

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
BUREAU OF LAND MANAGEMENT
AND THE
RURAL UTILITIES SERVICE**

I. Introduction

This Memorandum of Understanding (MOU) is between the Bureau of Land Management (BLM), an agency of the United States Department of the Interior, and the Rural Utilities Service (RUS), an agency of the United States Department of Agriculture, jointly herein referred to as the "Parties."

II. Purposes

This MOU will:

- A. Establish a process for the Parties to determine whether a facility is being financed, in whole or in part, or is eligible for financing under the Rural Electrification Act of 1936 (RE Act);
- B. Establish timeframes for each Party;
- C. Set forth RUS Eligibility Standards; and
- D. Establish primary and secondary contacts for each agency.

III. Background

This MOU will address the exemption of rent, under the authority of Section 504(g) of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), for rights-of-way (ROW) granted by the BLM for electric or telephone facilities that are financed or eligible for financing under the RE Act. Section 504(g) of FLPMA, 43 U.S.C. 1764(g), provides:

"Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities eligible for financing pursuant to the Rural Electrification Act of 1936, as amended, [7 U.S.C. 901 et seq.] determined without regard to any application requirement under that Act, or any extensions from such facilities"

The BLM regulations at 43 C.F.R. § 2806.14(a)(4) state:

"(a) You do not have to pay rent for your use if:

(4)Electric or telephone facilities constructed on the right-of-way were financed in whole or in part, or eligible for financing, under the Rural

Electrification Act of 1936, as amended . . . or are extensions of such facilities. You do not need to have sought financing from the Rural Utilities Service to qualify for this exemption. BLM may require you to document the facility's eligibility for REA financing. For communication site facilities, adding or including non-eligible facilities as, for example, by tenants or customers, on the right-of-way will subject the holder to rent in accordance with §§2806.30 through 2806.44 of this subpart.”

It is the eligibility of the facilities, rather than the eligibility of the owner or operator of the facilities that is the focus of amended section 504(g). If electric or telephone facilities within a ROW are financed by the RE Act, or are eligible for such financing, the ROW qualifies for a rent exemption. 70 Fed. Reg. 21006 (April 22, 2005).

In 2008, the BLM and RUS cooperatively established two forms (Electric and Telephone) to document facilities financed or eligible for financing under the RE Act. The Parties agree the process established in 2008 is no longer practical and both parties agree to the revised procedures contained herein.

The burden of notifying the BLM of eligibility for a rent exemption rests with the ROW holder or applicant.

IV. Authorities

- A. The authorities for BLM to enter into this agreement include, but are not limited to, the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1737(b).
- B. The authorities for RUS to enter into this agreement include, but are not limited to, the Rural Electrification Act of 1936, 7 U.S.C. § 901 *et seq.*

V. Roles and Responsibilities

- A. BLM roles and responsibilities:
 - 1. Providing the RUS with complete documentation to allow the RUS to make a timely and efficient determination of a facility's financing or eligibility for financing under the RE Act;
 - 2. Transmitting to the RUS an applicant's request for a determination of a facility's eligibility for financing; and
 - 3. Verifying whether an applicant has added or included non-eligible facilities to a communication site facility.
- B. RUS roles and responsibilities:

1. Responding within 60 days to transmitted information regarding the determination of facility financing or eligibility for RUS financing under the RE Act; and
 - a. If the RUS is unable to respond within 60 days, a meeting will be scheduled to discuss concerns and challenges.
 - b. The RUS will set a manageable schedule for responding to the backlog that may arise.
 - c. Scheduled biweekly meetings will be set until the pending backlog is resolved.
2. Informing the BLM of any changes to the RE Act or the RUS regulations affecting facility financing or eligibility for financing.

C. The Parties agree to:

1. Meet monthly in person or by conference call;
2. Resolve issues in a timely manner;
3. Respond timely to applicant inquiries; and
4. Update primary and secondary contact information as necessary.

VI. Process Outlined

Section 504(g) of FLPMA calls for a rental exemption if a ROW is granted, issued, or renewed by the BLM for electric or telephone facilities that are (1) financed (in whole or in part) under the RE Act, or (2) eligible for financing under the RE Act. These two categories are addressed below.

A. For Facilities Financed (in whole or in part) by the RUS:

1. The BLM will ask each ROW applicant whether he/she intends to seek a rental exemption at the Pre-Application Meeting or upon application filing.
2. If yes, the BLM will provide the applicant with an Information Request Checklist (attachment 1) and request that the applicant complete and return the Checklist to the BLM field office as part of the applicant's Plan of Development or Standard Form 299 ROW application. The BLM will ensure that the Information Request Checklist is accompanied by appropriate documentation indicating RUS financing of the facility described in the applicant's ROW application.
3. The BLM will seek verification that the facility described in the applicant's ROW application has received funding from the RUS using document(s) from the applicant's RUS loan file.
4. If verified, the BLM will exempt from rent the ROW grant described in the applicant's ROW application in accordance with 43 CFR 2806.14(a)(4).
5. The BLM will issue a decision letter to document approval or denial of a rental exemption per BLM regulation at 43 CFR 2806.14(a)(4).

B. For Facilities Eligible for Financing by the RUS:

1. The BLM will ask each ROW applicant whether he/she intends to seek a rental exemption at the Pre-Application Meeting or upon application filing.
2. If yes, the BLM will provide the applicant with an Information Request Checklist and request that the applicant complete and return the Checklist to the BLM field office as part of the applicant's Plan of Development or Standard Form 299 ROW application.
3. The BLM field office will forward the Information Request Checklist to the BLM Washington Office (BLM-WO) for screening.
4. After completing its review, the BLM-WO will transmit the Information Request Checklist to the RUS for screening.
5. Within 60 days of transmittal, the RUS will determine whether the facility described in the applicant's ROW application is eligible for financing under the RE Act. The RUS will transmit its signed determination to the BLM-WO.
6. The BLM-WO will transmit the signed RUS determination to the BLM field office.
7. The BLM state or field office will issue a decision letter to document approval or denial of a rental exemption per BLM regulation at 43 CFR 2806.14(a)(4).

VII. RUS Eligibility Standards

Under the RE Act, to be eligible for financing, electric or telecommunications borrowers must meet (1) the eligible purposes requirements, and (2) the rural requirements.

A. Eligible Purposes

1. Electric purposes, under Section 4 of the RE Act, 7 U.S.C. 904, include: *"financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing and improving of electric service to persons in rural areas, including by assisting electric borrowers to implement demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems"*
2. Telecommunications purposes, under Section 201 of the RE Act, 7 U.S.C. 922, include: *"financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural areas"*

B. Rural Requirements

1. To be rural under the electric program, Section 13 of the RE Act, 7 U.S.C. 913, is linked to the Consolidated Farm and Rural Development Act. Section 13 defines "rural area" as:

... the farm and nonfarm population of— (A) any area described in section 343(a)(13)(C) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(C)); and (B) any area within a service area of a borrower for which a borrower has an outstanding loan made under titles I through V as of the date of enactment of this paragraph.

Section 343(a)(13)(C) of the Consolidated Farm and Rural Development Act defines “rural” or “rural area” as:

... any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants.

Additionally, for electric borrowers with renewable energy projects, Section 6108 of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, authorized loans by RUS for electric generation from renewable energy resources for resale into rural and non-rural areas without restriction.

2. To be rural under the telecommunications program, Section 201 of the RE Act, 7 U.S.C. 922, gives preference to applicants operating in rural areas, defined in Section 203(b), 7 U.S.C. 924(b), which states:

As used in this subchapter, the term "rural area" shall be deemed to mean any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

3. To be rural under the broadband telecommunications program, Section 601 of the RE Act, 7 U.S.C. 950bb, defines the term “rural area” as

any area other than – (i) an area described in clause (i) or (ii) of section 343(a)(13)(A) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(A)); and (ii) a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.

Clause (i) and (ii) of Section 343(a)(13)(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(A)) describe

any area other than – (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) any urbanized area contiguous and adjacent to a city or town described in clause (i).

An urbanized area comprises a densely populated territory as defined in the latest decennial census.

In addition to this program, the Telecommunications Program provides financing through the Telecommunications Infrastructure Loan Program, the Broadband Initiatives Program, the Distance Learning and Telemedicine Program, the Community Connect Grant Program, and the Delta Health Care Services Grant Program. The population cap for determining eligibility differs for each of the programs.

C. Definitions of Electric and Telephone Service Program

1. Electric Service, as defined under 7 U.S.C. 904, involves *“the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing and improving of electric service to persons in rural areas. . .”*
2. Telephone Service, as defined under 7 U.S.C 924, *“shall be deemed to mean any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means, and shall include all telephone lines, facilities, or systems used in the rendition of such service; but shall not be deemed to mean message telegram service or community antenna television system services or facilities other than those intended exclusively for educational purposes, or radio broadcasting services or facilities. . .”*

D. If at any point the RUS is unable to make a determination of eligibility for financing due to a lack of information or need for an application, the Parties will cooperatively work together to resolve the issue on a case-by-case basis.

VIII. Representatives

The Parties will designate representatives as specified in the Point of Contact List, attached hereto, to ensure coordination during the implementation of this MOU.

IX. Funding

- A. Subject to the availability of funds, the Parties agree to fund their own expenses associated with the implementation of this MOU.
- B. Nothing contained herein shall be construed as obligating the BLM or the RUS to any expenditure or obligation of funds in excess or in advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341.

X. Compliance with Applicable Laws and Regulations

Nothing in this MOU alters or supersedes the authorities and responsibilities of any of the Parties on any matter under their respective jurisdictions.

XI. Term, Amendment, and Termination

A. Term of MOU:

1. This MOU becomes effective upon the date last signed and executed by the duly authorized representative of the Parties to this MOU.
2. This MOU shall remain in effect until terminated or cancelled. This MOU may be terminated upon 30 days written notice by any party.

B. Amendments:

1. The Parties may request changes to this MOU, which shall be effective only upon the written agreement of all Parties.
2. Any changes, modifications, revisions, or amendments, except for update of primary and secondary contact names, to this MOU shall be incorporated by written instrument, executed and signed by all Parties, and will be effective in accordance with the terms and conditions contained herein.

XII. Signatures

- A. All signatories have the appropriate delegation of authority to sign this MOU.
- B. The Parties hereto have executed this MOU on the dates shown below.

for Steven Felli
Neil Kornze, Director, Bureau of Land Management

Date: 8/1/2014

John Padalino, Administrator, Rural Utilities Service

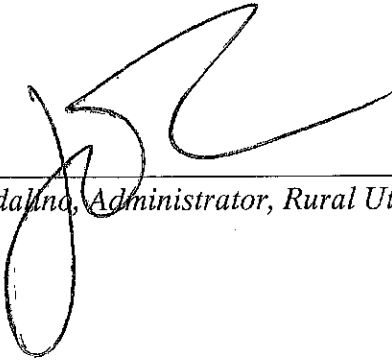
Date: _____

XII. Signatures

- A. All signatories have the appropriate delegation of authority to sign this MOU.
- B. The Parties hereto have executed this MOU on the dates shown below.

Neil Kornze, Director, Bureau of Land Management

Date: _____



John Padalino, Administrator, Rural Utilities Service

Date: 8/1/14

**Information Request Checklist for
Right-of-Way Rental Exemption Determination
For Electric or Telephone Facilities Financed or Eligible for Financing
Pursuant to the Rural Electrification Act of 1936, as Amended**

This Checklist is to be completed by a right-of-way applicant or right-of-way holder seeking a rental exemption under Section 504(g) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1764(g), for a right-of-way for electric or telephone facilities financed or eligible for financing pursuant to the Rural Electrification Act of 1936, as amended (RE Act).

The following information and documentation must be provided to the Bureau of Land Management (BLM) as part of a right-of-way applicant's plan of development or as an attachment to Standard Form (SF) 299, Application for Transportation and Utility Systems and Facilities on Federal Lands. The information and documentation is sought pursuant to 43 CFR 2804.12(c) to allow the BLM to determine whether a right-of-way may be granted, issued, or renewed without rental fees for electric or telephone facilities financed or eligible for financing under the RE Act. A right-of-way applicant or right-of-way holder not seeking a rental exemption need not complete this Checklist.

For electric or telephone facilities that have previously received financing from the RUS, you need only provide the requested General Information in Part I and those materials requested for RUS Financed Facilities in Part I. If you are currently seeking or intend to seek financing from the RUS, you must complete Part I General Information and Part II or III as appropriate.

Part I

1. General Information

- a. BLM Serial Number of Application or Authorization: _____
- b. Applicant's/Holder's Rural Utilities Service Program Project Number, Code or Other Identification if any: _____
- c. Name of Applicant/Holder: _____
- d. Address: _____

- e. Telephone: _____ Email Address: _____

2. BLM Contact Information: (Internal BLM Use)

- a. Name: _____ Title: _____
- b. Email Address: _____ Telephone: _____
- c. State/Field Office: _____
- d. Address: _____

3. RUS Financed Facilities

- a. Did the Applicant/Holder obtain financing for this facility pursuant to the RE Act of 1936, as amended? (Please note that Broadband Initiatives Program (BIP) financing is

not under the RE Act, but under the American Recovery and Reinvestment Act (ARRA) of 2009 Pub. L. 111-5, 123 Stat. 115 (2009). If you have only a BIP loan for this facility, you must check No.

Yes

If yes, please provide the following:

Date of Financial Approval by the Rural Utilities Service _____

Borrower Designation _____

Loan Designation _____

No

b. Is the facility an extension to facilities which have received RUS financing pursuant to the RE Act? Yes No

If yes, please provide one of the following documents from your RUS loan package:

- RUS Form 740c, Form 515 or Form 527
- Other evidence of RUS financing for an electric or telephone facility authorized by a right-of-way for which a rental exemption is sought pursuant to Section 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1764(g).

Facilities Not Financed by the RUS

If you have not received RUS financing for an electric or telephone facility authorized by a right-of-way for which a rental exemption is requested or if the additional financing documents in question 3.b. above are not available, provide the following information that will be reviewed in consultation with the RUS. For Electric Facilities, continue to Part II. For Telecommunications Facilities, continue to Part III. Select all answers that apply.

Part II Electric Facilities Financed or Eligible for Financing Pursuant to the Rural Electrification Act of 1936, as amended

4. Type of Borrower:

- Corporation, State, territory, or subdivision and agencies thereof
- Municipality
- People's utility district
- Cooperative, nonprofit, limited-dividend, or mutual association

5. Purpose of Facility:

- Provide retail electric service needs of rural areas
- Provide power supply needs of distribution borrowers

6. Type of Electric Facility:

- Generating plant
- Electric transmission and distribution lines

7. Description of Electric Facility:

- a. Existing (or) Proposed New Construction
- b. Is this part of a larger project? Yes No
- c. County: _____ State: _____
- d. Location: Township _____ Range _____ Section _____
- e. General Description of technology used: Voltage or wattage of facility, and if electric line, provide the pole type, wire size and operating voltage, and current (DC or AC) power of facility

8. Description of Area Served:

- Within a service area of a borrower for which a borrower has an outstanding loan
- Any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants
- The facility does not serve a rural area

Required supportive evidence:

- a. If you have not received financing from RUS, provide a map showing the planned facilities, the area they will serve, and most recent census data for that area.
- b. Provide a detailed narrative description of how the applicant's facilities would be eligible for RUS financing under the Rural Electrification Act, 7 U.S.C. 901, *et seq.*

9. Rural Utilities Service Statement of Eligibility for Financing

Based upon the information provided, the Rural Utilities Service has determined that the facility

_____ Is _____ Is not

eligible for financing pursuant to the RE Act, as amended. If a right-of-way applicant/holder should apply to the RUS for financing, the RUS will make a further eligibility determination under the RE Act at the time of the application, which determination may differ from that above.

Approved by: _____ Date: _____
Division Director or Designated Representative on behalf of
Assistant Administrator, Electric Programs

Comments (attach additional pages as necessary):

Part III Telephone Facilities: Financed or Eligible for Financing Pursuant to the Rural Electrification Act of 1936, as amended

10. Type of Borrower:

- Entity providing telephone service in rural areas

- Public body providing telephone service in rural areas
- Cooperative, nonprofit, limited dividend, or mutual association
- State or local governments
- Indian Tribe
- An emergency communications equipment provider

11. Purpose of Facility:

- Furnish and improve telephone service in rural areas
- Finance facilities and equipment which expand, improve and provide 911 access; integrated interoperable emergency communications, including multi-use networks that provide commercial or transportation information services in addition to emergency communications services; homeland security communications; transportation safety communications; or location technologies used outside an urbanized area.

12. Type of Facility:

- Telephone
- Communications Site
- Fiber Optic Cable
- Broadband (This means a facility financed by the RE Act only.)

13. If the applicant is an RUS Broadband Borrower, are the facilities proposed for an upgrade in a service area with broadband service that was financed by the RUS Broadband Loan Program?

- Yes No

14. Does the broadband speed for the service for which the facilities are proposed meet the required minimum bandwidth of 5 Mb/s for both fixed and mobile service to the customer for both download plus upload speeds?

- Yes No

15. Description of Facility:

- a. Existing (or) Proposed New Construction
- b. County: _____ State: _____
- c. Location: Township _____ Range _____ Section _____
- d. Latitude and Longitude: _____
- e. General Description of Technology Used: If the facility will serve *more than one purpose, describe each purpose separately on an attached sheet*. Include in detail the service for which the facilities are used, including service speed. Use additional sheets if necessary. Include whether the facilities are for serving subscriber(s) within its service area or the facilities Competitive Local Exchange Carrier purpose.

16. Description of Area Served:

- The facility serves an area other than a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.
- The facility serves an area other than a city or town that has a population of greater than 50,000 inhabitants, or an urbanized area contiguous and adjacent to such city or town. An urbanized area comprises a densely populated territory as defined in the latest decennial census.
- The facility serves an area not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.
- The facility does not serve a rural area.

17. Are any competitive providers already providing the same service?

- Yes No

18. Check below whether the proposed facilities are to provide service as

- Incumbent Local Exchange Service Provider; or
- Competitive Local Exchange Service Provider.

Required Supportive Evidence:

- a. If you have not received financing from RUS, provide a map showing the planned facilities, the area they will serve, and most recent census data for that area.
- b. Provide a detailed narrative description of how the applicant's facilities would be eligible for RUS financing under the Rural Electrification Act, 7 U.S.C. 901, *et seq.*

19. Rural Utilities Service Statement of Eligibility for Financing

Based upon the information provided, the Rural Utilities Service has determined that the facility

_____ Is _____ Is not

eligible for financing pursuant to the RE Act, as amended. If a right-of-way applicant/holder should apply to the RUS for financing, the RUS will make a further eligibility determination under the RE Act at the time of the application, which determination may differ from that above.

Approved by: _____ Date: _____

Division Director or Designated Representative on behalf of
Assistant Administrator, Electric Programs

Comments (attach additional pages as necessary):

Points of Contact				
	Name	Title	Email	Phone Number
BLM Primary	Michael Nedd	Assistant Director	MNedd@blm.gov	202-208-4201
BLM Secondary	Don Buhler	Acting Division Chief Lands, Realty & Cadastral Survey	DBuhler@blm.gov	202-912-7353
BLM Secondary	John Kalish	Acting Branch Chief ROW	JKalish@blm.gov	202-912-7148
RUS Primary	Stephanie Smith	Chief of Staff	Stephaniem.smith@wdc.usda.gov	202-260-8167
RUS Secondary	Jim Elliott	Acting Assistant Administrator for RUS Electric Program	Jim.elliott@wdc.usda.gov	202-720-9545
RUS Secondary	Keith Adams	Assistant Administrator for RUS Telecomm/ Broadband Program	Keith.adams@wdc.usda.gov	202-720-9556