that area. *Should the BLM fail to tailor its proposed rules to take this into account, it risks layering on additional steps for access to BLM managed lands that is already expensive and time-consuming for small businesses such as those represented by NTCA.*

Moreover, as BLM is no doubt well aware, NEPA and NHPA are complicated processes that

⁸ Notice at 19585.

⁹ *Id.* at 19584.

¹⁰ *Id.* at 19585-86.

¹¹ *Id.* at 19586.

woefully understaffed agency offices must enforce – an additional layer of review that accomplishes similar aims would burden this staff even more.

Such a “layering on” of compliance requirements would also be inconsistent with the “multiple use” structure of the FLPMA. As the Notice states, the proposed rules will establish “practices to ensure that the BLM manages the public lands to allow multiple uses while retaining and building resilience to achieve sustained yield of renewable resources,”¹² and it identifies “minerals, energy, forage, timber, and recreational opportunities”¹³ as among those uses. The Covid-19 pandemic and resulting work and school closures underscored that broadband Internet access is a necessity on par with energy, minerals, and timber. Yet millions more remain unable to obtain the benefits of broadband, and Congress responded with the Broadband Equity, Access, and Deployment program, a once-in-a-generation commitment to addressing the Digital Divide.¹⁴ Because reaching many of these unserved and underserved Americans – the vast majority of whom reside in rural areas – will necessitate crossing or otherwise touching BLM lands, the agency can and should tailor its proposed rules to ensure that lands under its purview help to promote the clear congressional interest in furthering broadband access nationwide. This national effort to connect millions of Americans will be hampered or at least severely delayed – and indeed many will not get the broadband connection they need – if crossing BLM lands becomes impossible and rerouting around the land in question is not feasible.

¹² *Id.*

¹³ *Id.*

¹⁴ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), § 60102.

Finally, NTCA encourages BLM to establish certain guardrails around the proposed “conservation leases” to mitigate any potential impact on existing rights enjoyed by broadband providers, among others. As the Notice states, conservation leases “would allow the public to directly support durable protection and restoration efforts to build and maintain the resilience of public lands” and would be available to “entities seeking to restore public lands or provide mitigation for a particular action.”¹⁵ Even as the Notice indicates that these “would not override valid existing rights or preclude other, subsequent authorizations,”¹⁶ absent proper attention to the consequences of what could be *competing uses of BLM lands*, these entities’ restoration efforts could be damaging to existing, permitted uses. As an example, a restoration effort could inadvertently lead to a fiber-cut or damage to a provider’s tower, cabinet, or backup power where a lessee exercising its rights under a conservation lease is unaware of, or fails to take sufficient measures, to avoid this equipment. And for providers, the consequences of an accidental fiber cut or other damage to communications facilities go beyond cost alone, affecting users’ ability to engage in commerce, keep connected to family, or even preclude the ability to reach public safety. Thus, any parties granted conservation leases should be required to work with BLM staff to identify *all* existing permitted uses of the areas where they seek to undertake restoration efforts and describe with particularity care taken to avoid damage such as a fiber-cut.

¹⁵ *Notice* at 19586.

¹⁶ *Id.*

Respectfully submitted,

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