Improving Rights-of-Way Management Across Federal Lands:

A Roadmap for Greater Broadband Deployment

Report by the Federal Rights-of-Way Working Group

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U.S. DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

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EXECUTIVE SUMMARY

Broadband, also known as high-speed Internet access, has the potential to bring new services and products to American consumers and businesses, fostering innovation, investment, and job-producing economic growth. The President has recognized the economic vitality that can result from broadband deployment and has called on our Nation to be aggressive about the expansion of broadband. On March 26, 2004, the President called for a national goal of universal, affordable access to broadband by 2007. A key to widespread broadband deployment is ensuring that broadband providers have timely and cost-effective access to rights-of-way -- the legal right to pass through property controlled by another -- so that they can build out their networks across the Nation. In the broadband context, rights-of-way include access to the conduits, corridors, trenches, tower sites, undersea routes and other locations that broadband networks occupy. These passageways often cross large areas of land owned or controlled by the Federal Government. Thus, effective and efficient federal rights-of-way policies and practices are critical for promoting broadband deployment.

To ensure that the Federal Government's rights-of-way policies and practices facilitate the aggressive deployment of broadband networks, the Bush Administration created a Federal Rights-of-Way Working Group composed of representatives from most of the major federal agencies with land management responsibilities. The mission of the Working Group is to identify and recommend changes in federal policies, regulations, and practices that would improve the process of granting rights-of-way for broadband communications networks on lands under federal jurisdiction. The Working Group is seeking reforms that would not only facilitate broadband deployment, but also improve access to rights-of-way for other interested stakeholders, such as members of industries outside the telecommunications sector. At the same time these reforms are designed to assist federal agencies in efficiently and effectively performing their vital role as the stewards of public lands, while working cooperatively with their counterparts in state, local, and tribal governments.

Based on information gathered from the communications industry, the federal agencies, state, local and tribal representatives, and other stakeholders, the Working Group has produced the following report, which sets forth recommendations in the four main areas below. Nothing in this report, however, relieves rights-of-way applicants of their obligation to comply fully with all applicable laws and regulations. The Working Group recognizes that some agencies have already implemented some of these recommendations and we commend them for doing so. To make lasting, nationwide improvements in federal land management, however, we urge all of the agencies to devote the time and resources to fully implement each of these recommendations.

(1) Information Access and Collection

- Within three months of the release of this report, the Administration should set up a central Web portal to be administered by the National Telecommunications and Information Administration (NTIA) with information about the federal rights-of-way permit process and links to all of the federal land management agencies.
- Within six months of the release of this report, all federal land management agencies should update their Web sites to ensure that the information is

centrally located on a prominently displayed rights-of-way home page with agency contact information.

- By August 2004, all federal land management agencies should institute pre-application meetings with potential rights-of-way applicants. These meetings, which will occur before an applicant files its application, are designed to promote an early exchange of information between applicant and agency, resulting in better-prepared applications and more timely processing.
- By December 2004, all federal land management agencies should use a common application form (the existing Standard Form 299) as a way to streamline and standardize applications to save time and reduce costs.

(2) Timely Process

- To prevent undue delay that can increase the costs of deployment and cause deferral or even abandonment of a project, the Working Group recommends that all federal land management agencies institute, by December 2004, specific target time frames for completion of various steps involved in the rights-of-way permit process. For example, in instances where a pre-application meeting has been held, agencies should review an application and notify the applicant within 30 days as to whether the application is "complete" and accepted for formal review.
- Federal agencies should designate a lead agency for projects involving more than one federal agency, and by December 2004, adopt internal procedures to ensure that such designations occur.
- Federal agencies should use project managers, who are responsible for overseeing all aspects of an application's review within an agency, to help ensure timely processing of rights-of-way grants.
- Federal agencies should encourage the telecommunications sector, state, local and tribal officials, and other stakeholders to participate in planning and coordination efforts for utility corridors and communications sites. In many cases, though not all, an applicant can save considerable time and expense by using a designated corridor or site rather than breaking new ground.

(3) Fees and Other Charges

- The Working Group recommends a set of principles, as well as specific techniques, for standardizing and simplifying cost recovery, fees, and rental payments. It further suggests that federal agencies initiate rulemaking proceedings, as necessary and appropriate, to develop and implement cost recovery regulations that incorporate these recommendations by December 2004.
- For larger inter-agency projects where a lead agency has been designated, the affected federal agencies should agree on consolidating cost recovery and rental fee duties and placing them with the lead agency.
- The Working Group recommends greater use of rental fee schedules, rather than appraisals, which should result in more efficient use of resources, a quick turnaround, and greater transparency of the process.

- All relevant federal land management agencies that are not currently using fee schedules should commence rulemakings, as necessary and appropriate, for the purpose of greater use of fee schedules in determining rights-of-way rental payments. These agencies should initiate these rulemakings by December 2004.

(4) Compliance

- Federal agencies involved in granting and monitoring rights-of-way should make formal training available to their staff, and by December 2004 should establish procedures to publicize the availability of such training.
- Federal agencies should by December 2004 begin informing grantees of the option of hiring reputable third-party contractors, who, in conjunction with agency compliance monitors, ensure that grantees properly perform planning and environmental studies, and initial phase construction work to the agency's satisfaction.
- Federal agencies should require grantees to submit periodic compliance reports, which will facilitate necessary inspections and reduce the need for some physical monitoring. Agencies that determine a rulemaking is necessary before requiring compliance reporting should initiate such a proceeding by December 2004.
- By December 2004, any relevant federal land management agency that does not recover its monitoring costs should commence a rulemaking, as necessary and appropriate, to implement its authority to recover such costs.
- The Working Group recommends that, where appropriate, agencies use their authority to impose reasonable, but adequate, bonding requirements to secure fulfillment of a grantee's compliance obligations, and initiate any rulemaking necessary to implement such a requirement by December 2004.

To ensure that the Bush Administration is responsive to the needs of all stakeholders, a year after the release of this report, each of the federal agencies will submit a report to the Office of Management and Budget (OMB) describing their efforts to implement the recommendations in this report and listing any steps that still need to be taken. The improved federal land management processes that ensue from these recommendations, together with the agencies' commitment to implementation, will help the Administration take a significant step forward in meeting its goal of greater broadband deployment throughout the Nation.

Introduction

This report addresses the interaction between broadband deployment and rights-of-way management -- two seemingly unrelated issues that, when taken together, play an important role in the success of this Nation's technological and economic development. Broadband, also known as high-speed Internet access, promises great advances in commerce, education, healthcare, national security, public safety and many other areas. Access to rights-of-way -- the conduits, corridors, trenches, tower sites, undersea routes, and other physical locations that modern communications networks occupy -- is a critical ingredient for the deployment of broadband networks and services. To ensure that broadband providers are able to obtain rights-of-way in a timely and cost-effective manner, the Bush Administration formed a Federal Rights-of-Way Working Group to assess the management of rights-of-way over lands under federal jurisdiction. The following report contains the Working Group's findings and recommendations for how the Federal Government can reform its approach to rights-of-way management to help bring the promise of broadband to all Americans, while ensuring that federal land managers fulfill their important roles as stewards of our Nation's public property.

Broadband communications networks enable the transmission of vast amounts of information over great distances in a short period of time. In addition to browsing the World Wide Web at high speeds, broadband opens new opportunities for telemedicine, access to libraries and research facilities, the provision of entertainment services, and countless other services that can boost our economy, improve our productivity, and enhance our lives. High-speed lines connecting homes and businesses to the Internet increased by 18% during the first half of 2003, from 19.9 million to 23.5 million lines.[1] Nevertheless, broadband technologies are unavailable to some Americans. Accordingly, the President announced on March 26, 2004 a national goal of universal, affordable access to broadband technology by 2007.[2]

In addition to his most recent comments, President Bush has emphasized, "[i]n order to make sure the economy grows, we must bring the promise of broadband technology to millions of Americans."[3] The President noted that "[t]he private sector will deploy broadband. But government at all levels should remove hurdles that slow the pace of deployment."[4] The

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[1] Federal Communications Commission, *High-Speed Services for Internet Access: Status as of June 30, 2003* at 1 *at* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd1203.pdf (December 2003). The FCC defines "high-speed lines" as those that "provide the subscriber with transmissions at a speed exceeding 200 kilobits per second (kbs) in at least one direction."

[2] President George W. Bush, Remarks on Home Ownership at Expo New Mexico, *at* (http://www.whitehouse.gov/news/releases/2004/03/20040326-9.html (March 26, 2004).

[3] President George W. Bush, Remarks at the Waco Economic Forum Plenary Session, *at* http://www.whitehouse.gov/news/releases/2002/08/20020813-5.html (August 13, 2002).

[4] *Id.*

President's Council of Advisors on Science and Technology[5] (PCAST) examined broadband, holding hearings and issuing a report setting forth steps that could be taken to facilitate deployment.[6] Among other suggestions, PCAST highlighted rights-of-way management as a critical component of broadband deployment. PCAST noted that:

> If [rights-of-way] access is unfairly denied, delayed, or burdened with unjustified costs, broadband deployment is slowed, and our citizens are deprived of access to vital communications facilities. . . . It should be a priority of this Administration to ensure that [rights-of-way] issues are dealt with in a balanced manner that facilitates prompt [rights-of-way] access for broadband networks while preserving legitimate government interests to protect public health, safety and welfare, and ensuring that government entities are fairly compensated for the costs of managing their rights-of-way and that disruption of rights-of-way is minimal.[7]

To ensure that broadband providers are able to obtain rights-of-way in a timely and cost-effective manner, the Administration formed a Federal Rights-of-Way Working Group in July 2002 to examine land management practices across the Federal Government. Led by the National Telecommunications and Information Administration at the Department of Commerce, the Working Group includes representatives from most of the federal agencies with major rights-of-way management responsibilities.[8] The primary participants in the Working Group are from the following federal agencies:

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[5] On December 12, 2001, the President held the first meeting of PCAST. Leading private sector and academic experts composed PCAST, which was co-chaired by Presidential Science Advisor John Marburger and Floyd Kvamme.

[6] President's Council of Advisors on Science and Technology, *Building Out Broadband: Findings and Recommendations, at* http://www.ostp.gov/PCAST/FINAL Broadband Report With Letters.pdf (Dec. 13, 2002).

[7] *Id.* at 9.

[8] Obtaining rights-of way for telecommunications projects is also an issue at the state and local levels. *See* NARUC's Study Committee on Public Rights-of-Way, *Promoting Broadband Access Through Public Rights-of-Way and Public Lands* (presented at the 2002 NARUC Summer Meetings in Portland, Oregon on July 31, 2002); Christopher R. Day, *The Concrete Barrier at the End of the Information Superhighway: Why Lack of Local Rights-of-Way Access is Killing Competitive Local Exchange Carriers*, 54 FED. COMM. L.J. 461 (2002); William Malone, *Access to Local Rights-of-Way: A Rebuttal*, 55 FED. COMM. L.J. 251 (2003). To assist rights-of-way stakeholders in understanding and improving the authorization process for constructing new communications networks that carry broadband Internet and other communications services, NTIA released an electronic report on state and local rights-of-way. *See* http://www.ntia.doc.gov/ntiahome/staterow/statelocalrow.html (last visited March 26, 2004). Intended as a resource for state and local land managers, communications providers, and other rights-of-way stakeholders, the report provides information about the laws, regulations, policies, and practices that affect state and local management of rights-of-way. The electronic report includes a state-by-state matrix that identifies the rights-of-way laws relating to jurisdiction, compensation, timelines, nondiscrimination, mediation, and condemnation in all fifty states and the District of Columbia. The report also includes an evolving compendium of rights-of-way "success stories," explaining how industry and government have devised creative new approaches to facilitate access to

Department of Agriculture

- **Forest Service**.[9] The Forest Service manages public lands in national forests and grasslands, totaling approximately 192 million acres.

Department of Commerce

- **National Oceanographic and Atmospheric Administration (NOAA)**.[10] NOAA promotes sustainable economic development, jobs and prosperity along the Nation's coastal areas. NOAA manages a network of 13 national marine sanctuaries.

- **National Telecommunications and Information Administration (NTIA)**.[11] NTIA serves as the President's principal advisor on domestic and international telecommunications and information technology policies and manages the Federal Government's use of the radio spectrum.

Department of Defense

- **Army Corps of Engineers**.[12] The Army Corps of Engineers provides engineering services to the Nation, including planning, designing, building, and operating water resources and other civil works projects, such as navigation, flood control, environmental protection, and disaster response.

- **Department of the Navy.**[13] The Navy holds property for use in support of its military mission.

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public rights-of-way. NTIA's electronic report is intended to help advance the dialogue on rights-of-way management at the state and local level, with the goal of promoting broadband deployment across the United States.

[9] *See* http://www.fs.fed.us/ (last visited March 26, 2004).

[10] *See* http://www.noaa.gov/ (last visited March 26, 2004).

[11] *See* http://www.ntia.doc.gov/ (last visited March 26, 2004).

[12] *See* http://www.usace.army.mil/ (last visited March 26, 2004).

[13] *See* http://www.navy.mil/ (last visited March 26, 2004).

Department of the Interior[14]

- **Bureau of Land Management (BLM)**.[15] BLM administers 261 million acres of our Nation's public lands, located primarily in 12 western states. BLM administers approximately 85,000 rights-of-way on the public lands, including about 23,000 oil and gas pipeline and 12,000 electric transmission system rights-of-way. BLM processes over 5,500 rights-of-way actions annually.

- **National Park Service**.[16] The National Park Service is responsible for protecting the Nation's national parks and monuments, and conserving the scenery, natural and historic objects, and wildlife therein. The National Park System of the United States comprises 388 areas covering more than 83 million acres in 49 States, the District of Columbia, American Samoa, Guam, Puerto Rico, Saipan, and the Virgin Islands.

- **Bureau of Indian Affairs (BIA)**.[17] BIA is the lead federal agency responsible for improving the lives and protecting the trust assets of American Indians, Indian tribes, and Alaska natives through services and relationships. BIA grants rights-of-way over American Indian-owned lands with the consent of the Indian owner (tribal or individual).

Department of Transportation

- **Federal Highway Administration (FHWA)**.[18] The Federal Highway Administration, through its Federal Lands Highway Program, provides access to and within national forests, national parks, Indian reservations, and other public lands by preparing plans, letting contracts, supervising construction facilities, and conducting bridge inspections and surveys. FHWA also provides funds for transportation projects owned and controlled by state departments of transportation, and is charged with oversight of how the monies are spent and how the resulting roadways are maintained and operated. Increasingly, these operational needs involve more use of fiber optics for intelligent transportation systems and other capacity-improving activities.

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[14] The U.S. Fish and Wildlife Service (FWS) is an agency of the Department of the Interior, but did not participate in the Working Group. FWS is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The Service manages the 95-million-acre National Wildlife Refuge System, which encompasses 544 national wildlife refuges, thousands of small wetlands, and other special management areas. It also operates 69 national fish hatcheries, 63 Fish and Wildlife Management offices and 81 ecological services field stations.

[15] *See* http://www.blm.gov/nhp/ (last visited March 26, 2004)

[16] *See* http://www.nps.gov/ (last visited March 26, 2004).

[17] *See* http://www.doi.gov/bureau-indian-affairs.html (The site <www.bia.gov >is temporarily unavailable due to the Corbell litigation, *see infra* fn. 49) (last visited March 26, 2004).

[18] *See* http://www.fhwa.dot.gov/ (last visited March 26, 2004).

Independent Agencies

- **General Services Administration (GSA).**[19] GSA obtains the buildings, products, technology, and other essentials that federal agencies need. GSA provides services to over one million federal workers located in 8,300 government-owned and government-leased buildings nationwide.

The Working Group brought together most of the major federal land management agencies to conduct a comprehensive review of federal rights-of-way policies and practices. The Working Group focused on streamlining and simplifying rights-of-way management processes, where possible and appropriate, to meet the needs of communications providers, as well as stakeholders from other industries seeking rights-of-way access. At the same time, the Working Group recognized the vital role that the federal agencies play as stewards of public property, and the Working Group attempted to improve the federal agencies' abilities to carry out their missions in an efficient manner. The overarching goal of this endeavor is to ensure that federal rights-of-way policies and practices serve to promote broadband deployment for the benefit of all Americans.

This report reflects many hours of discussion and consensus building by members of the Working Group. While some of these discussions led to new approaches to rights-of-way management, we also substantially built upon the significant efforts and collaboration that BLM and the Forest Service have already undertaken to build consistency within their rights-of-way programs and to implement management practices that work well, result in a better use of agency resources, and are supported by industry. Part I of this report describes the scope of the Working Group's mission and activities. Part II briefly discusses the major federal statutes that govern rights-of-way management. Part III delineates the issues that the Working Group addressed and provides the Working Group's recommendations, together with suggested implementation strategies.

Part I: Scope of the Working Group's Mission and Activities

A. Mission

The mission of the Working Group is to identify and recommend changes in federal laws, regulations, policies, and practices that would improve the process for obtaining rights-of-way for the deployment of broadband networks on federally-owned or federally-controlled real property. In fulfilling this mission, the Working Group attempted to strike an appropriate

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[19] *See* http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0 (last visited March 26, 2004). The U.S. General Services Administration (GSA) is a major federal landholding agency that manages Federal real property. It is not, however, a federal land managing agency responsible for overseeing tracts of public lands. While GSA's portfolio contains various types of real property, including unimproved real property over which it may grant rights-of-way, easements, or leaseholds, most of the portfolio consists of federally-owned and leased office buildings and warehouse space in urban and suburban areas. Accordingly, this report's recommendations are generally inapplicable to GSA, except for those related to linking the rights-of-way portal that NTIA will develop to the Firstgov website that GSA administers.

balance between two sometimes competing interests: (1) the telecommunications industry's desire to build out broadband networks in a timely and cost-effective manner; and (2) the federal land managers' responsibility to ensure appropriate use of public land. In balancing these interests, the Working Group sought reforms that would provide industry with a more customer service oriented experience while concurrently allowing federal land managers to operate more effectively and efficiently. In general, these reforms are aimed at streamlining, standardizing, and simplifying rights-of-way management across all of the relevant federal agencies. When implemented by the agencies, the Working Group expects the reforms to reduce burdens on industry, shorten construction time on projects, allow agencies to use their resources more efficiently, and facilitate the delivery of more broadband services to American consumers and businesses.

Although the Working Group focused on reforms aimed at promoting broadband deployment, the Working Group expects that our recommendations will improve rights-of-way management for the telecommunications industry as a whole, as well as other industries that require access to rights-of-way on federal lands, such as the energy industry. Indeed, the majority of the Working Group's recommendations are designed to improve rights-of-way policies, procedures, and practices that should benefit all rights-of-way stakeholders.

B. Activities

As part of its research and policy development, the Working Group conducted a series of outreach meetings and informal discussions with stakeholders.[20] Specifically, the Working Group met with the following stakeholders:

- Industry representatives, including incumbent local exchange carriers, competitive local exchange carriers, telephone cooperatives, wireless providers, satellite companies, cable companies, trade associations, the TelROW Coalition, and the International Rights of Way Association;

- State, local, and tribal officials and associations, including the National Association of Regulatory Utility Commissioners (NARUC), National Association of Telecommunications Officers and Advisors (NATOA), National League of Cities, National Association of Counties, U.S. Conference of Mayors, Local and State Government Advisory Committee, American Association of State Highway and Transportation Officials (AASHTO), American Public Works Association (APWA),

[20] As part of its larger and ongoing efforts to promote broadband deployment, on October 12, 2001, NTIA held informal public discussions with telecommunications companies and other stakeholders to gather information about the status of broadband deployment in the United States. The participants discussed cable open access, broadband deployment in underserved rural areas, demand and supply for advanced services, technical and economic roadblocks to broadband deployment, and regulatory methods for stimulating supply and demand. In November 2001, NTIA issued a Request for Comments on these and related issues. *See Deployment of Broadband Networks and Advanced Telecommunications*, NTIA Docket No. 011109273-1273-01, RIN 0660-XX13, *at* http://www.ntia.doc.gov/ntiahome/broadband/ (last visited March 26, 2004).

Coastal States Organization, representatives of state public utility commissions, and representatives of the Navajo Nation; and

- Environmental protection, historic preservation, and other stakeholder groups.

Based on information gathered from all of these stakeholders, as well as our own research, the Working Group focused its efforts in four basic areas:

(1) Information Access and Collection: Broadband providers operating across multiple jurisdictions are often required to supply the same information in different applications to numerous permitting authorities. The Working Group looked for ways to streamline and standardize applications to save time and reduce costs.

(2) Timely Process: Broadband providers have an important need to obtain rights-of-way permits on a timely basis. Otherwise, undue delay can increase the costs of deployment and can sometimes prevent deployment altogether. The Working Group examined practices that could ensure timely and appropriate action on rights-of-way applications.

(3) Fees: The nature and amount of fees charged to broadband providers vary widely across different agencies. The Working Group scrutinized various fee structures, looking for approaches that are appropriate and reasonable, and that do not unfairly impede the deployment of broadband networks.

(4) Compliance: Rights-of-way managers have a legitimate interest in ensuring that broadband providers take appropriate action to plan, permit, construct, operate, and maintain the rights-of-way. The Working Group looked for examples of remediation and maintenance requirements that accomplish those important objectives without placing undue burdens on broadband providers.

The Working Group divided itself into the following three committees to tackle the issues: the information collection and timely process committee, the fees committee, and the compliance committee. Each committee closely examined current federal rights-of-way practices and policies, and looked for ways to improve those practices and policies. The Working Group placed great emphasis on reaching consensus wherever possible on our recommendations, which are set forth in Part III below.

The Working Group recognized that some stakeholders suggested additional rights-of-way issues for our consideration, such as compliance with environmental and historic preservation laws, known as the National Environmental Policy Act (NEPA)[21] and the National Historic Preservation Act (NHPA).[22] Although these issues are important, they are beyond the scope of this report, and the Working Group addresses them only to the extent that they relate to

[21] National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.*

[22] National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470 *et seq.*

the four general issue areas described above. The Working Group also observes that other expert stakeholders are actively engaged in addressing NEPA and NHPA issues. For example, the White House Council on Environmental Quality (CEQ) has established a special NEPA Task Force. Created on May 20, 2002, the NEPA Task Force reviewed the current NEPA implementation practices and procedures in a variety of areas and made recommendations to the CEQ for improving the NEPA process based upon the information collected and the public comments received.[23] The recommendations are posted on the NEPA Task Force's Web site.[24] The Task Force intends to publish a separate report presenting best practices based on the case studies it evaluated.[25]

Part II: Laws Governing Rights-of-Way on Federal Lands

A variety of laws govern rights-of-way on federal lands. Several laws specifically authorize Federal Government agencies to approve private parties' access to federal lands for a wide range of purposes. Other laws contain environmental protection, historic preservation, and other requirements that impact rights-of-way on federal lands. In order to provide context for the recommendations in Part III of this report, we offer the following overview of the major laws governing rights-of-way on federal lands.

A. Laws Authorizing Rights-of-Way Grants

By virtue of the almost one-half billion acres of public and forest lands that it governs, the Federal Land Policy Management Act of 1976 (FLPMA) is the most significant of the laws authorizing federal agencies to grant easements and other rights-of way.[26] The FLPMA empowers the Secretary of the Interior, for "public lands,"[27] and the Secretary of Agriculture, for National Forest System lands, to grant, issue, or renew rights-of way for a variety of facilities, including "systems for transmission or reception of radio, television, telephone, telegraph, and

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[23] All public comments submitted to the task force are posted on the CEQ Web site, *at* http://ceq.eh.doe.gov/ntf/comments/comments.html (last visited March 26, 2004).

[24] *See* The NEPA Task Force Report to the Council on Environmental Quality, *Modernizing NEPA Implementation*, *at*,http://ceq.eh.doe.gov/ntf/report/index.html (last visited March 5, 2004).

[25] *Id.* at *vii*.

[26] 43 U.S.C. § 1701 *et seq.* FLPMA does not apply to Indian land, however. The Secretary of Interior grants rights-of-way over Indian land under the Act of February 5, 1948, 25 U.S.C. §§ 323-328, and the Indian Land Consolidation Act, 25 U.S.C. § 2218. Similarly, FLMPA does not govern rights-of-way in national parks. Sections 5 and 79 of the United States Code and applicable regulations control such rights-of-way grants.

[27] The FLPMA defines "public lands" as

> any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except – (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos." 43 U.S.C. § 1702.

other electronic signals, and other means of communication."[28] The Act requires that each right-of-way grant contain terms and conditions that will, among other things, "minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment."[29] The Secretaries of these agencies may also impose such terms and conditions deemed necessary to "protect Federal property and economic interests."[30] Other provisions of FLPMA describe the Secretaries' ability to: promulgate regulations; require advance rental payments; and impose bonding requirements, among other duties.[31]

For federal lands not covered by FLPMA, Congress has also provided executive branch agencies with authority to grant rights-of-way on federal lands within their control. Specifically, Public Law No. 87-852,[32] as recodified in Public Law No. 107-217,[33] gives executive branch agency heads the authority to grant for real property controlled by his or her agency:

> an easement that the head of the agency decides will not be adverse to the interests of the Government, subject to *reservations, exceptions, limitations, benefits, burdens, terms, or conditions* that the head of the agency considers necessary to protect the interests of the Government . . . . [34]

Significantly, the law specifically grants executive branch agency heads the discretion to impose terms, conditions, or even burdens on the easements, if such measures are necessary to project government interests. The statutory subtitle that includes Public Law 87-852, as codified, states that one of its purposes is to provide the Federal Government with an "economical and

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[28] 43 U.S.C. § 1761(a)(5).

[29] *Id.* at § 1765(a)(ii).

[30] *Id.* at §1765(b)(i).

[31] *Id.* at §1764.

[32] The General Services Administration requested this legislation, which vested in all executive agency heads the authority to grant easements similar to that which previously only the Secretaries of the military departments, the Atomic Energy Commission, the Administrator of Veterans Affairs, and the Attorney General enjoyed. S. REP. 87-1364 (1962), 1962 U.S.C.C.A.N. 3870 at 3871. The Senate Report notes that the new law would "improve the . . . Government procedures for granting of easements. At present these procedures are unrealistic and result in undue delay to both the Federal Government and those dealing with it. Enactment of this bill [H.R. 8355] will provide effective procedures in dealing with requests for easements . . . . " *Id.* at 3872.

[33] Public Law 107-217 revised, codified, and enacted without substantive change certain general and permanent laws, including Public L 87-852, as title 40, United States Code, 'Public Buildings, Property, and Works.' H.R. REP. 107-479 (2002), 2002 U.S.C.C.A.N. 827. Public Law 107-217 is codified at 40 U.S.C. § 101 *et seq.*

[34] 40 U.S.C. § 1314(b) 2002 Supp. (emphasis added) (see Appendix A for text of entire provision). This provision excludes rights-of-way on public lands and National Forest system lands in accordance with the repeal of its predecessor, Public Law 87-852, under Section 706 (a) of FLPMA. *See* 90 Stat. 2743, 2793.

efficient system for . . . [u]sing available property."[35] Except as restricted by limitations not relevant here, the statute supplements executive branch agencies' powers under other laws.[36]

In addition to FLPMA and Public Law No. 87-852, other more specific laws may provide rights-of-way authority to a particular agency. For example, the National Marine Sanctuaries Act[37] allows NOAA to issue special use permits for specific activities in a national marine sanctuary if the Secretary of Commerce determines authorization is necessary to "establish conditions of access to and use of any sanctuary resource."[38] The Secretary may assess fees for such special permits,[39] as well as suspend or revoke permits, and assess civil penalties for violations of any term or condition of the grant.[40] This Act also requires permit holders to submit to the Secretary annual reports describing the activities conducted under the permit and the revenues derived from such activities.

B. Laws Affecting Rights-of-Way

Although not directly authorizing federal agencies to grant rights-of-way, laws such as the National Environmental Policy Act (NEPA),[41] the National Historic Preservation Act (NHPA),[42] and the Endangered Species Act (ESA)[43] affect whether rights-of-way are granted and may require that specific conditions or limitations be included in the grant of a particular right-of-way. Congress enacted NEPA:

> To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.[44]

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[35] 40 U.S.C. § 101(2).

[36] *Id*. at § 113. "Except as otherwise provided in this section, the authority conferred by this subtitle is in addition to any other authority conferred by law and is not subject to any inconsistent provision of law." *Id*. at § 113(a).

[37] 16 U.S.C. § 1431 *et seq.*

[38] *Id*. at § 1441(a)(1).

[39] *Id*. at § 1441(d).

[40] *Id*. at § 1441(e).

[41] 42 U.S.C. § 4321 *et seq*.

[42] 16 U.S.C. § 470 *et seq.*

[43] 16 U.S.C. § 1531 *et seq.*

[44] 42 U.S.C. § 4321.

This law requires federal agencies to study the environmental effects of their actions through an interdisciplinary planning process that integrates environmental and economic issues. In cases where the environmental effects may be significant, the NEPA process informs and seeks input from the public, tribes, states, and local agencies, as well as other federal agencies.

Under NHPA, the Federal Government provides leadership for preservation efforts and fosters conditions to facilitate the harmonious existence in modern society of prehistoric and historic resources. As amended in 1992, Section 110 of the Act outlines a broad range of responsibilities for federal agencies. Among other responsibilities, the provision calls for federal agencies to establish preservation programs commensurate with their mission, and to designate qualified Federal Preservation Officers to coordinate their historic preservation activities.[45]

In 1973, Congress passed the ESA to conserve the ecosystems that sustain endangered and threatened species. Congress considered such fish, wildlife, and plant species to be "of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people."[46] Therefore, Congress established a policy requiring all federal agencies and departments to seek to conserve these species and to support the Act's purposes. The Interior Department's Fish and Wildlife Service and the Commerce Department's National Marine Fisheries Service administer the law. Section 7 of the ESA directs all federal agencies to use their existing authorities to conserve threatened and endangered species and in consultation with the U.S. Fish and Wildlife Service, to ensure that their actions do not jeopardize listed species or destroy or adversely impact critical habitat. Section 7 applies to management of federal lands as well as other federal actions that may affect listed species, such as the issuance of permits, licenses, or other actions authorizing private activities. NEPA, NHPA, ESA and other laws may impose additional responsibilities on right-of-way grantees that may impact their ability to use public lands for the desired commercial purposes.[47]

Part III: Issues and Recommendations

In discussions with stakeholders and federal agency staff, the Working Group discovered that rights-of-way concerns generally fall into the following four main categories: (a) information access and collection, (b) timely process, (c) fees, and (d) compliance**.** In each of the main categories, the Working Group examined a variety of individual, yet related issues. Below, the Working Group discusses these issues, offers its recommendations, and presents a roadmap for implementation of the recommendations. Nothing in this report, however, relieves

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[45] 16 U.S.C. § 470h-2(a)(2).

[46] 16 U.S.C. § 1531 (a)(2)-(a)(3).

[47] Other examp les of such laws include: National Wildlife Refuge System Administration Act of 1966, as amended, (16 U.S.C. §§ 668dd -668ee); the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 *et seq.*); the Archaeological and Historic Preservation Act of 1974, as amended (16 U.S.C. § 469 *et seq.*); Section 404 of the Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. § 1344); Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403); and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*).

rights-of-way applicants of their obligation to comply fully with all applicable laws and regulations.

A. Information Access and Collection

A potential applicant for a rights-of-way permit and the affected agency(ies) confront several issues related to accessing and collecting information. First, the applicant needs access to general information about how to obtain a permit. Second, the applicant must interact with the appropriate agencies so that they are advised early in the application process of potential issues, concerns, and information requirements that may be needed by the agencies to evaluate the applicant's request for a right-of-way. In this section, the Working Group offers recommendations for improving the accessibility and quality of general information available to applicants for rights-of-way permits. The Working Group also offers recommendations for streamlining and simplifying the process for agencies to collect information from applicants. In both instances, the Working Group's recommendations are designed to reduce burdens on applicants and to allow agencies to make better use of their limited resources.

1. Information about Obtaining a Right-of-Way over Federal Lands

Issue: To prepare an application for a rights-of-way permit, a potential applicant typically needs information about agency personnel contacts, application forms, fees, and other planning and permitting requirements. While some federal agencies provide excellent, easy-to-find information about their rights-of-way processes,[48] other federal agencies have significant room for improvement. Indeed, the Working Group's research has shown that few federal agencies have a clearly identifiable rights-of-way section on their Web sites, complete with an application form, delineated steps to follow in the rights-of-way process, and agency contacts. Instead of obtaining a clear roadmap for how to obtain a rights-of-way permit, the potential applicant often gets lost in a maze of confusing regulations and policies, incomplete information, and receives no contact information for asking directions. The resulting uncertainty causes delays, drives up costs, and slows deployment of networks.

Recommendation: The Working Group believes that the Internet provides the most cost effective and most easily accessible means to disseminate information about the rights-of-way permit process to potential applicants. Accordingly, the Working Group offers two recommendations: (1) establish a central federal Web portal for rights-of-way information; and (2) update individual agency Web sites and link them to the central Web portal.

Central Web Portal. The Working Group recommends that the Administration create a central Web portal with information about the rights-of-way permit process for federal lands. The Web portal would contain general information about obtaining a rights-of-way permit over federally-owned or federally-controlled real property. This central Web portal also would list and link to the appropriate, updated Web sites for each federal agency with authority to grant rights-of-way permits on federal lands (see below). The Working Group recommends that

[48] *See, e.g.*, BLM's Web site, *at* http://www.blm.gov/nhp/what/lands/realty/row.htm (last visited March 26, 2004).

NTIA, as the lead agency in the Working Group, host and maintain the central Web portal. To draw attention to the Web portal, the Working Group also recommends that a referral Web page be established in the business gateway section of the FirstGov.gov Web site,[49] which is the official U.S. gateway to all government information.

After the central Web portal is established, the Working Group recommends that NTIA investigate the feasibility of employing more advanced, automated services on the central Web portal. For example, the central Web portal could engage a potential applicant in a series of questions about the type, scope, and location of the project. In turn, the Web portal could employ software that would take this information and give the potential applicant the relevant contact information of the federal agencies likely to have jurisdiction over their application, a copy of a rights-of-way application, and information about environmental protection, historic preservation, endangered and threatened species, and other issues that would need to be addressed as part of the rights-of-way application process. The information entered by the potential applicant could also generate an e-mail alert to each relevant agency, noting that an application request had been made.

Updated Agency Web sites. The Working Group also recommends that individual land management agencies update their Web sites to ensure they meet the following criteria:[50]

- Information is centrally located on a prominently displayed rights-of-way home page with appropriate links to sub-pages.
- All information is up-to-date.
- All information is organized in a logical, user-friendly format.
- Agency contact information (including e-mail addresses) is current and easily accessible on the Web site.

Implementation: In consultation with the Working Group, NTIA should take the lead in creating a central Web portal for information on federal rights-of-way on the existing NTIA Web site. This new portal should be created within three months of the release of this report. NTIA should work with GSA, which maintains the FirstGov.gov Web site, to establish a referral Web page directing federal rights-of-way inquiries to the NTIA Web portal. Other federal agencies with land management responsibilities should also update their Web sites according to the criteria above within six months of the release of this report.

2. Pre-application Meeting

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[49] *See* http://www.firstgov.gov/Business/Business_Gateway.shtml (last visited March 26, 2004).

[50] The Working Group recognizes that the Bureau of Indian Affairs does not currently have a presence on the Internet. Specifically, the Bureau of Indian Affairs was disconnected from the Internet in December 2001, by order of U.S. District Court Judge Royce Lamberth, who cited security concerns and the need to protect data maintained under the Trust Asset and Accounting Management System. *See* Randall Edwards, *Interior shuffles BIA, adds tech division*, FEDERAL COMPUTER WEEK, June 30, 2003, at 12, *at* http://www.fcw.com/fcw/articles/2003/0630/news-bia-06-30-03.asp. Upon re-establishment of the Bureau's Internet presence, the Working Group recommends that the Bureau update its Web site as described above.

Issue: As part of their responsibility to administer rights-of-way, federal agencies are often required to review and evaluate a variety of factors regarding an applicant's proposed use of federal land, such as whether: (1) the proposal is consistent with the stated purpose for which the public lands are managed; (2) the proposal is in the public interest; (3) the applicant is technically or financially capable of accomplishing the project; (4) the proposal is consistent with applicable federal, state, local, or tribal laws; and (5) the applicant is able to mitigate any adverse environmental consequences resulting from the proposal. In addition, some federal applications may require coordination with state, local, or tribal governments. Due to the potential complexity of this review, applicants for rights-of-way permits often lack a good understanding of the potential issues that their applications may raise, the impacts to government agency resources that may be needed to evaluate the application, and the information needed by those government agencies in order to effectively evaluate the applications pursuant to the laws, regulations, and policies governing these types of requests. As a result, federal agencies frequently ask applicants to provide additional information before applications are accepted. This situation causes delays and additional costs for applicants and is an inefficient use of scarce agency resources.

Recommendation: To ensure that applicants are fully aware of all of the approval criteria and the process by which their applications will be evaluated and to ensure that all relevant government entities are properly engaged in the review process, the Working Group strongly recommends that a pre-application meeting occur between the applicant and the relevant agencies. Knowing the specific details of a project and engaging in an early and candid discussion with the relevant federal, state, local, and/or tribal officials *before the application is filed* can facilitate a more efficient processing of the rights-of-way application. Such a meeting will enable the government representatives to identify issues regarding land management consistency and/or constraints; potential or alternative route selection; cost recovery; rental or land use payments; NEPA requirements, including any studies that may be needed to comply with NHPA and ESA; cultural site considerations; work schedules; safety; remediation; and compliance. During the pre-application meeting, agency personnel will examine the proposed right-of-way to determine whether it could fit in an existing rights-of-way utility corridor or communications site (see discussion below). Applicants should be advised to bring a map of the project area to the pre-application meeting.[51] By establishing a dialogue between the applicant and all of the affected government entities, the pre-application meeting has the potential to save time and money for all parties. Adoption of this recommendation should not impose any additional burden on agencies' resources because existing staff would attend the pre-application meetings.

The Working Group recommends that the federal agencies post clear instructions for a potential applicant on their Web sites, noting that the burden is on the applicant to contact all potentially relevant federal agencies and to request a pre-application meeting. Once a potential applicant has made a request for a pre-application meeting, however, each of the agencies should work cooperatively to facilitate the meeting. A potential applicant should consider inviting the appropriate state, local, and tribal officials, if applicable. Federal agencies should strive to

[51] A map is requested as part of the application form.

schedule a pre-application meeting within 30 days of receiving a request from a potential applicant for such a meeting.

Implementation: By August 2004, each federal agency with rights-of-way responsibilities should post on their Web sites, and add to any applicable practice manuals, clearly articulated information for a potential rights-of-way applicant on the importance of a pre-application meeting and the steps that a potential applicant should take to set up that pre-application meeting.

3. A Single, Standardized Rights-of-Way Application

Issue: Although most federal agencies require a relatively similar body of information from rights-of-way applicants, their methods for collecting that information vary widely among agencies. Some agencies, such as BLM and the Forest Service, use a common application form; others such as the Navy or NOAA do not, just requiring similar information in whatever manner the applicant wishes to present it so long as it satisfies agency guidelines. As a result, applicants often submit the same information in different formats for different federal agencies, even when the agencies are collaborating on the review of the same project. This situation causes applicants to expend unnecessary time and resources to satisfy duplicative requirements. In contrast, where agencies such as BLM and the Forest Service have used a single common application form, industry stakeholders have noted the benefits from standardizing the information collection.

Recommendation: The Working Group recommends that all agencies with rights-of-way responsibilities for federal lands adopt a single, standardized form for rights-of-way applications. A single, standardized form will reduce filing burdens on applicants and will provide a consistent source of information for affected federal agencies. Specifically, the Working Group recommends that all federal agencies adopt the Standard Form 299 (SF-299) for use beginning no later than December 2004. (See Appendix B for a copy of Standard Form 299, currently in use by BLM and the Forest Service.)

The SF-299 requests information about the type of project proposed by the applicant. This information includes the project's location; the applicant's technical and financial capability to construct, operate, maintain and terminate the project; the applicant's need for the particular right-of-way; and the general environmental impact of the proposed project.

The SF-299 provides much of the basis for obtaining information to determine if the applicant is qualified and the project is viable. Use of the SF-299 is intended to simplify information collection for both the applicant and the federal agencies. There are unique parts of each federal agency's mission, however, that cannot be captured in a standardized form and that may require particular information from an applicant in order for a federal agency to assess whether to grant a right-of-way. Thus, later in the process, a federal agency may need to request further information specific to the project or an agency's mission.[52] Accordingly, the filing of an

[52] The Working Group notes that applicants should continue to be responsible for providing information to the federal agencies for NEPA analyses, NHPA requirements, threatened and endangered species inventories, and any

SF-299 does not preclude an agency from requesting additional information from the applicant. However, use of a common application form, coupled with a pre-application meeting, should reduce duplication and delays based on information solicitation.

The process of developing the SF-299 involved more than 20 federal agencies and the general public. The current version, first issued in 1999, resulted from consultation among the Forest Service, Bureau of Land Management, Fish and Wildlife Service, National Park Service, U.S. Department of the Interior Solicitor's Office, U.S. Department of Agriculture Office of General Counsel, Department of Transportation Office of Surface Transportation, and Department of Transportation Federal Aviation Administration.

The SF-299 is available in an electronic format so an applicant can download the form from the Internet, complete the application, and submit it via U.S. mail. After full implementation of OMB's e-gov initiative, the Working Group expects that applicants will be permitted to file the SF-299 electronically. The submitted SF-299, together with the appropriate cost recovery fees and a NEPA/NHPA checklist,[53] if applicable, should provide all the basic information necessary for a federal agency to complete its initial screening of the proposed permit (see below). The Working Group recognizes, however, that the complexity of the project under review, determines the extent of any additional information needed to complete the SF-299. Use of the SF-299 can provide applicants with useful guidance about the type of information that federal agencies require in their decision-making and can help to expedite the agency's initial review process.

Implementation: Each federal land management agency that does not currently use the SF-299 should initiate any agency action necessary, including rulemaking, to adopt the SF-299 as its primary means of collecting information from rights-of-way applicants. The Working Group recommends that such rulemakings commence immediately upon release of this report so that all federal land management agencies could begin using the SF-299 by December 2004. Once an agency formally adopts the SF-299 for use, that agency should post the SF-299 on its Web site. While electronic filing of the SF-299 is not currently available, the federal agencies

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other clearances that may be required. The Working Group recommends that the federal agencies allow applicants to provide this information using experts from their own companies or expert third-party contractors.

[53] The NEPA/NHPA checklist lets the applicant know early in the process what environmental and historical preservation concerns need to be addressed before the rights-of-way permit will be granted. For sample NEPA compliance checklists, please see NOAA's checklist, *at* http://www.ecs.noaa.gov/documents/nepaChecklist.html (last visited March 26, 2004) and the U.S. Fish and Wildlife Service's checklist, *at* http://training.fws.gov/fedaid/toolkit/3-2185.pdf (last visited March 26, 2004). Information on compliance with the NHPA is available from the Advisory Council on Historic Preservation, *at* http://www.achp.gov (last visited March 26, 2004). Typically, when it is determined that a federal undertaking will have an adverse effect on a property listed or eligible for listing in the National Register of Historic Places, the federal agency and the applicant enter into a Memorandum of Agreement (MOA) with the State Historic Preservation Officer and other consulting parties setting forth agreed-upon mitigation measures. Sample MOAs that have been signed by the FCC's Wireless Telecommunications Bureau are available online, *at* http://wireless.fcc.gov/siting/environ-nhpa-agreement.html (last visited March 26, 2004).

should work with OMB to enable electronic filing of this document by applicants as soon as possible.

B. Timely Processing

Issue: In order to construct their networks in a cost-effective manner, broadband providers, like other rights-of-way users, need timely decisions from land managers. Lengthy delays can add tremendous costs to a broadband project, cause companies to lose their funding, delay expansion into a particular market or community, and/or result in the deferral or abandonment of a broadband project. In outreach meetings with representatives from all sectors of the telecommunications industry, company representatives voiced many complaints about the length of time that rights-of-way applications take in federal agencies' land management processes. The Working Group found that delays result from a variety of causes, including limited funds, inadequate staffing, a lack of skills and expertise, meeting environmental planning, approval and permitting requirements, the absence of time frames for processing applications, or no enforcement of such time frames. The reassignment of staff to handle

national emergencies (*e.g.*, wildfires) can also result in lengthy delays. Although some of these issues are beyond the Working Group's ability to address, we believe that the recommendations below can substantially improve an agency's ability to process an application in a timely fashion.

1. Time Frames

Issue: A rights-of-way applicant often has little information about when an agency will complete its review of the application and issue a permit, or even complete various steps along the way. The lack of clear time frames often frustrates applicants who are trying to coordinate funding, construction, and other aspect of a project. Uncertainty can derail and even defeat the deployment of broadband networks.

Recommendation: The Working Group recommends that, during or shortly after the pre-application meeting, the affected agencies identify all steps and decisions that need to be made by each agency relative to processing a right-of-way and establish an estimated time frame for the review process. Early designation of a lead agency and project managers would facilitate the development of such a time frame and its timely execution. (See discussion below regarding lead agency and project managers.) The Working Group recommends the use of specific target time frames for various steps of the rights-of-way process. Time frames would help to expedite processing, provide predictability to the applicant, and provide agencies with a way to measure their performance. Some federal agencies already strive to meet the target time frames set out below. For purposes of establishing time frames, a proposal will be accepted as an application when the lead or responsible agency determines that the proposal provides the information necessary to evaluate it pursuant to NEPA, and meet any other applicable environmental requirements as needed by the agency(ies) having jurisdiction to approve the project. The Working Group recommends that all federal land management agencies establish the following time frames for processing rights-of-way permits:

- Target Time Frames for Initial Screening and Response for All Projects

    - For applicants that have participated in a pre-application meeting, agencies should review the initial application (the SF-299) and notify the applicant within 30 calendar days whether the application is "complete" and ready for formal review, or whether the application is incomplete and must be revised or supplemented.

    - For applicants that have not arranged for and participated in a pre-application meeting, then the agencies should review the application and notify the applicant within 60 days as to whether the application is complete.[54]

[54] This time frame is consistent with existing processing standards of BLM and the Forest Service. *See* BLM Manual 2801, R/W Management and Handbook H-2801-1 and FSH 2709.11, Special Use Handbook, Chapter 10.

- Target Time Frame for Final Decisions on Small, Uncomplicated Projects[55]

    - For small, uncomplicated rights-of-way projects, agencies should strive to grant or deny a proposal within 60 days of receiving a complete application.[56]

- Target Time Frame for Final Decisions on Large, Complex Projects

    - For larger, complex projects, the agency(ies), in consultation with the applicant and other affected parties, should establish a schedule of processing time frames and notify the applicant of that schedule within 60 days after the application is deemed complete.

Implementation: By August 2004, every federal agency with land management responsibilities should implement the target time frames as part of their internal practices for processing rights-of-way applications. To help ensure that agencies meet these targets, agencies should report to their respective Secretaries, or his/her designee, on an annual basis, with the first report due December 31, 2004, regarding the number of permits or easements that were issued within the targets and the number of permits or easements that were issued outside the targets. If applicable, the report should also explain why the target time frames were not met and should contain recommendations for improving timeliness in the future. By incorporating an annual reporting requirement, these target time frames will benefit not only rights-of-way applicants, but also agency personnel by providing an opportunity to demonstrate success and/or the need for additional information or resources.

2. Identification of Lead Federal Agency

Issue: Applicants also voiced the concern that, when projects affect more than one federal agency, coordination between agencies is often unpredictable. Varying local priorities, agency requirements, staffing levels, funding, and land-use planning decisions complicate agency cooperation and coordination. A lack of coordination between federal agencies often results in delays and imposes unnecessary costs on the applicant.

Recommendation: The Working Group recommends that, for rights-of-way projects that involve more than one federal agency, the agencies involved should designate a lead agency immediately following the pre-application meeting described above and before an application is filed. Agencies should use the following factors in the selection of a lead agency: (1) amount of land crossed, the difficulty of crossing certain land, and the impact to the land and resources; (2) the personnel and financial resources available to process expeditiously the rights-of-way application; (3) the expertise of the various agencies; and (4) the agency that manages the federal

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[55] The determination of whether a project is small and uncomplicated or large and complex depends on a variety of factors, such as the number of agencies involved, the type of geographic area covered, and the extent of environmental impact, among other considerations. This is an area of federal agency discretion.

[56] *See e.g.*, BLM Manual 2801, R/W Management and Handbook H-2801-1.

land over which there is the greatest degree of controversy or concern with respect to the proposed project. The responsibilities of the lead federal agency would include managing communications with all affected government agencies; managing the budget and personnel resources devoted to an application; ensuring that deadlines are met; and coordinating with all the other federal, state, local, and tribal agencies involved in the project with respect to related processes, approvals, and permits. One of the most important responsibilities of the lead agency is to serve as the primary contact for the applicant, who should work directly with the lead agency.

Implementation: The Working Group recommends that by August 2004, federal land management agencies adopt internal operating practices to ensure that a lead agency is designated for multi-agency projects. For most projects, these operating practices need not be extensive and should not require the adoption of any new rules. On particularly complex projects, agencies may wish to set forth the details of the responsibilities of the lead federal agency in a letter, memorandum of understanding, or other document mutually agreed to by all the affected federal agencies.[57]

3. Project Managers

Issue: Stakeholders also have noted that the rights-of-way process within a federal agency is slowed when several people at the agency have responsibility for different parts of the process, but there is no clear leader on the project. Consequently, delays occur because of a lack of coordination and communication. The applicant in such cases often must deal with multiple agency personnel, with resulting inefficiencies for both the applicant and the agency. The lack of clear leadership on a given project within an agency makes inter-agency coordination more difficult as well.

Recommendation: To improve timeliness, the Working Group recommends the use of project managers by federal agencies. The responsibilities of the project manager would include managing the budget and personnel resources devoted to processing an application and facilitating the permit's issuance; ensuring that target time frames are met; coordinating with all other federal, state, local, and tribal agencies involved in the project; and serving as the primary point of contact for industry, contractors, and other government entities. Project managers can provide skills and expertise with respect to regulations, requirements, and contacts that are usually not retained at every field office. Project managers are also extremely useful for agencies that are involved in multi-agency projects, as they can improve and simplify inter-agency coordination. As with lead agencies, applicants should avail themselves of the benefits of the single contact point that project managers provide. BLM has successfully utilized national project managers who coordinate large/complex project proposals, and other agencies may benefit from consulting with BLM about its experience.

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[57] When the Federal Energy Regulatory Commission (FERC) licenses large energy projects that involve several federal agencies, FERC often puts together a communications protocol so that all agencies and the permittee have a common understanding of how various communications are to occur between interested parties. *See, e.g.,* Appendix C, Federal Energy Regulatory Commission, *Communications Protocol: Lake Chelan Hydroelectric Project*, FERC NO. 637 (May 1, 1998; revised March 6, 2001).

Implementation: All federal agencies with land management responsibilities should (1) implement the use of the project manager approach for large, complex projects; and (2) designate project manager responsibilities, where appropriate, in employees' work plans. Federal agencies should provide training for personnel, if necessary, to carry out the duties of a project manager.

4. Utility Corridor Planning

Issue: In constructing their networks, broadband providers are often confronted with the challenge of finding suitable, cost-effective routes for laying fiber optic cables, or other linear communications media, while minimizing any potential environmental or historic preservation impacts that may slow an agency's review process. Energy companies have faced similar issues in laying pipelines, and many of those companies have embraced the use of utility corridors as the most optimal solution.[58]

Recommendation: As a way to help streamline the rights-of-way process for broadband companies, the Working Group recommends that companies take advantage of previously designated rights-of-way utility corridors when possible. Congress addressed the issue of rights-of-way utility corridors in Section 503 of the FLPMA. Section 503 states that the Secretary of the Interior shall designate corridors to minimize adverse environmental impacts and the proliferation of separate rights-of-way.[59] In addition, the National Energy Policy and Executive Order 13213 requires BLM to emphasize rights-of-way planning and corridor designations.[60] Since 1979, the Western Utility Group[61] and others have worked in cooperation with BLM and the Forest Service to identify and designate corridors in their land management plans.[62]

In recognition of the benefits of utility corridor designation, the Working Group recommends that the federal land management agencies encourage the telecommunications sector, agencies with environmental and regulatory responsibilities, state transportation department officials, and state historic preservation officials to participate in the land and resource planning processes and proceedings that federal agencies use to designate utility corridors. The Working Group suggests that federal agencies reach out to telecommunications entities in their utility corridor designation process. Utility corridors provide a way for various

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[58] A utility corridor is "a parcel of land either linear or aerial in character that has been identified by law, Secretarial Order, the land-use planning process, or by other management decision, as being a preferred location for existing and future rights-of-way grants and suitable to accommodate more than 1 type of right-of-way or more rights-of-way which are similar, identical or compatible." Western Governors' Association, *Briefing Paper on Utility Corridors*, at 2-3, http://www.westgov.org/wieb/electric/Transmission%20Protocol/SSG-WI/util_corr.pdf (last visited March 26, 2004).

[59] 43 U.S.C. § 1763.

[60] Implementation guidance for this action is articulated in Instruction Memorandum No. 2002-196 (June 25, 2002).

[61] The Western Utility Group is an industry group.

[62] *See* Western Utility Group, *Western Regional Corridor Study* (1993).

stakeholders to work together to identify rights-of-way across federal lands that may be used by more than one company. In many instances, using a designated utility corridor can significantly expedite the processing of rights-of-way for new telecommunication transmission facilities by eliminating the need to do extensive environmental and other impact studies required for new sites, and thereby result in time and financial savings for the applicant. The Working Group recognizes that utility corridors may not always present the most efficient or cost-effective route for rights-of-way applicants and these applicants should retain the flexibility to apply for other routes. Nonetheless, the Working Group encourages applicants to use utility corridors wherever practicable.

Implementation: The federal agencies should promote the use of designated utility corridors to all potential applicants by means of public awareness through postings on their Web sites,[63] as well as information provided to applicants at the pre-application meeting. Postings on agency Web sites could include a fact sheet that includes maps and descriptions about the location of existing and planned utility corridors and provide information about how interested telecommunications companies and other stakeholders can get involved in these federal land management planning processes. While BLM and the Forest Service already actively participate in the Western Utility Group's current *Western Regional Corridor Study*, other Federal land management agencies should also become more active participants.

5. Communications Site Plans

Issue: In addition to employing linear facilities that may stretch for tens or hundreds of miles, such as fiber optic cables, communications providers also rely on facilities located at a single geographic point. These facilities may include buildings or towers that house or support communications equipment. These physical structures are also known as communications sites.[64] A communications site plan, developed by an agency, sets forth the conditions for multiple tenants' use of such a facility.

Communication sites are critical for the wireless industry, which has a growing need for additional antenna sites, including in remote communities once considered too isolated for the investment of infrastructure capital.[65] However, to avoid congestion as well as to address aesthetic concerns, agencies desire to limit the number of communications sites. Most federal agencies advocate maximizing an existing communications site to reduce the proliferation of sites and ensure compatibility among communications uses.

In the past two years, BLM has completed site management plans on over 60 mountain tops. BLM uses in-house land surveyors and geographic information system (GIS) mapping specialists to perform the site survey and to prepare detailed site maps of the mountain tops.

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[63] Agencies should post information within six months of the release of this report.

[64] Forest Service, FSH 2709.11: Special Uses Handbook (October 2002).

[65] *Id.*

Recommendation: The Working Group recommends that federal land management agencies encourage co-location of communications facilities on existing designated communications sites, where feasible for the agency and the applicant, similar to the practice currently employed by BLM and the Forest Service. The advantage for rights-of-way applicants is that co-location on an existing communications site allows a potential tenant to co-locate in a private facility without agency review, when the facility owner determines that the proposed use is compatible with the site plan and existing communications uses at the site.[66] The Working Group encourages federal agencies to continue using communications site plans that facilitate appropriate access to federal property for the siting of mobile service antennas. Agencies should give special consideration to potential broadband use for extending service to rural communities. Agencies must retain the discretion to reject inappropriate siting requests, ensure protection of public property, and ensure timely removal of equipment and structures at the end of service.[67]

Implementation: All relevant federal land management agencies should continue to prepare and maintain a communications site plan for each designated communications site. The federal agencies should explore the option of obtaining fee retention authority, similar to that given to BLM, for use in establishing communications site planning programs. In addition, the federal agencies should work closely with industry and other users to ensure that the communications site plans remain effective and inclusive of all needs of both industry and the Federal Government. The federal land management agencies should promote private sector awareness of these communications sites and should include maps on their Web sites showing the location of existing communications sites.[68] NTIA should post a fact sheet on the central federal rights-of-way Web site that (1) explains the current status of the Federal Government's communication site plans, (2) includes maps showing the location of existing or planned communications sites, and (3) provides information about the potential role for interested telecommunications companies and other stakeholders.

C. Fees and Other Charges

As an applicant goes through the rights-of-way process, the applicant generally encounters two types of fees: (1) the recovery of costs incurred by federal agencies in processing and monitoring rights-of-way, and (2) the assessment of rental payments or other compensation

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[66] Forest Service, FSH 2709.11: Special Uses Handbook (October 2002).

[67] See, GSA Bulletin FPMR D-242, Placement of Commercial Antennas on Federal Property, 62 Fed. Reg. 32,611 (1997). GSA Bulletin FMPR-D-242, Supplement 1, 64 Fed. Reg. 30523 (1999), extended the bulletin's expiration date indefinitely.

[68] The Working Group recognizes that many agencies have important security concerns. Consequently, such concerns may inhibit agencies that maintain communication sites co-located with, or comprising, critical infrastructure from broadly disseminating the location of such sites on a public Web site. In such instances, agencies should post on their Web site contact information for staff who can assist interested parties in identifying sites where they might co-locate their communications facilities. Agencies should do updates within six months of the release of this report.

for the applicant's use of federal land.[69] In reviewing current procedures used by federal rights-of-way managers, the Working Group identified areas where federal agencies should streamline their practices, improve processes with respect to calculating reasonable fees, provide information in a more customer-friendly way, and promote predictability and accountability. These issues are discussed below.

1. Cost Recovery

Issue: By statute and administrative directive, federal agencies are required to recover the cost of providing goods, services, or resources to the public, including permits for rights-of-way. Specifically, Title V of the Independent Offices Appropriations Act of 1952 allows federal agencies to recoup costs from identifiable "special beneficiaries" where the services benefited particular recipients as compared to the general public.[70] OMB Circular No. A-25 establishes federal policy regarding fees assessed for government services and for sale or use of government goods or resources.[71] For cost recovery for rights-of-way uses, the circular requires that federal agencies assess and collect user charges that will be sufficient to recover the full cost to the Federal Government of providing a good, service, or resource. This recovery may include a variety of costs, such as those for verifying and evaluating information submitted by the applicant, inspecting and monitoring installation and maintenance, and conducting environmental and engineering studies. In most cases, federal agencies calculate and recover these costs separately from a land use fee, also known as a rental fee, or some other consideration given in exchange for use of the rights-of-way.

In practice, federal agencies have widely divergent policies and procedures for assessing, collecting, and spending cost recovery fees associated with rights-of-way management.[72] For example, BLM has detailed regulations on the use of cost recovery schedules for smaller projects, and case-specific cost recovery procedures for larger projects. The Forest Service currently collects processing and monitoring fees on a voluntary basis from applicants and

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[69] Certain applicants are exempt from some fees. Telephone local exchange carriers that apply for a right-of-way permit for facilities that are eligible for Rural Utilities Service financing are exempt from paying rights-of-way rents on any federal lands that are subject to § 504(g) of FLPMA, 43 U.S.C. § 1764(g). *(footnote continued on next page)* This exemption applies to any eligible facility, regardless of whether the applicant is a non-profit or for-profit telephone local exchange carrier. The exemption applies only to rental fees, so the applicant would still be subject to permit processing fees.

[70] 31 U.S.C. §§ 9701 and 1111.

[71] *See* Appendix D for a copy of OMB Circular No. A-25. OMB Circular No. A-25 provides all executive departments in the Federal Government with administrative direction in implementing the authority to recover costs as set forth in Title V of the Independent Offices Appropriations Act of 1952, 31 U.S.C. §§ 9701 and 1111, and Executive Order Nos. 8248 and 11,541.

[72] Concerning building access, GSA does not charge telecommunications vendors for the agency personnel's time or effort in working with them, but GSA does expect these vendors to cover a variety of ancillary costs, such as utility expenses, equipment room build outs, security clearances, radio emissions safety assurance, confirmation of no interference with electronic equipment operating in or near the building, and changes to the installation "blueprint" based upon structural impediments, aesthetic issues, or tenant concerns.

permit holders, but by the end of fiscal year 2004, it intends to finalize a set of cost recovery regulations and fee schedules concurrently with BLM's pending revisions to its long-standing regulations and procedures. The end product will be a higher degree of consistency in the assessment of processing and monitoring fees between these two agencies.

Other agencies use a variety of different approaches. For example, an applicant for an easement on military lands pays cost recovery, although the Navy must recover its costs in the fiscal year in which the costs are incurred. In the case of the Army Corps of Engineers, customers pay according to an established fee schedule, although the Army Corps of Engineers permits deviations from the schedule in certain circumstances. If NOAA chooses to assess a special use permit fee under the National Marine Sanctuaries Act, it must include assessments for administrative costs, monitoring costs and fair market value. The National Park Service provides local offices with the discretion to determine their own cost recovery fee rates based on actual costs incurred. BIA does not currently recover costs related to rights-of-way on Indian lands, although it has the authority to do so under 25 U.S.C. §413.

As the preceding examples demonstrate, federal agencies have adopted a variety of approaches to implementing cost recovery. In the Working Group's discussions with stakeholders, many applicants -- particularly those dealing with multiple agencies -- viewed the varied approaches to be inefficient, confusing, and frustrating. In response to these concerns regarding cost recovery, the Working Group sets forth three recommendations. The recommendations address the following three aspects of cost recovery: (1) the entity responsible for cost recovery; (2) general principles applicable to cost recovery; and (3) specific techniques for standardizing and simplifying cost recovery.[73]

Recommendation #1: First, the Working Group has identified the need to clarify which federal agency will be responsible for cost recovery on projects involving more than one agency. The Working Group's recommendation is that for small, uncomplicated projects, individual agencies should continue to be responsible for recovering their own costs, subject to the principles and techniques discussed below. For larger inter-agency projects,[74] improved efficiency may result from the lead agency performing cost recovery on behalf of all affected federal agencies (see discussion above). By sharing resources and simplifying cost recovery procedures where multiple federal land management agencies are involved, federal agencies can better use their skilled staff, reduce duplication, and make communications easier for applicants, who would benefit from a single point of contact for the federal agencies.

Implementation: For larger inter-agency projects where the federal agencies have designated a lead agency, the affected federal agencies should agree on consolidating cost

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[73] As noted earlier, (*see supra* fn.19) the issue of access to federal buildings is outside the scope of this report. We refer to the "telecommunications-in-buildings" approach of the GSA, however, as part of the Working Group's description in two specific areas: cost recovery and also rental fees (see below).

[74] As an example of the demarcation between small, uncomplicated rights-of-way ("minor") projects and large, complex interagency ("major") rights-of-way projects, BLM since the 1970s has used a threshold of 50 hours. In this context "hours" refers to the time needed by agency personnel to process applications and monitor authorizations.

recovery duties and placing them with the lead agency. Federal agencies should develop a standard inter-agency agreement or memorandum of understanding regarding inter-agency cost recovery procedures that will apply in most cases, unless there are unique aspects to the project that require changes to the standard inter-agency agreement. The significantly different statutory missions of some federal agencies, such as BIA and NOAA, may require specific provisions in the inter-agency agreements that take into account the agency(ies)' different approaches to cost recovery.

Recommendation #2: Second, the Working Group recommends that the federal agencies act in accordance with a set of general principles applicable to cost recovery pertaining to rights-of-way management. Specifically, the Working Group recommends that these agencies develop and implement regulations that result in a cost recovery process that meets the following criteria:

- Promote predictability and consistency.
- Are based on a transparent and reliable cost recovery system that helps ensure accountability.
- Feature reasonable fees that reflect an agency's costs and efficiency.
- Afford ease of use by the customer (*e.g.*, a ready contact; provides for a lead agency approach where multiple jurisdictions are affected; a clear published explanation of the process).
- Foster ease of use by the agency (simple formula for implementation).

Implementation: All relevant federal land management agencies should commence rulemakings, as necessary and appropriate, for the purpose of developing and implementing regulations for rights-of-way cost recovery processes that incorporate the above criteria. These agencies should initiate these rulemakings by December 2004.

Recommendation #3: Third, the Working Group recommends specific techniques for standardizing and simplifying cost recovery relating to rights-of-way management. In particular, applicable agencies should implement the following practices and procedures:

- An activities-based costing system using accepted accounting principles. Such a formal, reliable cost-accounting system would promote accountability and confidence for both agencies and applicants. Adopting this system across the various rights-of-way agencies would foster a similar costing basis, thereby minimizing distortions and unjustified differentials.
- Fee schedules[75] for small, uncomplicated projects. Establishment of such schedules would enhance predictability and ease of use by agencies and their customers, reducing the number of complaints.

[75] For an explanation of "fee schedules" please see the section on Rental Payments/Compensation.

- Case-specific cost estimates and assessments for large, complex projects. Working Group members generally agreed that the agencies' need for flexibility and specificity in estimating the costs of such diverse projects should be paramount; fee schedules would be easier to use but would not accommodate the need for costing accuracy and flexibility in large-scale projects. Drawing costs for large, complex projects from a transparent and reliable cost recovery system would instill confidence in applicants and agencies alike.

- A readily accessible source of information (*e.g.*, Web site), describing for applicants the agency's cost recovery regulations, policies, and procedures. This transparency would inform and reassure applicants, particularly those new to the federal rights-of-way process. Agencies, too, would benefit from enhanced efficiency in their operations, as well as greater ease of use and improved relations with their applicants.

- A specific list of costs to be recovered that will include, but not be limited to, an agency's costs for the following activities:

    (1) Verifying information submitted on the application.
    (2) Reviewing plans, conducting field reviews, and collecting data.
    (3) Conducting environmental and engineering studies.
    (4) Mitigating impacts to federal lands, facilities, and resources.
    (5) Amending resource management plans.
    (6) Inspecting and monitoring installation, maintenance, construction, and restoration.

This list should reside in the respective agencies' rules and be posted on their Web sites. Identifying specific types of costs in advance would help applicants in planning projects and also save time and effort for affected agencies.

Implementation: All relevant federal land management agencies should commence rulemakings, as necessary and appropriate, for the purpose of standardizing and simplifying rights-of-way cost recovery, incorporating the practices and procedures set forth in the recommendation above. These agencies should initiate such rulemakings by December 2004.

2. Rental Payments/Compensation

Issue: In addition to cost recovery fees, rights-of-way applicants also encounter other land use fees, such as rental fees. Specifically, a variety of statutes and regulations direct federal agencies to assess and collect rent, or obtain consideration for, the use of federal lands, including for rights-of-way.[76] As a starting point for calculating rental payments, most statutes embrace

[76] Most of these statutes and their associated regulations provide agencies with the discretion to waive all or part of a rental fee, pursuant to specific fee waiver criteria. Other statutes may also exempt rental fees for certain uses or rights-holders. The Army Corps of Engineers, for example, does not collect periodic rental payments for the grant of an easement. 31 U.S.C. § 9701. The General Services Administration may grant an easement without consideration, or with monetary or other consideration, or with exceptions if the head of the agency considers this

the principle of fair market value. For example, the statutes applicable to BLM and the Forest Service require that rent for the use of public land and national forest system land be based on "fair market value, as determined by the Secretary."[77] Other agencies have different, but similar, legal authority. OMB Circular A-25 provides guidance as well, requiring "user charges based on market prices . . . that need not be limited to the recovery of full cost and may yield net revenues."[78]

In practice, there are several approaches to establishing fair market value that government agencies commonly use in rights-of-way management.[79] The two primary ways of calculating rental payments are (1) rental fee schedules and (2) real estate appraisals. BLM and the Forest Service rely primarily on regulatory rental fee schedules to set annual rental payments for linear applications and communications sites. In general, the communications industry has expressed few problems with the linear rental fee schedules used by BLM and the Forest Service, but the annual rates in those schedules are currently out-of-date. BLM and the Forest Service currently update rates based on the annualized change in Implicit Price Deflator-Gross Domestic Product (IPD-GDP).[80] However, efforts to update the rental fee schedules during the last four years have raised concerns about the level of and the basis for the rates.[81] The communications industry also has generally supported the Forest Service/BLM rental schedule for communications sites

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necessary to protect the interests of the federal government. 40 U.S.C. § 1314. For American Indian-owned land subject to BIA approval, rights-of-way are acquired via easements involving a one-time payment. 25 C.F.R. § 169.

[77] The primary statutory authority for the two agencies with respect to telecommunications and fiber optics for the granting of rights-of-way over National Forest System and BLM-administered public lands is Title V of the FLPMA, 43 U.S.C. § 1764.

[78] Requests for exceptions to this requirement can be made to OMB. Please see Appendix D for a copy of OMB Circular A-25.

[79] For a basic discussion of four general approaches to rights-of-way valuation, with particular emphasis on fiber optics easements, *see* Chapter III, "Valuing Rights of Way," National Oceanic and Atmospheric Administration, *Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries*, August 2002. It is noteworthy that GSA takes a different approach to determine rental payments for building access than for rights-of-way access to federal lands. GSA is authorized to negotiate reasonable compensation for accessing federally-owned buildings. For rooftop antenna placements, the amounts charged typically take into account such factors as building location, height, population served, and line of sight. Insofar as the placement of antennas by GSA customers (*i.e.*, other federal agencies) is concerned, GSA charges for rooftop and other space needed based upon prevailing commercial rates. GSA also requires a written agreement, which specifies the terms and conditions under which customers will access the building and install and maintain the telecommunications equipment. *See* GSA Bulletin FPMR D-242, Placement of Commercial Antennas on Federal Property, 62 Fed. Reg. 32,611, 32613 (1997).

[80] Statisticians and economists use GDP (Gross Domestic Product) deflators to remove the influence of price changes and to record only real changes to the economy. Stated differently, this deflator is a price index that is used as a means of adjusting "nominal" (money) GDP to obtain real GDP, which represents output of physical goods and services. This replaced a similar deflator based on Gross National Product (GNP).

[81] The House of Representatives has passed legislation during each of the last two sessions of Congress to require that any revision of the rental schedule be similar to the current schedule, in which the annual rates are based on a percentage of the estimated fee simple value of the land being occupied.

(such as for wireless telecommunications uses),[82] which is adjusted each year by the annualized change in the Consumer Price Index-Urban (CPI-U).[83]

In addition to employing rental fee schedules, a number of agencies routinely use real estate appraisals or nonfederal market rent studies or surveys to determine the annual land use fee for a license or permit[84] or the amount of consideration for the conveyance of an easement.[85] A few agencies, however, limit their use of real estate appraisals to establish rental fees for high value rights-of-way. Besides direct monetary payments, in-kind compensation has also been used in certain circumstances. For example, the Federal Highway Administration's state department of transportation partners have used a barter approach, in some situations receiving the use of fiber optic capacity instead of cash rents as consideration.

General rental fee schedules and individual real estate appraisals each have their strengths and weaknesses. The Working Group's discussions with stakeholders revealed that an agency's use of case-specific real estate appraisals or market rent surveys require fact-intensive inquiries, which can slow the application process and may result in value estimates significantly different than expected by a right-of-way applicant. In some cases, appraisals can be complicated by the lack of market rental data, the limited availability of appraisal expertise, and inconsistent appraisal methodologies among or within agencies, all of which can cause a wide range of outcomes for apparently similar projects. For determining the precise consideration owed for a right-of-way, however, appraisals have the potential to provide the most accurate results. By contrast, generalized rental schedules may not work as well for large, complex projects but are attractive because they are relatively easy to use and they provide greater certainty to applicants.

In addition, utility corridor rights-of-way may pose significant challenges to determining correct valuation. Recent studies in California and Arizona concluded that corridor markets are basically "immature and characterized by divergent methodologies and valuation results."[86] Among the problems cited: (1) confidentiality agreements inhibit the free flow of information; (2) appraisers may either be uninformed concerning telecommunications corridor rights-of-way

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[82] For illustrative purposes, the 2003 Communications Site Fee Schedule (excerpted from Forest Service, FSH 2709.11: Special Uses Handbook, October 2002 (Chapter 30, "Fee Determination")) may be found in Appendix E.

[83] CPI-U is an index of changes in the prices of goods and services to typical urban-based consumers and is premised upon the cost of the same goods in a base period. For linear rights-of-way rental fee rates, the Forest Service and BLM annually update those rates.

[84] A permit is a permission granted by the property owner to use the property, subject to the terms and conditions of the permit. A permit grants no interest in the property, is nonexclusive, and is often revocable.

[85] An easement is an interest in land owned by another that entitles the holder to a specific limited use (*e.g.*, to cross the land). The use may be in perpetuity or for a stated period of time and usually involves the initial payment of consideration to the property owner.

[86] *See* C.P. Bucaria and R.G. Kuhs, *Fiber Optic Communication Corridor Right of Way Valuation Methodology*, THE APPRAISAL JOURNAL, April 2002, at 2.

or rely solely upon one method to solve all appraisal problems; and (3) valuers may rely upon local markets that may not contain information appropriate to a particular appraisal problem.[87]

In response to these concerns regarding rental payments, the Working Group sets forth three recommendations. The recommendations address the following three aspects of rental payments/compensation: (1) the entity responsible for rental payments; (2) general principles applicable to rental payments; and (3) specific techniques for standardizing and simplifying rental payments.

Recommendation #1: First, the Working Group seeks to clarify which federal agency will be responsible for rental payments on projects involving more than one agency. The Working Group's recommendation is that for small, uncomplicated inter-agency projects, individual agencies would continue to be responsible for administering rental payments, consistent with the principles and techniques discussed below. For larger inter-agency projects, improved efficiency may result from the lead agency collecting rental payments from an applicant on behalf of all affected agencies (see previous discussion on lead agency).[88] Implementing this recommendation will redound to the benefit of both applicants and agencies through establishment of a single point of contact, better use of agency resources, and significant time savings.

Implementation: For larger inter-agency projects where the federal agencies have designated a lead agency, the affected federal agencies should agree on consolidating rental payment duties and placing them with the lead agency. The details of the rental payment procedures may be set forth in a memorandum of understanding among the agencies or other appropriate inter-agency document.

Recommendation #2: Second, the Working Group recommends that the federal agencies act in accordance with a set of general principles applicable to rental payments. The Working Group recommends that agencies responsible for rental payment functions develop and implement regulations, or make revisions to policies and practices that result in rental payment procedures that meet the following criteria:

- Promote predictability and consistency.
- Provide for a transparent compensation system that helps ensure accountability.
- Use a reasonable market-based rights-of-way valuation approach.

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[87] *Id.*

[88] BIA's mission is unique among the federal land managing agencies. As the lead agency for implementing the United States' fiduciary responsibility for trust and restricted fee lands owned by Native Americans, BIA distributes all appropriate right-of-way payments to the owners whose property is being crossed in accordance with their ownership interest in the property. Therefore, it is recognized that any funds derived from Indian lands held in trust must be handled in a manner that is consistent with the federal government's fiduciary responsibilities, such as, for example, by carefully segregating trust from non-trust funds.

- Provide for agency discretion to make adjustments to rental fees for purposes of achieving the agency's mission.

- Afford ease of use by the customer (ready contact; provides for a lead agency approach where multiple jurisdictions occur; a clear published explanation of the process).

- Foster ease of use by the agency.

Implementation: All relevant federal land management agencies should commence rulemakings, as necessary and appropriate, for the purpose of developing and implementing regulations for rights-of-way rental payment processes that incorporate the above criteria. These agencies should initiate these rulemakings by December 2004.

Recommendation #3: Third, the Working Group recommends greater use of rental fee schedules where periodic rental payments are required. Rental schedules provide a standardized mechanism for determining rental fees, thereby removing a great deal of time-consuming, subjective judgment from the valuation process. Thus, rental fee schedules can result in more efficient use of resources, timely processing of rights-of-way applications, and a more transparent process for all. However, the Working Group recognizes that greater use of fee schedules may not be appropriate for some applications, for which other valuation methods may be better suited.

More specifically:

- With respect to *linear featured broadband facilities*, all federal land management agencies should adopt, where practicable, policies and procedures for rental fees based on the fee schedule rates approach used by BLM and the Forest Service. BLM and the Forest Service should update their rental fee schedules for wireless and linear broadband equipment on federal lands.

- With respect to rental fees for *communications sites* (such as for wireless telecommunications equipment), the Working Group recommends that all federal agencies that authorize the operation of wireless telecommunications facilities on federal lands adopt a rental rate schedule based on the Forest Service/BLM schedule for communications site uses, thereby establishing an annual rental fee for use and occupancy of federal lands.

- In both cases, federal agencies should retain authority to grant an exception, as appropriate, to the use of fee schedules (*e.g.*, to perform individual appraisals or undertake agreements to receive services instead of cash) in order to foster efficiencies or other benefits (such as allowing barter for public services such as safety messages, 911, or other operational uses), or to further the agency's mission. This would not limit the existing statutory authority agencies may have to establish rental rates or the amount of consideration for conveyances of easements.

- Agencies should use rental fee schedules where practicable. In addition to the above stated exceptions, however, agencies should consider obtaining an appraisal rather than refer to a rental rate schedule if the valuation problem is complex, the value of the rights to be granted is likely to substantial, or the conveyance of an easement is contemplated. [89]

- In order to provide consistency in rental fees and avoid duplicating efforts, federal agencies should share information about methodologies for determining fair market rental values, and other information, as they develop and update rental fee schedules and as they perform individual appraisals. Avoiding duplication should enhance efficiency in processing rents and ensure greater consistency among agencies.

Implementation: All relevant federal land management agencies that are not currently using fee schedules or who are using them infrequently should commence rulemakings, as necessary and appropriate, for the purpose of greater use of fee schedules in determining rights-of-way rental payments. Agencies should initiate these rulemakings by December 2004.

D. Compliance

As the trustee of public lands, the Federal Government is responsible for preserving, to the extent possible, the natural state of wilderness, coastal, and other protected lands, [90] and for sustaining the productivity of the lands' renewable and other resources. [91] At the same time, most federal land management agencies are obligated to optimize the lands' utility by accommodating multiple uses, including recreational and commercial uses, which benefit the Nation. [92] To ensure

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[89] Where an agency finds a need to use appraisals, reference to the *Uniform Appraisal Standards for Federal Land Acquisitions* (December 2000), promulgated by the Interagency Acquisition Conference, may be helpful in mitigating some of the problems identified with the use of appraisals.

[90] *See, e.g.*, 43 U.S.C. § 1701(a)(8), which sets forth a Congressional policy declaration that:

> the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmosphere, water resource, and archeological values; that where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

[91] In contrast to other federal land managing agencies, BIA administers rights-of-way on lands owned by Indian tribes or individuals, and balances preservation of the trust resource with economic development in fulfilling its role.

[92] *See, e.g.*, 16 U.S.C. §532, which provides that:

> The Congress hereby finds and declares that the construction of an adequate system of roads and trails within and near the national forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met . . . and that such a system is essential to enable the Secretary of Agriculture to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yields of products and services.

However, some federal agencies have a narrower mission. The National Park Service's establishing legislation instructs that agency to "conserve the scenery and the natural and *(footnote continued on next page)*

that the government appropriately balances its dual responsibilities, a variety of laws permit private sector use of federal land but require rights-of-way holders to restore land, to the extent possible, to its original condition following installation of a commercial facility. Certain environmental and historic preservation, protection, and restoration measures are required. Land management agencies, in turn, incorporate these requirements as conditions of the right-of-way.

Although permit holders have a legal duty to properly install and maintain their facilities, their commercial interests give them an added incentive to do so. Permit holders generally recognize that obtaining authorization to locate their equipment on federal lands depends upon their adherence to the permit's terms. They are usually well aware of these terms since they frequently negotiate compliance and other requirements during the NEPA and NHPA review process prior to the permit's approval. Therefore, in the Working Group members' experience, monitoring and related compliance activities are ordinarily the least problematic aspects of rights-of-way administration at the federal level.

Nonetheless, the Working Group has identified some aspects of monitoring and compliance that federal land managers could improve. Based on our discussions with stakeholders and our own research, the Working Group found that compliance issues fall into the following main categories: (1) ensuring the proper installation and maintenance of facilities, (2) addressing unanticipated costs, and (3) imposing penalties for noncompliance.

1. Ensuring Proper Installation and Maintenance of Facilities

Issue: During a project's initial construction, agency staff ordinarily ensure that the linear or site facility installation complies with pre-approved specifications and any accompanying agreements or site plans. Following construction, agencies often rely on field personnel to inspect the facilities periodically. In the rare instance of abandonment or termination of a right-of way, field personnel would also inspect for proper facilities removal and premises restoration.

BLM and the Forest Service, two of the largest federal land management agencies, function through a decentralized system of field office operations. BLM's workforce comprises 10,000 employees located at its headquarters and national centers, and over 180 state and field offices to oversee more than 261 million acres of public lands located primarily in the western states and Alaska plus a total of 700 million acres of subsurface mineral estate.[93] As of August 2002, the agency was handling a total of about 85,000 rights-of-way. Over the last several years,

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historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1.

[93] U.S. Department of the Interior, Bureau of Land Management, *Annual Report FY02: Balancing Today's Need for Tomorrow's Public Lands*, at preface, *at* http://www.blm.gov/nhp/info/stratplan/AR02.pdf (last visited March 26, 2004) (public lands administered by the BLM include "millions of acres of open rangelands; geological formations containing the oil, gas, and coal resources needed to sustain our economic well-being; wilderness and recreation areas with spectacular scenery and opportunities for solitude; nearly 117,000 miles of fishable streams; high forested slopes; alpine tundra; majestic canyons; and rugged badlands").

BLM has experienced an annual ten percent increase in the number of rights-of-way applications received, and has processed about 5,500 such matters each year.[94] Similarly, the Forest Service, through a network of nine regional offices, manages 155 national forests and 20 grasslands totaling 192 million acres.[95] Through its special uses program, the Forest Service has approved more than 72,000 authorizations for more than 150 types of uses, including telecommunications and utility rights-of-way.[96]

The breadth of these agencies' responsibilities to balance the public's many uses of the extensive and diverse national lands they administer may limit at any given time the human or financial resources available in the field to address compliance matters. In reality, rights-of-way compliance monitoring is one of many tasks of agencies' field personnel, who prioritize monitoring among their other mission critical responsibilities, such as, for example, battling forest fires, responding to other emergencies, and assisting tourists. For the most part, field personnel seem to handle routine right-of-way compliance satisfactorily. In field offices lacking staff with the necessary expertise or the funds for such activities, however, additional resources could help to improve post-construction compliance monitoring.

Federal agencies' capacity to fund compliance activities varies widely. Some agencies have imposed fees for this purpose. For example, BLM has implemented a fee schedule to reimburse the government for the cost of monitoring its simpler projects, which it classifies in categories of increasing complexity from I-IV. The fees in these categories range from $50 to $200 to monitor the project's construction, operation, maintenance, and termination and for the protection and rehabilitation of the affected lands.[97] BLM designates as category V projects those that are large, complex, and require the gathering of original data to comply with NEPA and other statutes, and at least three field examinations.[98] The Category V permit holder pays the monitoring fee and other costs on a periodic basis before the government incurs them.[99] NOAA, which administers sub-marine rights-of-way for communications cables, and the Army Corps of Engineers are other examples of agencies that charge specific fees for monitoring rights-of-way.

By contrast, under the Department of the Navy's current practice, that agency may only recover costs associated with rights-of-way administration during the fiscal year in which the

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[94] Federal Rights of Way Working Group Survey Response of the Bureau of Land Management (BLM Survey Response), at 1 (on file with NTIA). For rights-of-way, BLM has inventoried and prioritized energy-related rights-of-way applications; hired four rights-of-way project managers, all stationed in the West, to expedite major rights-of-way applications; and expanded rights-of-way training for BLM staff and industry. *BLM FY02 Annual Report* at 3.

[95] *See* http://www.fs.fed.us/aboutus/ (last visited March 26, 2004).

[96] U.S. Department of Agriculture, Forest Service, *Obtaining a Special-Use Authorization with the Forest Service, at* http://www.fs.fed.us/recreation/permits/broch.htm (last visited March 26, 2004).

[97] 43 C.F.R. § 2808.4.

[98] *Id.* at § 2808.2-1(a)(5).

[99] *Id*.

construction occurred. Therefore, the Navy must recover up front any costs for routine compliance monitoring or other activities incurred during subsequent fiscal years. The Navy administers relatively few rights-of-way, which mitigates to some extent the potential burden that this practice might impose on its resources.

Recognizing that agencies rely on their field personnel to perform an array of duties that can shift depending upon the office's needs at a particular time, the Working Group recommends the following measures to enhance staffing and funding for rights-of-way administration and compliance monitoring.

Recommendation #1: First, federal agencies with staff involved in granting and monitoring rights-of-way should make formal training on these issues available to them. Whether offered by the agencies themselves or by outside organizations, such training would particularly benefit field personnel who rarely handle rights-of-way matters. The training would help to familiarize them with these issues and emphasize the importance of their prompt response. Both BLM and the International Rights of Way Association offer training that is open to individuals outside of their organizations.[100] Several years ago BLM extended to 16 weeks its training for professional realty specialists at the Lands Academy of the National Training Center. The academy offers a beginning session each year and an additional two sessions at different times during the year. The agency expanded the course to increase the base knowledge of its workforce.[101] BLM currently offers several training courses for BLM, Forest Service, and industry participation. Those courses cover managing major rights-of-way projects, electric systems, pipeline systems, and wireless telecommunications. BLM and the Forest Service also offer a course to BLM/Forest Service managers called National Lands Training for Managers and Program Leaders. The Working Group strongly encourages all federal land management agencies to make available to their staff these or other relevant training opportunities that may exist.

Implementation: By August 2004, all federal agencies offering training on rights-of-way administration should begin to publicize on their Web sites and through other effective means the availability of rights-of-way training and the eligibility requirements to attend. In addition, by August 2004, all federal land management agencies, regardless of whether they provide in-house training, should designate staff to identify regularly and disseminate promptly information about rights-of way training opportunities to the appropriate staff.

Recommendation #2: Second, federal agencies should inform grantees of the option of hiring reputable third-party contractors, who in conjunction with agency compliance monitors, ensure that grantees properly perform planning and environmental studies, and initial phase construction work to the agency's satisfaction. These contractors are not substitutes for federal personnel, but work closely with them as agents of rights-of-way applicants. A knowledgeable contractor may be an invaluable resource to help applicants navigate an agency's rights-of-way

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[100] *See* http://www.ntc.blm.gov/ (last visited March 26, 2004) and http://www.irwaonline.org/education/ (last visited March 26, 2004).

[101] BLM Survey Response at 4 (on file with NTIA).

process, and thereby minimize delays that could result from incomplete or unsatisfactory submissions. Therefore, contractors may expedite facility construction by preparing rights-holders for compliance inspections and other monitoring activities, including reporting to federal land managers the grantee's observance of work plan requirements. Given agencies' limited resources, their personnel can be most effective when working with experienced contractors. Rights-of-way applicants may receive desired approvals more quickly, which may lower long run project costs.

The Working Group in no way intends to suggest that agencies require the use of third-party contractors. Instead the suggestion results from successful dealings of BLM and the Forest Service with third-party contractors. The agencies noted in particular that contractors' experience with NEPA's lengthy processes and complex procedures enables the contractors to prepare necessary documents and to check their client's compliance with any NEPA requirements included in the grant before any formal inspections by federal rights-of-way administrators.

Implementation: By August 2004, through postings on their Web sites and through communications with applicants and grantees, federal agencies should begin to notify rights-of-way applicants of the option of hiring reputable third-party contractors, who in conjunction with agency compliance monitors, will ensure that grantees properly perform planning and environmental studies, and initial phase construction work.

Recommendation #3: Third, for multi-agency projects, the appointment of a lead agency would improve coordination of compliance matters. Similarly, more efficient compliance could occur if federal land management agencies appoint a project manager to improve intra-agency communications. A lead agency or project manager can develop comprehensive rights-of-way compliance requirements that enable the agencies involved to adequately assess whether the right-holder has fulfilled installation, restoration, maintenance, and other obligations. By coordinating the agencies' various reporting and monitoring requirements, lead agency personnel and project managers minimize the burden on rights-of-way permit holders. They can also advance projects by organizing government personnel and budget resources to maximize their use and expedite projects. In that way, lead agencies and project managers can supplement field office staff to ensure availability of the necessary expertise for compliance monitoring and other purposes.

Implementation: As previously described in section III. B.2. of this report, by August 2004, federal agencies should adopt internal operating procedures for designating a lead agency when federal, state, local, and/or tribal authorities are participating in a project. For complex projects, the government entities should memorialize the lead agency's responsibilities in a memorandum of understanding, other inter-agency agreement, or written correspondence. In addition, agencies should incorporate project manager responsibilities into the work plans of appropriate employees and train them to perform these tasks (see above discussion on lead agency and project managers).

Recommendation #4: Fourth, federal agencies should require grantees to submit periodic compliance reports, which will facilitate necessary inspections and reduce the need for

some physical monitoring.[102] The reports would provide concise status updates and limited, but essential, information that the agencies need for their compliance monitoring. NOAA, for example, requires post-installation and annual status reports. The report information could help to better focus undersea cable inspections, using expensive remotely operated vehicles or manned submersibles, primarily in areas where problems are likely to arise. In addition, BLM and the Forest Service require communications site rights-of-way holders to provide an annual inventory of a site's tenants. The agencies then use the inventory, among other things, to verify authorized users on sites where multiple users are sharing facilities on the right-of-way. The information in these and similar reports can assist federal land managers in fulfilling their monitoring responsibilities, while assisting industry members in discharging their maintenance and compliance duties. Early detection of potential problems will help both parties to resolve them more easily before they develop into more serious issues.

Implementation: Federal agencies that do not routinely require compliance reports should incorporate the requirement into their rights-of-way procedures. Some agencies may determine that adopting a new rule requiring telecommunications rights-of-way holders to file periodic reports requires notice and comment. If so, such agencies should initiate rulemaking, as necessary and appropriate, by December 2004.

Recommendation #5: Fifth, the Working Group recommends that all agencies recover their monitoring and compliance costs under the specific statutes governing their agencies and/or the broad authority granted them pursuant to the easement granting authority of 40 U.S.C. § 1314, as recodified by Public Law 107-217.[103] NOAA, BLM, and the Army Corps of Engineers currently charge such fees and the Forest Service is promulgating cost recovery regulations similar to BLM's. However, until the Forest Service finalizes and adopts such regulations, it will continue to use voluntary fee collection agreements to recover the costs of conducting some of its monitoring activities, primarily on large scale projects.

The Working Group recommends that agencies that have not adopted rules to execute their authority to recover monitoring fees follow the guidance provided in OMB Circular No. A-25. The circular directs agencies to recover the full costs of managing federal rights-of-way, including monitoring and other compliance activities. Therefore, as described previously in section III. C.1. on "Cost Recovery," federal agencies should clearly identify the costs they seek to recover and adopt the recommended techniques for streamlining cost recovery.

Implementation: By December 2004, any relevant federal land management agency that does not recover its monitoring and compliance costs should commence a rulemaking, as necessary and appropriate, to adopt rules to execute its authority to recover such costs.

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[102] The Federal Highway Administration periodically accommodates grantees on highway easements. These grantees are not required to submit compliance reports unless they are installing equipment for ongoing telecommunications operations.

[103] *See* Appendix A, discussed *supra* at fn. 34.

2. Addressing Unanticipated Costs

Issue: In the Working Group's experience, federal grantees rarely abandon uncompleted projects or fail to seek renewal of expiring rights-of-way or re-assignment for successor companies. Having determined that access to federal lands is essential to their ability to provide service, rights-of-way holders are usually reluctant to relinquish this access barring extraordinary circumstances. To do so could adversely affect their or their successor's service, and abandoning a grant might jeopardize future rights-of-way applications or other government benefits. In the unusual case in which an agency must remove an abandoned installation or one located on an expired or terminated right-of-way, the government may incur unforeseen expenses.

Although unlikely, if a company de-commissions a site on federal land, it has usually agreed in advance to the restoration measures it will undertake.[104] If, however, a rights holder abdicates its responsibility to return the property to its previous condition, the Federal Government would then assume the task and the associated costs. Similarly, an agency could confront unanticipated costs if a grantee fails to restore government property to its previous condition following rights-of-way construction. Agencies may avoid even infrequent and, usually minimal, rights-of-way compliance expenditures, by requiring a bond or other means of securing performance.

NOAA's recent experience with submarine cables demonstrates the difficulty that may arise without the protection of a bond. NOAA did not require performance bonds from two companies that had received permission to install fiber optic cable in two different national marine sanctuaries. Post-installation surveys and monitoring of one of the submarine cables revealed unburied cable in some places along its route. At other locations, portions of cable were suspended, in one instance up to several feet above the seabed. Exposed and inadequately buried cables can present a hazard to commercial fishermen who might snag their fishing gear, and to fish and marine mammals that might then become entangled. Both cable companies sought protection in bankruptcy or insolvency proceedings and were unable to pay for monitoring and other fees required by their permits. A qualified buyer has assumed responsibility for one of the cables and payments have resumed; however the other cable system (the one with exposed segments) remains the subject of a bankruptcy proceeding.

Recommendation: The Working Group recommends that agencies use their authority under 40 U.S.C. § 1314, or other appropriate statutes, to impose reasonable, but adequate, bonding requirements to secure fulfillment of a grantee's compliance obligations. Circumstances might require agencies to engage expert advice to help forecast the costs of maintaining rights-of-way or removing structures from them, which will help the agencies to establish feasible bond amounts.

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[104] "In the unlikely event that a service provider removes an antenna site, the necessary steps are taken to restore the property to its original state. This generally includes removal of all equipment and restoration of the property's grounds and surrounding areas. Typically, the level of restoration will be negotiated during the initial approval process. The removal of an antenna site is, however, an unlikely prospect." Cellular Telecommunications & Internet Association, U.S. Department of the Interior, Bureau of Land Management, and U.S. Department of Agriculture, Forest Service, *Siting Wireless Telecommunications Facilities* (2002 ed.) at 93.

Implementation: By August 2004, any relevant federal land management agency that has not adopted rules to implement its authority to impose reasonable, but adequate, bonding requirements should commence a rulemaking, as necessary and appropriate, to adopt such rules.

3. Imposing Penalties for Noncompliance

Issue: The integrity of the government's rights-of-way programs depends in part upon the government's ability to compel a grantee's compliance with its obligations under the right-of-way grant. If a grantee fails to comply with the terms and conditions of a rights-of-way grant, then the government may seek to remedy the violation and to deter others by imposing fines or terminating the grant.

Agencies may suspend a right-of-way authorization until the grantee complies within a fixed time period with applicable terms and conditions.[105] In addition, all land management agencies have the authority to terminate a right-of-way grant for cause, but rarely use this power. Their reluctance to do so may result from concerns about service interruptions to innocent third parties. Authority to suspend or terminate rights-of-way grants, while helpful, may not be sufficient to obtain compliance from a recalcitrant rights-holder that intentionally and continually violates the terms of the grant. In such egregious instances, the government should have a strong enforcement tool at its disposal, particularly when termination is not a viable option.

Recommendation: Fines offer an effective way of satisfactorily punishing compliance violators, while deterring future violations. NOAA, for example, has the authority under the National Marine Sanctuaries Act to impose civil penalties up to $120,000 per day per violation, and to seek criminal penalties in limited circumstances. The Forest Service, which has no specific regulatory framework to impose fines, may, as a last resort, seek criminal citations that may require a fine.

Implementation: All federal land management agencies should, within a year of the date of this report, determine their ability to impose fines or other penalties for noncompliance. If an agency has no such ability and determines that it requires such authority to enhance its compliance program, then that agency should also determine what steps are necessary to secure such authority.

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[105] *See, e.g.*, FLPMA § 506, 43 U.S.C. § 1766 (describing the powers of the Secretaries of the Interior and Agriculture to suspend and terminate rights-of-way and easements for abandonment or failure to comply with any condition of the grant, or applicable rule, or regulation).

Conclusion

The Working Group has provided a series of recommendations -- covering information access and collection, timely process, fees, and compliance -- that we believe will improve rights-of-way management for all affected parties, while fostering greater broadband deployment across this Nation. In the months ahead, the Working Group will assist the federal agencies and other stakeholders in implementing our recommendations to help meet the President's challenge of ensuring affordable access to broadband technology for all Americans by 2007.

To ensure that the recommendations in this report are implemented in a timely manner, the Working Group believes that it is important to review the federal agencies' progress in adopting the recommendations. Specifically, the Working Group recommends that OMB ask each of the federal land management agencies to prepare a report of their efforts to implement the Working Group's recommendations. The individual reports should list specific steps that each agency took, as well as any additional steps that still need to be taken to implement the recommendations. The reports should be submitted to OMB no later than twelve months from the release date of this report.

The Working Group again wishes to extend our sincere thanks to all of the individuals who participated in this effort. Through your continuing efforts, we will help bring the promise of broadband to the American people.

National Telecommunications and Information Administration

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