

**Before the
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, DC 20240**

In the Matter of)
Rights-of-Way, Principals) 43 CFR Parts 2800 and 2880
And Procedures: Rights-of-Way)
Under the Minerals Leasing Act)

**Comments of the Rural Utilities Service
Regarding Exemption of
RUS Borrowers from Right-of-Way Fees**

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Bureau of Land Management
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Room 401 LS
1849 C Street, N.W.
Washington, DC 20240

The U.S. Department of Agriculture - Rural Utilities Service (RUS), actively supports and promotes the universal availability of a broad range of telecommunications and information services in rural America through its Telecommunications infrastructure lending program. The Agency also administers programs to finance water, wastewater, electric, distance learning, and telemedicine projects in rural areas. RUS currently holds a \$42 billion loan portfolio of investments in rural utility infrastructure.

RUS and its predecessor agency, the Rural Electrification Administration (REA), have been dedicated to improving the quality of life in rural America for over 63 years. The Telecommunications Program was enacted by Congress in 1949 to extend and improve telephone service in rural areas. At that time, only 38.2 percent of American farms and rural communities had telephone service of any type. The facilities that did exist were overwhelmingly multi-party and, all too often, the haphazard construction of the customers themselves, desperate for communications service of any kind.

Because of REA's and RUS' successful 64-year partnership with, and advocacy of rural America, we appreciate the opportunity to offer comments to the Bureau on the Proposed Rule on Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act, 43 CFR Parts 2800 and 2880. Our comments concern the proposed changes to § 2806.11. The proposed revision would allow right-of-way fees to be charged to small independent commercial companies providing service to rural areas and, in many instances, Bureau of Land Management (BLM) and other Federal government facilities.

The statutory authority, as set forth in 43 U.S.C. 1764, specifies that "Rights-of-way shall be granted, issued or renewed, without rental fees, for electric or telephone facilities eligible for

financing pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 @.), determined without regard to any application requirement under the Act, or any extensions from such facilities: Provided, That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection." RUS appreciates BLM's concern regarding the potential financial impact of reducing rents for large, for-profit utility grant holders that may be eligible to receive financing from RUS; however, the statutory language is clear and unambiguous. Giving the legislative language its full meaning would also be competitively neutral.

RUS further agrees that the rural telecommunications and electric cooperatives fulfill an essential need by providing service in some of America's highest cost to serve areas due to difficult terrain and low customer density. However, cooperatives are not the only entities fulfilling this need. While 98 percent of the total active electric borrowers are non-profit entities only 27 percent of the active RUS telecommunications borrowers are non-profit. Limiting the exemption to cooperative or non-profit entities would only create another disincentive for extending and improving telecommunications service in high-cost-to-serve rural areas.

The dramatic regulatory changes in the local exchange services brought about by the Telecommunications Act of 1996 has only heightened the need for telecommunications providers serving high cost rural areas to reduce their costs wherever possible. As such, many small independent telecommunications providers are hesitant to issue substantial debt offerings and are financing expansions and improvements of service with internally generated funds. To subject internally-financed facilities to additional fees for rights-of-way would discourage such investments.

The need for increased investment is even more apparent due to the recent sales of rural local exchanges by large, predominantly urban and suburban focused carriers such as US West and GTE, not willing to make the necessary infrastructure investments in rural America. The disproportionately high cost of maintaining and improving telecommunications facilities in rural areas has resulted in the wholesale disposition of rural exchanges. The Department of Commerce recently published information noting that rural areas are, once again, at risk of becoming the information "have nots."¹ There is also a particular need to bring modem and, in some cases, "first-time" telephone service to thousands of Native Americans. In today's global marketplace and era of high-speed digital communications capabilities, America's farms and rural communities must have equal access to advanced telecommunications technologies if they are to survive.

In an effort to prevent a reversal of the tremendous progress made in the last 50 years, RUS telecommunications borrowers, both cooperative and small independent commercial companies, have purchased many of the rural exchanges that have been sold. In many instances, these borrowers are using internally generated funds or funds procured from other lenders for the acquisition and improvement of these exchanges in rural areas that have not been upgraded in many years. Once again, in most of these instances, BLM and other Federal facilities have benefited directly from these

¹ U.S. Department of Commerce, NITA, "Falling Through the Net: Defining the Digital Divide," July 1999.

acquisitions and upgrades. Requiring these small independent companies to pay right-of-way fees would only increase their already disproportionately high costs and discourage any improvement or extension of service into or through BLM areas.

Because of the critical importance for providing reliable, affordable telecommunications and electric service to rural Americans, RUS respectfully requests that BLM give full competitively neutral meaning to the statute; however, at a minimum, revise its proposed text in a manner that protects RUS program interests and loan security by exempting facilities constructed on rights-of-way utilizing RUS loan funds or owned by all borrowers (cooperative, commercial, municipal, and public utility districts) with outstanding RU - S debt balances,

Dated: October 13, 1999

CHRISTOPHER A. MCLEAN
Acting Administrator
Rural Utilities Service