DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB51

Fee Schedule for Communications Uses on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service is adopting a final policy and a revised fee schedule for determining annual rental fees for communications uses authorized on National Forest System Lands in the Western States, Forest Service Regions 1 through 6. The Forest Service and the Department of Interior, Bureau of Land Management, have jointly developed identical fee schedules; the agencies have the same definitions for use categories and similar administrative procedures. (The Bureau of Land Management is issuing its fee schedule and procedures in a separate final rule.) These revisions are necessary to establish annual agency rental fees that are consistent for the Western States; based on sound business management practices; and reflective of fair market value, as required by title V of the Federal Land Policy and Management Act of 1976, the Independent Offices Appropriations Act of 1952, and the Office of Management and Budget Circular A–25.

EFFECTIVE DATE: This policy is effective November 6, 1995 for new use authorizations and on January 1, 1996, for existing use authorizations.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to John Anderson, Lands Staff (2700), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Background

Use of National Forest System Lands for transmission of electronic signals, commonly called communications uses, is authorized by title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771). Authorizations currently in effect number approximately 6,300. This use involves the construction of a building and tower with antennae or the placement of one or more antennae atop a building owned by another authorization holder. The Forest Service has sought for several years to establish fair market value fees for communications uses as required by statutory and regulatory authority.

From 1987 to 1992, through various notices in the Federal Register the Forest Service began publishing final and revised fee schedules on a regional basis for selected categories of communications uses on sites serving rural areas. The notices explained the need for further analysis to complete the fee schedules for the remaining use categories. In the interim, on-site appraisals would determine commercial mobile radio and cellular telephone fees for sites serving urban areas (Los Angeles, Albuquerque, and Boise, for example) and for television and FM radio broadcast.

To forestall the effect of significant fee increases on authorization holders, especially in rural areas, Congress adopted administrative provisions in the Appropriations Acts for Interior and Related Agencies for fiscal years 1990 through 1994 preventing the Forest Service from raising fees over the amount in effect on January 1, 1989. In the fiscal year 1992 appropriations, Congress extended the prohibition to include those authorizations issued by the Department of Interior, Bureau of Land Management (BLM). In addition, the conference report for the Appropriations Act directed the Secretaries of Agriculture and Interior to establish a broad-based Radio and Television Broadcast Use Fee Advisory Committee (Advisory Committee). The Advisory Committee's charge was to review the schedules, with particular emphasis on their impact on rural communities in the Western United States.

The Forest Service and BLM entered into a joint agency agreement in April 1991 to develop parallel procedures and standards for establishing fair market rental values for communications uses on lands they administer. The objective of the effort was to develop joint market-based fee schedules.

The Advisory Committee submitted its report to the Secretaries on December 11, 1992. The report made several recommendations: (1) Use of fee schedules instead of individual site appraisals to improve cost efficiency and administration, (2) acceptance of industry-recognized market ranking systems, (3) a phase-in period for rent increases greater than $1,000, (4) collection of 25 percent of the gross sublease income received from tenants by facility owners, (5) issuance of a ''footprint'' lease in which only facility owners would hold authorizations, and (6) annual fee increases based on the Consumer Price Index (Urban Consumer, U.S. City Average).

On July 13, 1993, the Forest Service published a Federal Register notice (58 FR 37840) requesting public comments on a proposed fee schedule for the four categories of commercial uses previously excluded from the regional schedules. The uses included television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses. The adoption of a final revised fee schedule would complete the regional schedules in place in Forest Service Regions 1 through 6 in the Western United States. Additionally, the agency stated its intention that its fee schedule be fully consistent with that of BLM and acknowledged that BLM planned to issue a separate Federal Register notice proposing the use of fee schedules for all communications uses applicable to lands under its jurisdiction.

The Forest Service and BLM jointly reviewed and considered the comments received by the Forest Service on its July 1993 proposed policy (58 FR 37840, July 13, 1993), incorporating and adopting the comments as appropriate in the development of the BLM proposed rule. On July 12, 1994, BLM published a proposed rule in the Federal Register (59 FR 35596), requesting comments on amendments to its right-of-way regulations. The proposed rule contained procedures for setting fair market rent for communications uses on public land and established rental schedules and procedures for eleven categories of communications service.

On July 12, 1994, the House of Representatives Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, and the Committee on Government Operations, Subcommittee on Environment, Energy, and Natural Resources held a joint hearing on communications site fees. The General Accounting Office released a report (GAO–RCED–94–248) at this hearing that concluded that current fees for communications sites on Federal lands were usually significantly below fair market value. The report acknowledged that the Forest Service fees are based on an outdated formula established forty years ago and the BLM rental rates are based on out-of-date appraisals. The report concluded that appropriations-related legislation impeded agency efforts to implement new fees. The report warned that if the limits continued, the Federal Government would not obtain fair market value for communications sites for many years. Because of the joint agency testimony and the General Accounting Office report, the committees strongly encouraged the agencies to complete the fee schedules as soon as possible.

The Forest Service and BLM developed the final fee schedules using information gained from public responses to the proposed Forest Service policy (58 FR 37840, July 13, 1993) and the proposed BLM rule (59 FR 35596, July 12, 1994). The agencies also used the Advisory Committee report, the General Accounting Office report, discussions with hundreds of industry representatives and private lessors, commercial communications site managers, State and local government representatives, and appraisers, and nearly 2,000 confirmed private lease transactions. The final Forest Service policy is being issued as amendments to Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, chapter 30, Fee Determinations, and chapter 40, Special Uses Administration. The text of the policy is set out at the end of this notice.

Analysis and Response to Public Comments

The Forest Service received 84 comments on the July 13, 1993, notice of proposed policy (58 FR 37840). Analyses of public comments were accomplished using standard Forest Service procedures designed to ensure an objective and systematic analysis. The agency received comments from 13 Western States; 28 percent of the responses came from California. While the proposed fee schedule applies only to the Western States, responses were received from parent companies of authorization holders, national organizations, and other interested parties located throughout the United States.

Respondents were grouped under the following categories:

Respondent type	Number	Percentage
Commercial Mobile Radio/or Building Owner	34	40
Television Broadcaster	9	11
Organization	8	10
Other Communications User	8	10
Cellular Telephone	7	8
Other Federal, State, or County Agencies	6	7
FM Radio Broadcaster	5	6
General Public	4	5
Translator or Repeater	3	3

All responses consisted of individual letters. No form letters or petitions were received.

The BLM received a total of 61 comments on the proposed rule (59 FR 35596, July 12, 1994): 35 nonbroadcast users, 6 broadcast users, 6 industry groups, 4 private citizens, 2 state agencies, 1 county association, and 1 Federal agency. In several cases, the same users, industry groups, and state agencies had also commented on the Forest Service proposed policy (58 FR 37840, July 13, 1993).

General Comments on Communications Site Fees and Agency Response

Based upon early comments to BLM's 1994 proposed rule (59 FR 35596, July 12, 1994) both agencies recognized the need for additional information to evaluate the responses appropriately. The BLM held several meetings with respondents during the comment period to verify information was recommendations submitted by respondents and to clarify the intent of the proposed rule. Forest Service representatives attended these meetings. Also, additional information and gathered from other Federal agencies and industry contacts to determine comparable and appropriate groupings for the fee schedule.

The agency did not incorporate changes in the final policy and fee schedule when the comments would (1) require additional detailed studies or development of specific criteria and instructions for each category of use, (2) lead to subjective, potentially inconsistent application of the fee schedule, or (3) require procedures that unnecessarily encumber both the holder's business and the agency's management practices.

Method for Determining Fees

Comment. Some respondents expressed general support for the effort to develop a fee schedule. One respondent strongly favored the master appraisal approach and the development of fee schedules. This respondent also called for inclusion of an urban schedule for other use categories, such as common carrier microwave relay, industrial microwave relay, mobile radio, internal communications, natural resource/environmental monitoring, and passive reflector. One respondent from the commercial use sector (cellular telephone) favored the schedule and accompanying communications site procedures.

Thirty respondents disagreed with the method and criteria used to develop the schedule. They suggested that the fees should be based on: (1) A flat fee using the square footage of the building and the height of the tower, (2) bare land values, (3) wider population increments, (4) a percentage based on total households and market size, (5) appraisals at high-value sites using local market data, (6) the Advisory Committee schedule, (7) the next best use concept, and (8) a more graduated scale that would charge site users in proportion to their market size.

Others noted that the schedule was incomplete and needed additional categories to establish fees for: (1) Buildings operated by facility managers whose primary business is space rental, (2) cable and subscription television companies serving more than 1,500 households, (3) broadcast translators for more than 60,001 people, (4) AM radio broadcasters, and (5) urban microwave and common carrier uses.

Response. To develop a policy and schedule that are easy to understand and implement, the agency is adopting a final schedule that uses one population ranking method for all uses to calculate fees. The agency disagrees with respondents who said that there was no link between population and rent charged for a communications site. To the contrary, market information shows that land rents overall are generally higher on sites serving large metropolitan areas than those sites serving less populated areas. Therefore, the agency developed a final schedule that more directly correlates to the population of the market served and the authorized use of the facility. This type of rating system reflects the actual market area served better than population figures that do not correlate to market areas.

To provide consistent procedures and a fee schedule identical to that of the BLM, the Forest Service expanded the fee schedule to include all categories of communications uses on National Forest System lands. The categories are: (1) Television broadcast, (2) AM/FM radio broadcast, (3) cable television, (4) broadcast translators, low power television and low power FM radio, (5) commercial mobile radio service and facility manager, (6) cellular telephone, (7) private mobile radio service, (8) microwave, and (9) other communications uses. Two use categories, passive reflector and local exchange network, will remain as regional schedules. The final Forest Service policy establishes identical definitions as the BLM for use categories. The agency is making these changes to the policy in Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, chapter 40, Special Uses Administration, section 48, Communications. The final fee policy and schedule, including implementation, phase-in, and updating procedures, are included in FSH 2709.11, chapter 30, Fee Determinations, section 36.2, Communications Site Fee Schedule. The text of the policy and fee schedule in

FSH 2709.11 are set forth at the end of this notice.

Fee Values

Comment. Four respondents indicated the proposed fees were too low. One respondent felt the fees averaged approximately 15–25 percent below comparable private market values. In particular this respondent said that television and radio were at least 15–20 percent below and mobile and cellular were approximately 20–25 percent below private market values. Another respondent characterized the use of public lands by television and radio broadcast users at less than fair market value as a subsidy, giving them an unfair competitive advantage.

Six respondents commented that the fees were higher than fair market value and were artificially inflated. They objected to the conclusions in the appraisals used to support the fees. Primary reasons they noted were: (1) The Forest Service agreed that the Advisory Committee approach of setting a fee schedule is appropriate, but then changed the Area of Dominant Influence (ADI) groupings; (2) the impact of the proposal on small business is significant; (3) the survey erroneously calculated user site fees; and (4) the fees were based on the broadcast station operator's ability to pay. One respondent suggested additional population strata in the categories.

Response. The agency has revised the final policy and fee schedule in response to public comments received on the Forest Service's proposed policy (58 FR 37840, July 13, 1993) and public comments received by BLM in response to its proposed rule (59 FR 35596, July 12, 1994). In addition, the agency has considered market information provided by users, industry groups, and private and Government appraisers, and other management considerations associated with developing a cost-effective method for setting and collecting fair market value for communications use of National Forest System land.

The final policy incorporates many Advisory Committee recommendations, such as use of a schedule instead of individual appraisals, issuance of one authorization (lease) to facility owners, a phase-in provision, and use of an index to update annual fees.

The agency believes the final schedule reflects a reasonable fee based on fair market value for the type of use, location, and rights authorized. By adopting identical schedules and similar authorization documents and application procedures to those of BLM, the Forest Service can give holders consistent and improved services. The schedule will replace the outdated, inconsistent approaches to assessing and collecting rental fees in different Forest Service regions and between the Forest Service BLM.

Additional Criteria for Establishing Fees

Comment. Several respondents said that additional criteria should be considered when applying the fees, such as rate adjustments for roadless and powerless sites or similar value-added services provided by private landowners/lessors. Respondents said that waivers or exemptions for those users who provide public service should be considered. Respondents also said that administrative delays and red tape make Federal sites less attractive than private sites. Respondents were also concerned with the requirement of free use for other Federal agencies and provisions considering the number of radio units in a facility.

Some respondents had difficulty understanding the different fee schedules (Regional versus National) and were unsure of how to classify a use. They also believed the schedule did not acknowledge the significant financial discrepancy between two operators on the same site.

Reponse. The agency recognizes that the July 1993 proposed policy (58 FR 38740, July 13, 1993) did not offer a detailed explanation of the proposed policy or how the fee schedule was derived. Respondents could not clearly determine how their specific uses applied to the schedule. In addition, the fee schedule in the Forest Service's proposed policy (58 FR 37840, July 13, 1993) applied to only four uses: television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone. The methods of determining the fee strata varied from the application of Arbitron Company market rankings for television and radio broadcast, to the application of population and metropolitan statistical figures for commercial mobile radio and cellular telephone uses.

In response to the public comments, the final policy and fee schedule include the following changes:

1. The fee schedule is based on a ranking of Ranally Metro Areas (RMAs) as identified in the ''Rand McNally Commercial Atlas and Marketing Guide, 1995.'' An RMA represents Rand McNally's definition of metropolitan areas in the United States. There are 452 RMAs. Four hundred and seventeen have a population of 50,000 or more. Thirty-five listed RMAs have a population near 50,000 and are included as RMAs because they include a central city of an official Metropolitan Statistical Area.

2. The fee is based on the location of the communications site and whether or not it serves an RMA, serves a community(ies) not listed as an RMA, or is in a remote, sparsely populated area that does not serve any individual community.

3. If the communications site serves an RMA, the fee is determined by the category of use and the population range on the schedule that includes the RMA population.

4. If the communications site serves a community not listed as an RMA, the fee is determined by the category of use and the population range on the schedule that corresponds with the most recent population for the largest community served by the site, as indicated in the current ''Rand McNally Road Atlas.''

5. If the communications site does not serve a community the fee is based on the minimum scheduled fee for the type of facility and use.

Comments on Specific Communication Uses and Agency Response

Comments received on the Forest Service's and BLM's proposed schedules (published in 58 FR 37840, July 13, 1993, and 59 FR 35596, July 12, 1994, respectively) and responses to those comments are incorporated in each of the following categories.

Television Broadcast Fees. The Forest Service proposed fee schedule used the Arbitron Company's Area of Dominant Influence (ADI) market rankings to determine the fee strata. Five separate strata were proposed, presenting fees from $45,000 for the highest market areas (750,000 television households and more) to $3,000 for the market area containing 49,999 households and less and non-ADI areas.

Comment. Seven television broadcasters addressed their comments specifically to this category. In all cases, the comments showed disagreement with the proposed fees. Respondents expressed their concern that television revenues in small rural markets have been dropping and categories were not consistent with the actual market size. They stated that the proposed fees were not within the range charged by private landowners in the Western States. Respondents suggested that the fees should be based on the value per household or on the actual number of television households reached from a site listed in the ''Broadcast Factbook.'' One respondent suggested a lower category (below 49,999) for rural broadcasters.

The comments indicated a need to reconsider the use of Arbitron ADI rankings as a basis for determining fees, to expand the population strata to provide smaller intervals, and to establish additional strata below 49,999. In addition, in December 1993 (after publication of the proposed schedule) the Arbitron Company ceased publication of the ADI market rankings.

In response to the comments received by the Forest Service and the discontinuation of the ADI rankings, the BLM based its proposed schedule (59 FR 35596, July 12, 1994) for television broadcast on the latest U.S. census figures for populations of the principal community (city, cities, metropolitan area, county, or counties) served by the transmitter. The proposed BLM schedule expanded the fee strata to nine divisions that range from populations of 2,000,000 and above to below 14,999.

Most comments on the BLM proposal favored the expanded fee strata. However, several respondents opposed using the population of the principal communities served and asked that it be reconsidered. Generally, respondents said the concept was too vague and difficult to determine the population served using census information. In addition, they said differences in calculating total population of the principal communities served would create inequities. Several respondents suggested the schedule should be based on market ranking methods used by industry, such as the Nielsen Dominant Market Area ranking system.

Reponse. The agency found there are some advantages to basing the schedule on industry-recognized market ranking surveys, since (1) they are based on the relative size of markets in which stations compete, and broadcasters generally accept them; (2) the surveys are updated each year, allowing for rent adjustments that reflect changes in private market conditions; and (3) rents could be based on the market actually served instead of the location of the transmitter or city of license.

However, there are also disadvantages to using the surveys. The market does not measure the households or audience reached by the broadcast transmitter located on National Forest System lands alone. Instead, the market includes households reached using a combination of microwave and broadcast translators that serve other smaller markets. This feature inadvertently inflates rental payments for those stations that have extensive translator networks serving communities outside the area normally served by the transmitter. The surveys do not include affiliate stations serving smaller communities within the market areas. Affiliate stations included in a market area would be assessed the same fee though they serve a smaller population of the market area.

From the additional information and analysis of alternatives, the agency found that basing fees on the population of the principal communities served by the broadcast transmitter would be difficult to implement. Additionally, the disadvantages associated with use of Nielsen market rankings would unnecessarily complicate the fee schedule. Therefore, based on available market data, recent appraisals, and information received from respondents, the final fee schedule establishes nine separate fee strata based on the Rand McNally RMA population rankings. Because of the redistribution of strata, the final fees range from $45,000 (RMA of 5,000,000 and above) to $1,200 (RMA of less than 25,000). This action reduces fees for some television broadcast uses as shown in the proposed Forest Service fee schedule.

FM Radio Broadcast Fees. The proposed Forest Service schedule used population data from the Arbitron Company's Metro Survey Area (MSA) to determine the fee strata. The proposed schedule displayed five divisions in the fee strata from 1,000,000 persons and more to 74,999 and less and non-MSA areas.

Comment. Four respondents in the FM radio group and one agency commented on the proposed fees. Several of these respondents stated the increased fees would have a significant economic impact on many small entities and make it impossible for small businesses to say economically sound. Specific and recurring comments were: (1) The fees were prohibitive for stations with potential audiences of 25,000 or less, (2) there should be a lower minimum fee per FM broadcast site, (3) greater weight should have been given to the market size served by respective radio stations, and (4) the respective value of lands used for transmitter location would carry a higher value in the more densely populated areas than the small areas. One respondent asked that the agency calculate rentals to broadcasters with reference to comparable uses and consider the public service rendered by broadcasters, along with the enhancement in value of Forest Service properties. One respondent asked if a cause and effect study had been completed. Another respondent asked that the schedule include AM radio broadcast. The responses indicated a need to develop additional population strata and expansion of the market ranking system for radio broadcast to determine fee strata.

The BLM proposed the same method as television broadcast (using U.S. census population figures for the principal community or communities served) and expansion of the fee strata into the same nine divisions for FM radio broadcast as proposed for television broadcast.

Respondents to the BLM proposal objected to the use of the population of a community served to determined fee strata. These respondents pointed out that radio market rankings are not nationwide and there are significant gaps in coverage. Therefore, other methods should be developed to establish rent in those areas not covered by the market ranking service. Several respondents to the BLM proposal also suggested the schedule include AM radio broadcast.

Response. The Forest Service has recalculated the final nine FM radio broadcast strata to match the Rand McNally RMAs. The fees range from $34,000 (5,000,000 and above RMA) to $900 (less than 25,000 RMA). The agency has modified the schedule to include AM radio broadcast uses at 70 percent of the FM schedule. Co-located AM and FM stations pay the full FM radio broadcast fee. The final fee schedule reduces the impact of urban area rates on the rural radio broadcaster.

Commercial Mobile Radio Fees. The Forest Service fees proposed for this category were based on the number of persons within the area served, as determined by the latest U.S. census population estimates. The agency proposed five fee strata divisions ranging from 500,000 persons to 59,999 and fewer persons.

Comment. This category received more comments than any other. Thirty-six respondents commented. Nearly all (31) identified themselves as commercial mobile radio users. The overall intensity of the comments reflects the most concern, disagreement, and confusion.

Major issues involved (1) the validity, quantity, and quality of the private lease transactions used in the contract appraisal and the market studies, (2) the credibility of the market data, and (3) fees in rural areas which are higher than the private market. Many respondents argued that the appraisals and fee schedule did not represent fair market value and were not adequately justified with relevant data. Several called for lower population strata and gave examples of what the population/fees should be. Others respondents asked for more studies in rural areas and commented that higher fees were not in the best interest of the public or local economies. They said that fee increases would harm small businesses because they would have to pass along the fee increases to their customers.

A few respondents simply stated their fees should be lower. Others said the fees were not what industry had agreed to. One respondent stated that recent legislation reclassified certain private carrier radio operators and required regulation by the Federal Communications Commission. One respondent asked that the respondent's fee be considered in a special category, or reduced, because of the respondent's public service.

Many respondents stated that the schedule needed further clarification and was confusing in certain areas. Many building tenants were uncertain how the agency would apply the fee schedule, believing they would be subject to the proposed fees as tenants. Facility owners who do not own or operate equipment and lease building and antenna space to other commercial radio service providers expressed confusion about how or if the fee schedule would apply to them in existing situation, such as leases, and multi-user permits.

The Forest Service recognizes that the lack of clear explanation on application of the schedule for this use category led to misinterpretation and confusion.

The BLM proposal included commercial mobile radio service (CMRS) in a nonbroadcast rental schedule and proposed several changes. These changes include: (1) Expanding the original five population divisions to nine to reflect market areas ranging from zero to more than 2,000,000, (2) basing fees on the population of the largest county predominantly served by the transmitter, (3) proposing a separate category for facility managers (building owners), and (4) adjusting fees in most strata to reflect the findings of additional analysis.

While respondents to the BLM proposal generally favored the expanded fee strata, most respondents objected to using county population as a basis for setting fees. Respondents to BLM's proposal strongly opposed the fees in each strata, stating they were unfair and too high, and would drive many small businesses out of the market. Several respondents provided additional information showing the proposed schedule fees were above the private market rates.

Several respondents to the BLM proposal questioned the similarity of the CMRS category and facility manager category. They suggested that BLM eliminate the facility manager category and incorporate it into the CMRS category. Other respondents said that CMRS is dependent on microwave communication equipment and pointed out that the difference in land rent between the two uses was less than 4 percent. In response to BLM's proposal, they asked that microwave communication equipment used to support a CMRS operation be charged one fee at the CMRS rate.

Response. In consideration of public comments to the agency's and BLM's proposed fee schedule, available market data, and additional industry information focusing primarily on rural areas, the final Forest Service policy and fee schedule for the CMRS category include the following changes:

1. The final fee schedule based on the standard RMAs establishes nine fee strata. Fees range from $12,000 in the highest RMA to $600 in the lowest RMA, reducing final fees in six of the nine strata.

2. The agency has adjusted the final fees to more closely coincide with fees for cellular telephone uses. The market analysis shows cellular telephone and CMRS providers often compete for sites in larger markets at similar private market rates. Comparable market information in less populated areas shows CMRS providers pay less than cellular telephone.

3. The definition for CMRS has been broadened to include facility managers and ancillary microwave link equipment.

Cellular Telephone Fees. The proposed Forest Service schedule defined three fee strata for cellular telephone based on populations within a Standard Metropolitan Statistical Area (SMSA). Fees within the strata ranged from $7,500 to $2,500.

Comment. Overall, respondents were supportive of the cellular fees. However, they suggested several modifications. They suggested that the agency abandon the term ''SMSA'' and determine the area a site covers based on contour maps filed with the Federal Communications Commission (FCC).

Two respondents to the BLM proposal suggested that they include specialized mobile radio, a similar wireless system, in the cellular category. They reasoned that Congress in recent legislation (Omnibus Budget Reconciliation Act of 1993) directed Federal agencies to regulate similar wireless telecommunications services consistently.

Other respondents were concerned about two emerging technologies: personal communication service (PCS) and microcells. PCS is smaller to cellular telephone service. The major difference between PCS and cellular telephone is that PCS operates at a low power and has smaller area coverage. However, the PCS network is more concentrated and requires more sites than a cellular service. The respondents warned that it would be inappropriate to require PCS users to pay the same fees as a cellular telephone users. While PCS service is not yet available, a similar service using mocrocells is provided now in rural, sparsely populated areas as an addition to wireline and cellular telephone service. The respondents suggested a separate fee of $2,500 per year.

Response. Because of the comments, other methods to determine the fee strata were explored and analyzed. The BLM proposal included cellular telephone in a nonbroadcast rental schedule and proposed expanding population divisions from three to nine. The BLM proposed basing fees on the population of the largest county predominantly served by the transmitter. The expanded strata, based on county populations, resulted in proposed fees ranging from $10,000 to $2,500.

Contrary to respondents' comments, additional analysis shows that in large metro markets, cellular telephone companies and commercial mobile radio service providers often pay similar rents in the private market. However, in small- to medium-size markets, commercial mobile service providers pay less than cellular telephone users. Therefore, the final Forest Service fee schedule reflects the differences in fees and maintains separate schedules for cellular telephone and commercial mobile radio service.

After considering the suggestions and gathering additional information from industry and the Federal Communications Commission (FCC), the Forest Service has deleted PCS from the definition for the cellular telephone category. Once site requirements are determined for PCS, the agency will consider amending the fee schedules. However, the agency has broadened the definition of cellular telephone to include other related technologies in the event PCS facilities are similar. It is the intent of the agency to apply the fee schedule to similar, emerging technologies when practical. Additionally, microcell service will not be included in the cellular telephone category at this time.

In consideration of the public comments and available market data, the final policy and fee schedule for the cellular category include the following changes:

1. The final fee schedule based on the standard RMAs establishes nine fee strata. Fees range from $12,000 in the highest RMA to $2,500 in the lowest RMA.

2. The agency has adjusted the final fees in the top population strata to coincide with fees paid by CMRS users. The market analysis shows cellular telephone providers and CMRS providers often compete for sites in larger markets at similar private market rates, while comparable market information in less populated areas shows CMRS providers pay less than cellular telephone providers.

3. The agency has deleted PCS from the definition for the category of cellular telephone.

4. The definition for cellular telephone has been broadened to include other related technologies.

Proposed Fee Indexing

Comment. Fourteen respondents commented on the proposal to use the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI–U) as an annual index to ensure fees are kept current with fair market values. Calculating the amount of the annual adjustment involves increasing the previous year's fee by the change in the annual CPI–U on a July-to-July basis.

Some respondents acknowledged that a CPI–U clause or other method for annual adjustment that properly reflects changes in economic conditions is appropriate. These respondents stated that annual indexing is typical and recognized in private industry.

Most respondents providing commercial mobile radio service objected to the use of indexing without a cap (or other similar method) to keep fees from exceeding fair market value. Two respondents disagreed with the use of indexing in any form. Others maintained that the practice is not common in the private market, especially for commercial mobile radio leases, and said indexing does not fairly or accurately take into account the ability of various site owners to negotiate rents at other sites that do not automatically include such increases. Respondents pointed out that 95 percent of the communications leases of three large companies in California either have no cost-of-living clause or have a cap.

One respondent stated that annual indexing tied to a cost-of-living index will not ensure that the rent will stay current with fair market values. This respondent suggested that the only way to ensure fair market rent is for the agency annually to assess the fees to see if they are comparable to the rents paid for similar uses on private land.

In response to the comments and additional analysis, the BLM proposal provided for a 5 percent per year limit to the annual index change. Many respondents to the BLM proposal generally supported use of the CPI–U to index the fees. Several of these respondents, however, disagreed with the 5 percent year limitation, suggesting the increases should be less than 1 percent, but no more than 3 percent of the preceding year. One respondent said the limitation was too generous and should be limited to a specific period, and then full CPI–U adjustment should be applied to the fees.

Response. After further study, the agency found that recent transactions show increases in annual rent are linked to changes in the CPI–U instead of increases in land value. Moreover, the agency agrees with respondents that the increases, in time, would be higher than normal increases in land rents in the private market.

The agency believes that one inherent problem with a fee schedule is that over the long term it may not adequately reflect fair market rent. Individual market rents in specific areas may be more or less than rents set by using the schedule. The agency believes limiting the CPI–U increases to no more than 5 percent per year will minimize any potential inflation of fees. The agency has revised the final fee policy to include a 5 percent per year limitation on the CPI–U increases. The CPI–U increase, not exceeding 5 percent for the year, will be applied to annual fees beginning in 1997.

Use of Leases and Applicable Fees

The Forest Service proposed policy included the issuance of a ''footprint lease'' (lease) to facility owners (holders) authorizing the subleasing of space in the facility to other communications users (tenants). If such a lease provision in implemented, the agency would no longer require separate authorizations for tenants in a facility. In addition to the annual rental fee indicated in the proposed schedule, a percentage of the gross rental receipts paid to the holders by tenants in facilities would be assessed for certain use categories. The agency would require holders to submit to the agency a certified list of tenants, types of uses, and gross rental revenues received from tenants.

Comment. Generally, respondents did not object to the use of a lease as a means to authorize all users of a facility under one document. However, there was strong opposition to the gross rental receipts concept and, in particular, the 25 percent figure.

Respondents commented that the use of a lease treats similar businesses differently, giving an unfair competitive advantage when one is a holder versus a user as a tenant. Respondents said building owners would raise tenant's rents 30 to 40 percent to compensate for fee increases to the agency. They also said that the opportunity for holders to abuse the fee system could result in reduced revenues to the agency. One respondent was concerned that implementation of the lease could have adverse consequences for public radio broadcasters because building owners may not be aware that public broadcasters are entitled to an exemption from Forest Service fees. The respondent asked that the agency clarify the exemption and waiver policy. One respondent asked the agency to establish a minimum level for facilities or number of transmitters before imposing the highest rental rate. The respondent also suggested that the lease should include the total number of facilities an operator has at a site, even if it is more than one building. Another respondent suggested that a contract be developed on a case-by-case basis to compensate user groups that are the primary source of administration and technical support and suggested that the group receive compensation or reduced fees.

Twenty-one respondents disagreed with the proposal to use a percentage of gross rental receipts as a part of the holders rental fee. Specific and recurring reasons objecting to the concept included: (1) Collection of a percentage of gross receipts, or revenue sharing in addition to the annual rental fee, is inconsistent with private leases and does not represent fair market value; (2) administering a system that utilizes a percentage of rent as part of the fee system is cumbersome and inefficient, and creates unnecessary and unproductive expense for both the Government and users; and (3) the proposal would involve unnecessary Government intrusion into the holder's business affairs.

In contrast, one respondent stated the percentage of revenue sharing was too low, saying that 30–35 percent was probably more appropriate.

Several respondents commented favorably on the proposed lease concept. Specifically, these respondents stated it would encourage use of existing facilities; minimize the clutter of separate facilities; reduce the financial burden on tenants; and improve the agency's management practices while ensuring high-quality site standards.

Many respondents asked for additional explanation of how and when the agency would issue leases and what use categories would pay the percentage of gross rental receipts. Some respondents understood it to apply specifically to broadcasters. Others understood it applied only in the largest markets, while some understood it applied to all markets.

The agency recognizes that the lease and percentage of gross rental receipts concept did not include enough specific information to allow respondents to clearly determine the intent of the proposed policy and implementing procedures.

In response to this issue, BLM incorporated some of the respondents' suggestions in its proposed rule. For example, additional information was added explaining how the lease would affect all users in a facility and that the percentage of gross rental receipts applies to all categories of use in all population strata. The BLM proposed rule would also reduce the percentage to 15 percent for five years and then would raise the percentage to 25 percent thereafter.

Most of the respondents commenting on the BLM proposal were CMRS users, who indicated a strong opposition to the proposed percentage of gross rental receipts. Respondents stated that it was unfair, not supported by market data, and exorbitant in view of the proposed base rents, and that it would be difficult and costly to implement. Most respondents pointed out that, with few exceptions, a landowner in the private market does not receive an additional amount for tenants in facilities. Several respondents submitted private market lease information to substantiate their views. Several likened the proposal to a tax and were dismayed at the prospect of the Government being a partner in their business.

Two respondents to the BLM proposal agreed with the concept and suggested that the percentage should not be reduced for the first five years, but applied immediately.

Another respondent to the BLM proposal observed that setting the rental payment on the authorized use, without adjusting for other users in the facility, would encourage lower rent users to obtain an authorization and then to rent to higher rent users, reducing the rent paid by the holder. The respondent suggested the rental payment should be based on the actual users in the facility.

Response. The Forest Service reviewed additional market information and found that it is not a widespread practice for landowners to charge a percentage of gross rent from tenants. This is especially true in rural areas. While there is some evidence that it does occur in newer leases for multiple use sites serving large population areas, it is not yet a common practice in the private market in all areas. The final fee schedule does not include a percentage of gross rental receipts.

However, the agency believes that multiple user facilities are more valuable than single user facilities, and the additional rights and privileges granted to tenants should be considered in the determination of fees for the use of public land. To ignore the increased demand for communications use would not reflect fair market value.

The agency considered and evaluated alternatives for assessing fees for tenant occupancy as suggested by respondents. Based on the comments and additional analysis, the agency concluded the fee should be based on the actual uses in the facility and reflect the revenue building owners collect from tenants.

Therefore, in response to the public comments, analysis of the alternatives, and additional information gathered in preparing this final notice, the Forest Service final fee policy includes the following changes:

1. One authorization granting the right to construct, operate, and sublease to tenants will be issued to the owner of each facility. The Forest Service and BLM will adopt a common format for communications use authorizations. The new authorization will authorize tenant occupancy, if desired by the holder, without prior written consent of the Forest Service or BLM.

a. In a facility with tenants, the holder's base fee is determined by the use that generates the highest fee on the schedule (highest valued use) of any of the uses in the facility, excluding those uses that would qualify for a fee exemption and/or waiver. If the schedule fee for another use in the facility is higher than the holder's, the holder's use is subordinated for purposes of calculating total fees for the facility. By October 15 each year, the holder will be required to provide the authorized officer with a certified statement listing the name and type of use for each tenant in the holder's facility on September 30 of that year.

b. Uses defined as ''customer'' (including private (other) and internal (PMRS) categories), renting space in a communication facility, and uses that would qualify for a fee exemption and/or waiver are not used to calculate total fees for the facility.

c. An additional fee for tenant occupancy applies to all other use categories in every population strata not identified in the preceding paragraph b. The additional fee is calculated on 25 percent of the scheduled fee.

d. The total fee for the facility is the base fee, plus the additional fee (the additional fee is based on 25 percent of the schedule fee for the holder's use and other tenant uses in the facility). (These requirements are in FSH 2709.11, sec. 36.21, included at the end of this notice.)

2. The fee for a facility with no tenants is the schedule fee for the holder's category of use.

3. A tenant in a facility may hold a separate authorization, without subtenancy rights, at the full schedule fee based on the tenant's category of use. A tenant is defined in the policy (sec. 48.1, para. 5) as a communications user who rents space in a communications facility and operates communication equipment for the purpose of re-selling communications services to others for profit.

Proposed Phase-In of Fee Schedule

The agency proposed to phase in fee increases to minimize the possible significant economic burden on users. As stated in the proposal, fee increases of $1,000 or more would be phased in over a 5-year period at $1,000 per year or 20 percent of the total increase per year, whichever is greater.

Comment. Two respondents expressed support for a phase-in provision. One suggested including the 25 percent of gross rental receipts received from tenants in the phase-in.

Several respondents objected to the 5-year phase-in provision. Specifically, these respondents stated that the magnitude of the fee increases was so great that the 5-year period was not long enough. They suggested that the agency extend the phase-in period to at least 10 years to allow current users the option of relocating their equipment or renegotiating tenant leases. One respondent suggested using a third party arbitrator to determine if the new fair market rents cause economic hardship to existing permittees. Another respondent proposed a 3-year phase-in period, but limiting increases to no more than 5 percent for certain FM radio broadcast categories.

Several respondents to the BLM proposal agreed that a phase-in provision for base fees was reasonable. In contrast, one respondent felt the provision was too generous, favored existing users over new users, and continued the subsidy of communications site fees.

Other respondents asked for additional relief from the percentage of gross rental receipts, and several commented that the process was confusing and too complex.

Based on the respondents' comments and suggestions to the BLM proposed rule, BLM proposed the following revisions to simplify the process: (1) Increases in the base fee in excess of $1,000 or 20 percent of the current fee, whichever is greater; would be phased in; (2) increases after the first year would be based on an equal annual installment, plus the inflation-adjusted increase (CPI–U), rather than limiting the phase-in to $1,000 per year or 20 percent of the total increase per year, whichever is greater, (3) the additional fee for the percentage of gross rental receipts would also qualify for a phase-in to reduce the potential impact of large increases in rent.

Response. The Forest Service recognizes that its proposed phase-in provision was unnecessarily complex so that respondents could not easily determine how it would be applied.

After considering the comments, the agency believes the phase-in of initial fee increases is a necessary and reasonable component of the final fee policy. While phase-ins will result in reduced receipts to the Treasury in the first year of implementation, the provision will substantially reduce the initial economic impact of fee increases on holders. The phase-in will provide time for facility owners and tenants to decide if they want to consolidate uses and adjust financial business plans.

Therefore, the final fee policy retains the 5-year phase-in period for fee increases. However, in response to comments to simplify the phase-in procedure, the agency has included the following revisions in the final policy:

1. Any fee increases of more than $1,000 will be phased in over a 5-year period, eliminating the 20 percent or more calculation. Stated another way, during the first year of implementation, fees will not increase more than $1,000 over the current year fees.

As an example:

A current fee is $700
A new fee based on the schedule is $2,700
Total fee increase = $2,000 (greater than the $1,000 minimum)
First year's fee = $1,700 ($700+$1,000)

The remaining increase, $1,000, would be added in equal annual installments ($250) for years two through five, plus the CPI–U adjustment.

Assuming a 2 percent increase in the CPI–U during the phase-in period, the fee (rounded to the nearest dollar) would be calculated as follows:

Year 1 (1996)— $700+$1,000=$1,700
Year 2 (1997)— $1,700+$250×1.02=$1,989
Year 3 (1998)— $1,989+$250×1.02=$2,284
Year 4 (1999)— $2,284+$250×1.02=$2,584
Year 5 (2000)— $2,584+$250×1.02=$2,891
Year 6 (2001)—$2,891×1.02=$2,949

Reevaluation of Fee Schedule

The Forest Service proposed policy contained a ten-year, or less, period for reevaluation of the fee schedule to ensure fees remain at fair market value.

Comment. One respondent objected, stating that the reevaluation could occur in 1 or 2 years, and the fees were already too high. In contrast, another respondent felt the agency should insist on reevaluation of fair market fees every 5 years, since the technology and demand for facility space is increasing. In addition, this respondent said that private landowners use short-term leases so that they do not have to reevaluate the rents.

The BLM proposed rule did not specify a period for reevaluation of the fee schedule. Instead BLM proposed to revise the schedule periodically, if necessary, to ensure the fees are fair. One respondent to the BLM proposal asked what was meant by ''periodically'' and another suggested that the fee schedule should be reevaluated every 5 years. The respondent noted that private market use fees have surged over the last several years and that unless there is a mechanism to update market information, the schedule would fall below fair market value.

Response. The Forest Service prefers a more flexible option, similar to private business practices, to keep the fees comparable with changing technology and fluctuations in the private market rental rates. The agency will continually monitor the private market to ensure the schedule fees remain current with market conditions.

Therefore, the final policy provides for review and updating of the schedule no later than 10 years from the date of implementation, and at least every 10 years thereafter, to ensure the fees reflect fair market value.

Clarification of Other Provisions of Proposed Policy

Use of Appraisals To Set Fair Market Fees. The Forest Service proposed policy allowed exceptions to the fee schedule in certain situations. For example, a bid procedure was suggested where a communications use is the focus of competitive interest, or an appraisal might be appropriate for uses on sites with truly unique characteristics. All of the regional schedules provide that the authorized officer may use site-specific appraisals or other sound business management principles, when it is determined that the fee schedule does not reflect fair market value, and the schedules specifically do not apply to fees previously established through competitive bid or appraisal.

Comment. Respondents to the Forest Service proposed policy did not comment on this provision of the policy. The BLM included similar language in its proposed rule to reserve the right to use individual appraisals or other valuation procedures to calculate fees. Several respondents to the BLM proposal commented that the authorized officer could determine fees based on appraisals instead of using the fee schedule. They were concerned the fee schedule would not be uniformly used to determine fees. One respondent asked for specific criteria or guidance on when the agency would use appraisals. Another respondent suggested that it would be appropriate to establish standards identifying when the fee schedule would not yield fair market value.

Response. The final Forest Service fee policy (FSH 2709.11, sec. 36.21a) clarifies that the authorized officer may deviate from the schedule and use other methods, including appraisals, to determine fair market value fees for communications uses when one of the following criteria applies:

1. The fee or use is not covered by the fee schedule.

2. The fee has been or will be established through competitive bid or appraisal and will be updated in accordance with the terms and conditions of the authorization.

3. The Regional Forester concurs with the authorized officer's determination that the communications site serves a population of 1 million or more and the expected fee for the communications use is more than $10,000 above the established fee schedule.

4. The expected fee exceeds the schedule rate fee by 5 times or more.

General Provisions for Fee Exemptions and Waivers. The Forest Service fee exemption and waiver policy, addressing all land uses, is set forth in FSH 2709.11, chapter 30 and Forest Service Manual (FSM) chapter 2715. The authority to set criteria for and grant exemptions from fees is either reserved to Federal agencies or set by law. The authorized officer determines fee waivers on a case-by-case basis and may grant a fee waiver when equitable and in the public interest.

Fee Waiver

Comment. Several respondents to the Forest Service proposed policy suggested broadening the current fee waiver policy. Specific and recurring comments from respondents asked that the agency: (1) Grant exemptions, rather than waivers, to nonprofit organizations and public service organizations; (2) recognize that ''public'' and ''noncommercial, educational television'' are one and the same; and (3) change the classification of noncommercial, educational television and radio broadcasters to the exempt category, rather than the waiver category.

Response. The agency is not persuaded by respondents' statements that ''public'' and ''noncommercial, educational television'' are one and the same. While the current policy does not provide fee exemptions, as requested by respondents, it does provide a full waiver of fees, with specific qualifying criteria. The outcome is the same whether the fee is exempt or fully waived. The agency believes the policy should not include additional exemptions, criteria, or changes to terminology.

Fee Waiver for All Television and Radio Broadcasters

Comment. Some respondents to the Forest Service proposed policy asked that the agency reconsider its waiver policy and adopt the Advisory Committee proposal of a 30 percent discount for all radio and television broadcasters in recognition of the public service they provide. One respondent asked for an explanation of the waiver policy when an easement is issued.

Response. The Forest Service recognizes the need to clarify the current fee waiver policy as it applies to commercial and noncommercial television and radio broadcasters. However, the agency disagrees with respondents' statements that television and radio broadcast stations should receive a 30 percent discount on use fees, since they provide important news and emergency programming without direct cost to the public. The General Accounting Office report (GAO–RCED–94–248) agrees with the position of the Department of Agriculture's General Counsel that reducing fees for broadcasters is not appropriate unless there is some direct and tangible benefit to the public lands. The report (GAO RCED–94–248) states further that providing public service discounts to all broadcasters simply because they do not directly charge the public is not appropriate. The agency agrees with the report that a public service discount should not be provided to all commercial radio and television broadcasters, and the respondents' suggestion has not been adopted in the final policy.

Fee waivers and exemptions are dependent on the nature of the use authorized, and the business and intent of the authorization holder. The terms and conditions of easements and leases provide for assignability (transfer) of the rights and privileges authorized. Situations could arise in which easement or lease holders who qualify for exempted or waived fees could transfer their fee exempted or waived status to unqualified authorization holders. Therefore, if the use fees are waived, an easement or lease will not be granted.

The final fee waiver policy in FSH 2709.11, section 31.2 (available on request from the **FOR FURTHER INFORMATION CONTACT** listed earlier in this notice) includes the following changes:

1. Adds a requirement that noncommercial educational radio and television broadcast stations have nonprofit status as defined in section 501(c)(3) of the Internal Revenue Code.
2. Requires an annual verification of nonprofit designation from the Internal Revenue Service (IRS).
3. Moves States and local governments to the full waiver category without qualifying criteria.
4. Adds direction that the authorized officer shall not waive fees when the holder (except a Federal agency) derives revenue from tenants in the facility. Existing Forest Service policy exempts Federal agencies from only the land rental fee. When Federal agencies are tenants in a communications facility, they are expected to pay a fee to the holder for any use of the facilities.

Adjustment of Fees for Free Federal Government Use of Facilities

Comment. While not discussed in the Forest Service proposed policy, two respondents commented that the fee schedule and policy should recognize the requirement placed on some holders to provide for the free use of the facilities by Federal Government agencies. The respondents asked that if the practice is allowed to continue, an adjustment for free Federal Government use should be considered when determining the holder's annual fees.

Response. The agency acknowledges this practice has occurred in isolated cases. However, there is no formal or informal policy permitting such practices. Therefore, the final fee policy includes direction that such requirements in existing authorizations shall be considered in setting fair market rental fees by allowing a temporary fee adjustment. The final policy in FSH 2709.11, section 36.25 provides that when a holder has been required to set aside a percentage of the square footage of building space as free use to other Federal Government agencies, the total annual fee will be reduced by the same percentage. The fee adjustment will be valid during the time the holder is committed to the tenant enjoying free use. The agency has also included direction in FSH 2709.11, section 48.1, paragraph 3, prohibiting authorized officers from issuing authorizations that require holders to provide free rental space to Federal Governmental entities.

Administrative Complexity

Comment. Several respondents to the Forest Service proposed policy said that they needed additional explanation to properly interpret and apply the proposed policy and fee schedule. Major problem areas identified by respondents included determining use categories, identifying internal versus commercial use, applying a complex phase-in procedure, and maintaining consistent administrative and application procedures. Several respondents complained that it takes too long to process applications for a communication site use and called for a reduction in the amount of ''red-tape.''

Response. The revised policy and fee schedule provide for streamlining implementation of the fee schedule; improve application and administrative procedures and make them consistent in the different Regions; and provide important incentives to maximize the use of communications facilities. In addition, the changes encourage continued growth of communications markets and services, especially in rural areas; improve customer service and business practices; set rental fees that are predictable and can be easily updated; encourage improved communications site management; substantially reduce the agency's and holder's administrative burden; and implement procedures more consistent with private market practices.

Once implemented, the improved business practices will work better, cost less, and produce measurable benefits enhancing the working relationship between the Forest Service and the communications site users.

The agency has made the following major changes in the final policy in FSH 2709.11, chapters 30 and 40, to streamline implementation of the fee schedule and provide consistent administration:

1. Defines use categories more broadly to include other related uses associated with the maintenance and monitoring of the use. As an example, internal mobile radio is often associated with other uses and, therefore, is included in the definition of each category of use (FSH 2709.11, sec. 48.11 and 48.12).

2. Redefines commercial mobile radio service to include internal and private communication uses not sold for a profit, that is, private mobile radio, internal microwave, and so forth. Holders operating commercial mobile radio service companies operate and maintain a wide range of mobile, wireless communication services for customers (FSH 2709.11, sec. 48.12a).

3. Revises definitions to provide that occupants owning and operating communication equipment in a commercial mobile radio service facility for internal use only, and not re-selling their service for a profit, are considered customers, not tenants. The base fee assessed does not include any adjustment for customers (FSH 2709.11, sec. 36.21).

4. Allows facility owners and tenants to decide if they want to consolidate their authorizations (FSH 2709.11, sec. 48.1, para. 7).

5. Eliminates the requirement that the holder obtain prior written consent of the authorized officer before allowing other parties to use the facility (FSH 2709.11, sec. 48.1, para. 7).

6. Phases in fee increases if the new scheduled fee exceeds the 1995 fee by $1,000 (FSH 2709.11, sec. 36.22).

7. Reduces the information burden placed on holders (FSH 2709.11, sec. 48.1, para. 7).

8. Encourages new applicants to co-locate in existing facilities, thus reducing surface disturbances and the proliferation of structures (FSH 2709.11, sec. 48.1, para. 1). Use Categories Not Included in Forest Service 1993 Proposed Policy. The Regional schedules recognize a total of 14 uses, generally corresponding to types of communications licenses issued by the FCC. Each Regional schedule, revised in 1992, uses separate market analyses to establish fees for specific use categories within a given Regional area and/or zone. The schedules appear as Regional supplements to chapter 30 FSH 2709.11, Special Uses Handbook. The following use categories included in the Regional supplements were not included in the Forest Service's proposed fee schedule: (1) Broadcast translator, (2) cable and subscription television, (3) common carrier microwave relay, (4) industrial microwave relay, (5) mobile radio: internal communications, (6) natural resource/environmental monitoring, (7) passive reflector, (8) amateur radio, (9) personal/private receive only, and (10) local exchange network. One use, low power television, was omitted from the Regional schedules.

Based on the comments received on the Forest Service proposed policy, additional research on private market practices, and comments received on the BLM proposed rule, the Forest Service is adopting a national fee schedule for all communications uses (except two categories of use) that is consistent with that of the BLM schedule. The agency is making the following changes to the use categories which appear in FSH 2709.11, section 48, and were described in the Regional schedules:

1. Adds low power television and radio uses to the broadcast translator category; remains the category as broadcast translator and low power television and low power FM radio (sec. 48.11d).

2. Renames the cable and subscription TV category as cable television (sec. 48.11c).

3. Renames the mobile radio: internal category as private mobile radio service (sec. 48.12c).

4. Combines the private microwave and common carrier microwave categories; renames the category as microwave (sec. 48.12d).

5. Combines the amateur radio, natural resource and environmental monitoring, and personal/private receive only categories; establishes fees and renames the category as other communications uses (sec. 48.13).

6. Changes the definitions for most categories (sec. 48.1, para. 5).

Following is a summary of the changes to each category. The changes reflect the information provided from respondents and additional joint analysis with BLM of the use categories and fee schedules in the six Regions.

Cable Television. (FSH 2709.11, sec. 48.11c). The current Regional schedules base the fees on the number of households served by a cable television franchise. Depending upon the Region, fees vary from $75 for less than 200 subscribers to $3,000 for more than 2,500 subscribers, with fees for uses serving more than 2,500 subscribers to be determined by appraisal or other means. A review of current market information revealed there is still limited comparable lease data for cable television use in larger markets.

Therefore, the final policy (sec. 48.11c) and fee schedule (sec. 36.21, ex. 01) make the following changes to the cable television category (formerly in the Regional schedules for cable television):

1. Fees are based on the standard RMA population ranges, establishing fees for four population ranges (less than 25,000 to 299,999). The final fees vary from $600 to $2,400.

2. Fees for uses in population ranges not covered by the schedule (300,000 and above) continue to be determined on a Regional basis by other reasonable methods, including appraisals.

3. If a nonscheduled fee is indicated, the current fee remains in effect until the new fee is determined.

4. Until a new fee is determined, a cable television use is not to be used to determine the highest value use for purposes of calculating building owner fees; but the building owner fee is based on the second highest value use in the facility covered by the schedule.

Broadcast Translator, Low Power Television, and Low Power FM Radio. (FSH 2709.11, sec. 48.11d). Based on the number of persons within the area served, the regional fee schedules vary from $75 for less than 15,000 persons to $1,000 for 60,000 persons, with populations over 60,000 to be determined by appraisal or other means. The National Translator Association supported these fees when published by the Forest Service Regions in 1992.

Comment. Several respondents to the Fores Service proposed fee schedule asked that the agency establish a separate category for low power television (LPTV). Low power television stations are essentially broadcast translators that originate programming. The devices cannot interfere with full-power stations and are limited to 10 watts VHF and 1000 watts UHF. Since the devices usually serve remote areas or specific unique markets, there is little information to suggest that there is a difference in land rent from broadcast translators.

Response. After considering the comments and reviewing the use categories, the agency found it would be appropriate to include LPTV and low power FM radio (LPFM) uses in the broadcast translator category. In addition, the agency found there is insufficient comparable lease data to establish fees for broadcast translator and LPTV use in the larger urban markets. Therefore, the final policy (sec. 48.11d) and fee schedule (sec. 36.21, ex. 01) make the following changes to the broadcast translator category (formerly in the Regional schedules for broadcast translator):

1. Fees are based on the standard RMA population ranges, establishing fees for four population ranges (less

than 25,000 to 299,999). The final fees vary from $100 to $2,400.

2. Fees for uses in population ranges not covered by the schedule (300,000 and above) continue to be determined on a Regional basis by other reasonable methods, including appraisals.

3. If a nonscheduled fee is indicated, the current fee remains in effect until the new fee is determined.

4. Until a new fee can be determined, a broadcast translator/LPTV/LPFM use is not to be used to determine the highest value use for purposes of calculating a building owner fee. In this situation, the building owner fee is based on the second highest value use in the facility covered by the schedule.

Private Mobile Radio Service. (FSH 2709.11, sec. 48.12c). The Regional schedules adopted an annual fee for private mobile radio use, rather than using population or areas served as a basis for fee determination. Fees for uses identified as mobile radio: internal in the Regional schedules, vary from $350 to $1,700.

Comment. A respondent to the BLM proposed rule pointed out that in some situations internal mobile radio and microwave systems must be used together. Commonly called ancillary uses, the systems give support or connect one another on the same communications facility. To eliminate confusion, the respondent suggested that when microwave and mobile radio uses are present in the same facility as ancillary uses, the fee should be based on the private mobile use if the microwave ends at the facility and is used for the control of the mobile facility.

Response. The agency agrees with the respondent. If the microwave and mobile radio uses are ancillary to each other, the holder should not pay two separate fees. To correct the problem, the definition has been broadened to include other equipment for the control of a facility. A separate fee is not to be charged for ancillary uses.

If microwave and private mobile radio uses are present in the same facility, but are independent of each other, they are considered as separate uses for purposes of fee calculation.

The final policy (sec. 48.12c) and fee schedule (sec. 36.21, ex. 01) make the following changes to the private mobile radio service category (formerly in the Regional schedules as mobile radio: internal):

1. Fees are based on the standard RMA population ranges, establishing fees for nine population ranges. The final fees vary from $350 to $10,000.

2. The definition has been broadened to include other communications equipment necessary for the control of a facility.

3. A separate fee is not assessed for ancillary microwave use.

Microwave. (FSH 2709.11, sec. 48.12d). Two separate categories, common carrier microwave and industrial microwave, were established in the Regional schedules. Based on the geographical location and the number of persons served, the fees vary from $1,000 in the rural areas to as much as $5,500 in urban areas.

Comment. Several respondents to the BLM proposed rule observed that there is little difference in the rent paid for private (industrial) or common carrier microwave facilities in the private market.

Response. The agency agrees with the respondents and has combined the two categories into one category for microwave.

The final policy is FSH 2709.11 (sec. 48.12d) and fee schedule (sec. 36.21, ex. 01) make the following changes to the microwave categories (formerly in the Regional schedules for common carrier and industrial microwave):

1. One category, microwave, combines the previous categories for common carrier microwave and industrial microwave uses.

2. Fees are based on the standard RMA population ranges, establishing fees for nine population ranges. The final fees vary from $1,500 to $10,000.

3. The definition has been broadened to include other communications equipment necessary for the control of a facility.

4. A separate fee is not assessed for ancillary private mobile radio use.

5. Fees for a microwave use with an ancillary private mobile radio use are based on the scheduled rate for microwave.

Other Categories. The Regional schedules adopted a $75 fee for separate categories of amateur radio, personal/private receivers, and environmental monitoring equipment uses for all geographic locations. The final policy (FSH 2709.11, sec. 48.13) combines these uses into one category, other uses, and the final fee schedule (sec. 36.21, ex. 01) maintains the $75 fee.

Two other categories, passive reflector and local exchange network, are in the Regional schedules but are not in the final agency policy or fee schedule. Passive reflector use fees vary from $475 to $1,000, depending upon the location and populations served. The system is used primarily in remote areas. Fees for local exchange network uses, a radio service providing basic exchange telephone radio service (BETRS) to remote areas, were established in the 1992 schedules using information gathered from a national fee analysis and rates for common carrier microwave. Fees vary from $75 to $4,000, depending on the persons served in a particular geographic area.

Passive reflectors and local exchange networks are unique systems with limited use. In many areas the systems are being replaced by new emerging technologies. Therefore, the final fee schedule excludes both uses and fees will continue to be determined on a Regional basis.

Definitions. The final policy includes a definition for each use category and other commonly used terms in FSH 2709.11, section 48.

Fee Schedule Implementation

The draft policy indicated the final fee schedule and associated policy changes would require Forest Service Regions 1 through 6 to modify their existing fee schedules and to give notice of those changes in the Federal Register. However, in consideration of the public comments that the fee schedules would still be incomplete, and because of the coordinated effort with the BLM to issue joint market-based fee schedules, the final fee schedule revises those procedures.

Instead, the final fee schedule replaces the Regional schedules, except for passive reflector and local exchange network uses. The fee schedule in FSH 2709.11, section 36.01, exhibit 01, will be updated annually to reflect:

1. The CPI–U adjustment factor to apply to annual billings for existing authorizations.

2. Revised schedule fees, reflecting the CPI–U adjustment, to be used for new authorizations.

3. Changes to the RMA population rankings.

The agency recognizes that the final fee schedule may result in a reduction of current fees for some holders, for several reasons, including:

1. Fees established by 1992 Regional schedules which have been increased by the CPI–U adjustment factor each year.

2. Definition of a ‘‘customer’’ to include internal and private uses renting space within a communication facility and not re-selling communication services to others.

3. The inherent leveling effect of a fee schedule applying a national market-based ranking system rather than specific geographic market conditions.

However, the agency believes implementation of a national fee schedule for most communications uses and the annual updating of fees with applicable CPI–U adjustments through national direction will end the inequity between fees charged to users in different regions and at the same time return fair market value in rental income to the United States.

The final fee schedule does not apply to Region 8 and 9 (encompassing the 33 eastern States) or Region 10 (Alaska). The Forest Service is currently validating the fee schedule's applicability to communications uses in the 33 eastern States. The agency expects to implement the fee schedule for Regions 8 and 9 with any necessary adjustments in 1997. Region 10 (Alaska) will continue to use the Regional fee schedule adopted in 1992.

The Forest Service plans the following actions and methods for implementing the final policy:

1. The Forest Service and the BLM will develop and adopt a new document for communication use authorizations for use by both agencies. The new authorization will allow tenant occupancy, eliminating the requirement for prior written consent of the agency or issuance of separate authorizations to tenants.

2. All authorization holders will receive notice of the regulatory changes affecting communications site use fees, and they will be given the option to convert to the new authorization. The holders will have 60 days to respond to the authorized officer indicating their intention. Permits that expire will be replaced with the new authorization.

3. Tenants may retain an existing authorization or relinquish the authorization and be included in the facility owner's authorization. Tenants electing to maintain an existing authorization will be billed the full use fee according to the schedule and category of use.

4. Fees for uses not included in the schedule continue to be determined on a Regional basis by other reasonable methods, including appraisals.

5. If a nonscheduled fee is indicated, the current fee remains in effect until the new fee is determined.

6. Until new fees can be determined, nonscheduled use categories are not to be used to determine the highest value use for purposes of calculating building owner fees, but are based on the second highest value use in the facility covered by the schedule.

7. Separate fees are not assessed for ancillary uses.

8. Holders will be notified of the calendar year 1996 fee by written notice from the authorized officer. The notification will include instructions for appealing the new fees in accordance with existing regulations.

9. The fee schedule is effective November 6, 1995 for new use authorizations (new construction) and on January 1, 1996, for existing use authorizations.

Controlling Paperwork Burdens on the Public

This policy will not result in additional paperwork not already required by law or not already approved for use. The information collection being requested as a result of this action has been approved by OMB (Number 0596–0082, expiration date—June 30, 1996). Therefore, further review required under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 22, 1995)) and implementing regulations at 5 CFR 1320 do not apply.

Regulatory Impact

This final policy has been reviewed under Executive Order 12866 on Regulatory Planning and Review. The agency has determined that this final policy is a significant regulatory action subject to Office of Management and Budget review.

Currently, annual costs for processing applications (including analysis for environmental and heritage resources) and determining fees for communications uses are estimated at $63,000 for the Forest Service and $32,500 for applicants. Annual costs to the Forest Service to administer existing authorized communications site uses are estimated at $1,985,500.

Under the existing fee system, approximately $2 million are collected annually from the 6,300 authorized communications site users on National Forest System (NFS) lands. Fees are waived for other Federal, State, and local municipalities and some non-profit organizations.

Each of the 6,300 current authorizations is issued for one user. The Forest Service requires proof of FCC licensing for each authorization. Due to the complexity of communications technology, the Forest Service is unable to economically track each user within each building. It is estimated that there are between 500 and 1,000 unidentified and unauthorized users operating on NFS lands. These users may or may not be licensed by FCC and are not paying compensation for the use.

The new process reduces the number of applications and permits, increasing benefits through reduced costs, more efficient administration, and reduction of environmental planning analyses. Administrative savings to the government would be approximately $975,000 and savings to communication site applicants and users would be approximately $16,250. With a decrease in caseload, Forest Service personnel will be able to provide better customer service to the public. Additionally, reduced caseload will enable the Forest Service to better administer existing uses, thereby ensuring uses are consistent with the terms and conditions of the lease and applicable policies, regulations, and laws. Non-profit organization that have annual certification by the Internal Revenue Service, such as public television and radio broadcasters and religious broadcasters, will have their fees waived. Reductions in operating expenses for these organizations may increase their ability to provide goods and services to the publics they serve.

The new schedule increases receipts to the Federal treasury by an estimated $18 million annually by charging fees more accurately reflecting fair market value as required by the Federal Land Policy and Management Act. This is a conservative estimate based on the findings of the joint Forest Service and BLM 1991 Report to Congress where fees were determined to be $20 to $25 million below fair market value.

Fees under the new schedule are consistent with those on private sites and reduce discrepancies between Federal and private site fees. Increased revenue to the Federal treasury assists with Administration and Congressional efforts to reduce the Federal deficit.

The granting of a lease to communications site users with a guaranteed term provides benefits to the user for planning and may increase opportunities for obtaining financing. Additionally, a consistent fee system across the Forest Service and BLM reduces confusion and simplifies processing for corporate users who may require leases at more than one location.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. The phase-in of annual fees described in this notice will allow small entities to adjust to the new fees over a period of time and thus minimize the risk of adverse impact on some businesses because of the magnitude of the increase in some fees.

Environmental Impact

Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions.'' Based on consideration of the comments received and the nature and scope of this policy, the Forest Service has determined that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Dated: July 17, 1995.

David G. Unger,

Associate Chief.

Final Handbook Revision

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with issuing and administering communications use authorizations. The text of the revised policy and fee schedule follows:

FSH 2709.11—Special Uses Handbook

Chapter 30—Fee Determination

36.2—Communications Site Fee Schedule. This section provides direction for use of the fee schedule for communications uses on National Forest System lands.

36.21—Determination of Fees. The authorized officer shall request that the holder provide a certified statement by October 15 of each year containing a list of tenants, by category of use, in the facility on September 30 of that year.

Calculate the annual fee using the fee schedule (ex. 01) and the population strata based on the Ranally Metro Area (RMA) population and city listing (ex. 02). The fee schedule provides rental fees by category of use and population. See section 36.21a for exceptions to using the fee schedule.

1. Consider the following when determining fees:

a. If the communications site serves an RMA community (ex. 02), determine the fee by the category of use and the corresponding population range on the fee schedule (ex. 01).

b. If the communications site does not serve a listed RMA community (ex. 02), determine the fee based on the population of the largest community (according to the most current ''Rand McNally Road Atlas'') served by the site.

c. If the communications site does not serve a community, determine the fee based on the lowest scheduled fee (ex. 01) for the category of use, except in situations described in section 36.21a.

d. Consider co-owned AM and FM stations located in the same facility as two radio stations in determining fees.

e. Do not apply the 25 percent schedule rate for customers (sec. 48.1, para. 5), including internal and private users, renting space in a communications facility.

2. Apply the fee schedule to communications uses providing the following services:

a. *Television Broadcast.* (Sec. 48.11a of this Handbook).

b. *AM and FM Radio Broadcast.* (Sec. 48.11b).

c. *Cable Television.* (Sec. 48.11c).

d. *Broadcast Translator, Low Power Television, and Low Power FM Radio.* (Sec. 48.11d).

e. *Commercial Mobile Radio Service (CMRS) and Facility Manager.* (Sec. 48.12a).

f. *Cellular Telephone.* (Sec. 48.12b).

g. *Private Mobile Radio Service.* Stand alone operations only. (Sec. 48.12c).

h. *Microwave.* Common carriers microwave relay and industrial microwave. (Sec. 48.12d).

i. *Other Communications Uses.* Stand alone operations only. This category includes the following uses: amateur radio; personal/private receive only; and natural resource and environmental monitoring. (Sec. 48.13).

3. Except for fees that apply to a facility manager (para. 4), assess fees for all the preceding uses in paragraphs 2a to 2i providing rental space to tenants as follows:

a. Determine a base fee from the schedule rate fee for the building owner or the use generating the highest schedule fee in the facility. If the highest schedule fee is a ''tenant'' fee, the ''tenant'' fee becomes the base fee and the building owner's schedule rate fee is used as a tenant fee for calculating additional fees (following para. b).

b. Add 25 percent of the schedule fee for each ''tenant'' (ex. 01). Include 25 percent of the building owner's scheduled fee if it is not the highest fee and, therefore, not used as the base fee.

Sample fee calculations are provided as follows:

Example 1: A communications facility serving an RMA population area of 200,000, with a CMRS provider (building owner), one TV broadcaster, two FM broadcasters, one cellular telephone, and two private mobile radio users.

Base fee=$6,000 (TV broadcast is the highest value use in the facility)+$750 (25% CMRS provider (building owner)+$2,000 (25% of two FM broadcasters)+$1,000 (25% cellular telephone)+$0.00 (no charge for PMRS)=Total fee for the facility: $9,750.

Example 2: A communications facility serving an RMA population area of 800,000, with a TV station (building owner), one FM broadcaster, and three private mobile radio users.

Base fee=$14,000 (TV broadcast is the highest value use in the facility)+$2,500 (25% FM broadcaster)+$0.00 (no charge for PMRS)=Total fee for the facility: $16,500.

4. Fees for facility managers are calculated differently from other uses. Facility managers provide rental space for other communications uses; they do not directly provide communications services to others. Determine the base fee as described in the proceeding paragraph. However, if the highest valued scheduled fee for the facility is not the facility manager's, do not ''substitute'' the 25 percent facility manager rental fee for the tenant fee used for the base fee.

Sample fee calculations for facility manager uses are provided as follows:

Example 1: A facility manager serving an RMA population area of 200,000, with three microwave providers and two amateur radio operators.

Base fee=$3,000 (the facility manager schedule rate is the highest valued use in the facility)+$1,500 (25% three microwave users)+$0.00 (no charge for amateur radio)=Total fee for the facility: $4,500.

Example 2: A facility manager serving an RMA population area of 800,000, with a TV station, three FM broadcasters, and three private mobile radio users.

Base fee=$14,000 (TV broadcast is the highest value use in the facility)+$7,500 (25% FM broadcaster)+$0.00 (no charge for PMRS)=Total fee for the facility: $21,500.

36.21a—Exceptions to Fee Schedule. Fees not established by use of the fee schedule shall be based on comparative market surveys, appraisals, or other reasonable methods. All such fee determinations shall be documented, supported, and approved by the authorized officer. The following are exceptions to the fee schedule:

1. The fee or use is not covered by the fee schedule.

2. The fee has been or will be established through competitive bid or appraisal and will be updated in accordance with the terms and conditions of the authorization.

3. The Regional Forester concurs with the authorized officer's determination that the communications site serves a population of 1 million or more and the expected fee for the communications use is more than $10,000 above the established fee schedule.

4. The expected fee exceeds the schedule rate fee by 5 times or more.

36.22—Phase-in of Fees. Fees for new uses (new construction) do not qualify for a phase-in. For existing uses, phase in first year increases in fees of more than $1,000 over a 5-year period. For example, if the current total fee is $700, and the new total fee is $2,700, calculate the 5-year phase-in as follows:

1. *Year 1996.* $700 (current total fee in 1995) + $1,000 (limit of first year increase) = $1,700 (first year's fee in 1996);

2. *Year 1997.* $1,700 (first year fee in 1996) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $1,989 (second year's fee in 1997);

3. *Year 1998.* $1,989 (second year's fee in 1997) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $2,284 (third year's fee in 1998);

4. *Year 1999.* $2,284 (third year's fee in 1998) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $2,584 (fourth year's fee in 1999);

5. *Year 2000.* $2,584 (fourth year's fee in 1999) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $2,891 (fifth year's fee in 2000);

6. *Year 2001.* Phase-in of the fee schedule has been completed. In succeeding years, apply only the CPI–U to the previous year's fee. $2,891 (fifth year's fee in 2000) × 1.02* = $2,949 (fee in 2001).

*Assumed 2 percent increase each year in the United States Department of Labor Consumer Price Index for All Urban Consumers—U.S. City Average (CPI–U).

36.23—Updating Fee Schedule. The Director of Lands, Washington Office, shall update the fee schedule (sec. 36.21, ex. 01) annually, based on the CPI–U published in July of each year. Annual adjustments based on the CPI–U shall be limited to 5 percent. The Director of Lands shall review the fee schedule no later than 10 years after the date of implementation of this schedule, and at least every 10 years thereafter, to ensure that fees reflect fair market value.

The Director of Lands shall review and update the RMA city and population table (sec. 36.21, ex. 02) annually.

36.24—Fee Waivers and Exemptions. For direction on fee waivers and exemptions, see sections 31.2 through 31.4

36.25—Fee Adjustment for Required Free Use. In no circumstance require a private holder to provide free rental space to Federal agencies or any other entity. In order to rectify past situations in which the Forest Service required the holder to provide free rental space, discount the annual fee by the same percentage that the entity receiving free use occupies (in square feet) in that building. For example, if the Forest Service previously required a building owner to provide free use for 20 percent of the building, discount the annual fee by 20 percent. Such a discount is valid for the period of time specified in an existing agreement between the parties.

BILLING CODE 3410–11–M

36.21 - Exhibit 01

FEE SCHEDULE FOR COMMUNICATIONS USES

POPULATION	TELEVISION	AM/FM RADIO *	CABLE TELEVISION	BROADCAST TRANSLATOR/ LPTV/LPFM	CMRS/ FACILITY MANAGER	CELLULAR TELEPHONE	PRIVATE MOBILE RADIO SERVICE	MICROWAVE	OTHER	PASSIVE REF. & LOCAL EXCH. NETWORKS	SAMPLE RMA'S
5,000,000 plus	$45,000	$34,000	*INSUFFICIENT*	*INSUFFICIENT*	$12,000	$12,000	$10,000	$10,000	$75		Los Angeles, CA
2,500,000 to 4,999,999	$30,000	$21,000	*MARKET DATA*	*MARKET DATA*	$10,000	$10,000	$6,000	$8,000	$75		Seattle, WA
1,000,000 to 2,499,999	$18,000	$14,000	*FEE TO BE DETERMINED*	*FEE TO BE DETERMINED*	$8,000	$8,000	$6,000	$7,000	$75	*FEES* *FOR*	Phoenix, AZ San Diego, CA Portland, OR Riverside, CA
500,000 to 999,999	$14,000	$10,000	*BY APPRAISAL OR OTHER*	*BY APPRAISAL OR OTHER*	$5,000	$6,000	$4,000	$5,500	$75	*THESE*	Las Vegas, NV Salt Lake City, UT Tucson, AZ Albuquerque, NM
300,000 to 499,999	$12,000	$8,000	*METHODS*	*METHODS*	$4,000	$5,000	$2,500	$2,500	$75	*USES*	Bakersfield, CA Spokane, WA
100,000 to 299,999	$6,000	$4,000	$2,400	$2,400	$3,000	$4,000	$2,000	$2,000	$75	*ARE* *DETERMINED*	Boise, ID Anchorage, AK Reno, NV Palm Springs, CA Yakima, WA Yuma, AZ Billings, MT
50,000 to 99,999	$3,000	$2,000	$1,200	$1,200	$1,200	$3,000	$1,000	$1,500	$75	*BY* *EACH* *REGION*	Las Cruces, NM Grand Junction, CO Idaho Falls, ID Missoula, MT Santa Fe, NM Pocatello, ID Farmington, NM Roswell, NM
25,000 to 49,999	$1,500	$1,200	$1,000	$500	$1,000	$2,500	$600	$1,500	$75		Butte, MT
LESS THAN 25,000	$1,200	$900	$600	$100	$600	$2,500	$350	$1,500	$75		

* *FEE FOR AM RADIO IS 70% OF THE FM SCHEDULED FEE*

36.21 - Exhibit 02

LISTING OF CITIES BY POPULATION STRATA

5,000,000 plus	2,500,000 to 4,999,999	1,000,000 to 2,499,999	500,000 to 999,999
Chicago, IL-IN-WI Los Angeles, CA New York, NY-NJ-CT (incl. Newark, NJ) and Danbury, CT) Philadelphia, PA-NJ-DC-MD (incl. Trenton, NJ Wilmington, DE, Coatesville, PA San Francisco, CA (incl. Antioch, Oakland, and San Jose)	Atlanta, GA Boston, MA-NH (incl. Brockton Haverhill, Lawrence, Salem and Lowell, MA and Nashua, NH) Dallas, TX (incl. Fort Worth) Detroit, MI-CAN (incl. Ann Arbor, MI and Windsor, CAN) Houston, TX Miami, FL (incl. Ft. Lauderdale) San Diego, CA-MEX (incl. Tijuana, MEX) Seattle, WA (Tacoma) Wash, DC-MD-VA	Baltimore, MD Buffalo, NY-CAN (incl. St. Cathannes-Niagara Falls, CAN) Cincinnati, OH-KY-IN Cleveland, OH Columbus, OH Denver, CO El Paso, TX-NM-MEX (incl. Ciudad Juarez, MEX) Hartford, CT (incl. New Britain) Indianapolis, IN Kansas City, MO-KS Milwaukee, WI Minneapolis, MN-WI (incl. St. Paul, MN) New Orleans, LA Norfolk, VA (incl. Portsmouth) Phoenix, AZ Pittsburg, PA Portland, OR Riverside, CA (incl. San Bernadino) Sacramento, CA St. Louis, MO-IL St. Petersburg, FL (incl. Clearwater) San Antonio, TX San Diego, CA	Akron, OH Albany, NY (incl. Schenectady, and Troy) Albuquerque, NM Allentown, PA-NJ (incl. Bethlehem,PA Austin, TX Birmingham, AL Calexico, CA-MEX (incl. Mexicali, MEX) Charlotte, NC-SC Dayton, OH El Paso, TX-NM Flint, MI Fresno, CA Grand Rapids, MI Honolulu, HI Jacksonville, FL Knoxville, TN Las Vegas, NV Louisville, KY-IN McAllen, TX (incl. Reynosa, MEX and Edinburg, TX) Memphis, TN-AR-MS Nashville, TN New Haven, CT Oklahoma City, OK Omaha, NE-AI Orlando, FL Providence, RI-MA Raleigh, NC Richmond, VA (incl. Petersburg) Rochester, NY Salt Lake City, UT Springfield, MA Syracuse, NY Tampa, FL Toledo, OH-MI Tucson, AZ West Palm Beach, FL

36.21 - Exhibit 02--Continued

LISTING OF CITIES BY POPULATION STRATA

300,000 to 499,999	100,000 to 299,999			
Augusta, GA-SC	Abilene, TX	Fayetteville, AR	Monroe, LA	Springfield, IL
Bakersfield, CA	Albany, GA	(incl. Springdale)	Monterey, CA	Springfield, MO
Baton Rouge, LA	Altoona, PA	Fayettsville, NC	(incl. Seaside)	Springfield, OH
Beaumont, TX	(incl. Bethlehem)	Fitchburg, MA	Montgomery, AL	Steubenville, OH-WV
(incl. Port Arthur)	Amarillo, TX	(incl. Leominster)	Muncie, IN	(incl. Weirton, WV)
Bridgeport, CT	Anchorage, AK	Fort Collins, CO	Muskegon, MI	Tallahassee, FL
Brownsville, TX-MEX	Anderson, IN	(incl. Loveland)	Myrtle Beach, SC	Terre Haute, IN
(incl. Matamoros, MEX)	Appleton, WI	Fort Myers. FL	(incl. Conway)	Topeka, KS
Canton, OH	Asheville, NC	(incl. Cape Coral)	Naples, FL	Tuscaloosa, AL
Charleston, SC	Athens, GA	Fort Pierce, FL	New Bedford, MA	Tyler, TX
Chattanooga, TN-GA	Atlantic City, NJ	Fort Smith, AK-OK	Newburgh, NY	Utica, NY
Colorado Springs, CO	Battle Creek, MI	Fort Walton Bch, FL	New London, CT-RI	(incl. Rome)
Columbia, SC	Billings, MT	Frederick, MD	(incl. Norwich, CT)	Vineland, NJ
Corpus Christi, TX	Biloxi, MI	Gainesville, FL	Nogales, AZ-MEX	Visalia, CA
Des Moines, IA	(incl. Gulfport)	Galveston, TX	(incl. Nogales, MX)	Waco, TX
Fort Wayne, IN	Binghamton, NY-PA	(incl. Texas City)	Ocala, FL	Waterbury, CT
Greensboro, NC	Bloomington, IL	Gastonia, NC	Oceanside, CA	Waterloo, IA
(incl. High Point)	(incl. Normal)	Green Bay, WI	Odessa, TX	Wheeling, WV-OH
Greenville, SC	Bloomington, IN	Hagerstown, MD-PA-WV	Ogden, UT	Wichita Falls, TX
Harrisburg, PA	Boise, ID	Harlingen, TX	Olympia, WA	Williamsport, PA
Jackson, MS	Boulder, CO	Hemet, CA	Palm Springs, CA	Wilmington, NC
Johnson City, TN-VA	(incl. Longmont)	Hickory, NC	Panama City, FL	Winter Haven, FL
(incl. Kingsport and Bristol)	Bremerton, WA	Houma, LA	Peoria, IL	Yakima, WA
Lansing, MI	Brownsville, TX	(incl. Thibodaux)	Port Huron, MI-CAN	York, PA
Laredo, TX-MEX	Bryan, TX	Huntington, WV-KY-OH	(incl. Sarnia, CAN)	Yuma, AZ-CA
(incl. Nuevo Laredo, MEX)	(incl. College	Huntsville, AL	Portland, ME	
Little Rock, AR	Station)	Jackson, MS	Portsmouth, NH-ME	
McAllen, TX	Burlington, NC	Jacksonville, NC	(incl. Dover and	
(incl. Edinburg)	Burlington, VT	Johnstown, PA	Rochester, NH)	
Madison, WI	Cedar Rpaids, IA	Kalamazoo, MI	Poughkeepsie, NY	
Melbourne, FL	Champaign, IL	Kannapolis, NC	Provo, UT	
(incl. Cocoa)	(incl. Urbana)	(incl. Concord)	(incl. Orem)	
Mobile, AL	Charleston, WV	Kenosha, WI	Pueblo, CO	
Newport News, VA	Clarksville, TN-KY	Killeen, TX	Racine, WI	
(incl. Hampton)	Columbus, GA-AL	Lafayette, IN	Reading, PA	
Oxnard, CA	Corvallis, OR	(incl. W. Lafayette)	Redding, CA	
(incl. Ventura)	(incl. Albany)	Lafayette, LA	Reno, NV	
Pensacola, FL	Davenport, IA-IL	Lake Charles, LA	Richland, WA	
Rockford, IL-WI	(incl. Rock Island	Lakeland, FL	(incl. Kennewick	
Saginaw, MI	and Moline, IL)	Lancaster, PA	and Pasco)	
(incl. Bay City and Midland)	Daytona Beach, FL	Laredo, TX	Roanoke, VA	
Sarasota, FL	Decatur, IL	Lexington, KY	Salem, OR	
(incl. Bradenton)	Duluth, MN-WI	Lima, OH	Salinas, CA	
Scranton, PA	Durham, NC	Lincoln, NE	Santa Barbara, CA	
(incl. Wilkes-Barre)	(incl. Chapel Hill)	Longview, TX	Santa Cruz, CA	
Spokane, WA-ID	Elkhart, IN-MI	Lubbock, TX	Santa Rosa, CA	
Wichita, KS	Erie, PA	Lynchburg, VA	Sauit Ste. Marie,	
Winston-Salem, NC	Eugene, OR	Macon, GA	MI-CAN (incl. Sauit	
Worcester, MA	Evansville, IN-KY	Manchester, NH	Ste. Marie, CAN)	
Youngstown, OH-PA	Fairfield, CA	Mansfield, OH	Savannah, GA	
(incl. Warren, OH)	(incl. Vacaville)	Medford, OR	Shreveport, LA-TX	
	Fall River, MA-RI	Merced, CA	Sioux City, IA-NE-SD	
	Fargo, ND-MN	Middletown, OH	Sioux Falls, SD	
	(incl. Moorehead	Midland, TX	South Bend, IN-MI	
	MN)	Modesto, CA	Spartanburg, SC	

36.21 - Exhibit 02--Continued

LISTING OF CITIES BY POPULATION STRATA

50,000 to 99,999			25,000 to 49,999	Less than 25,000
Alexandria, LA	Goldsboro, NC	New Castle, PA	Amherst, MA	Calexico, CA
Alliance, OH	Grand Forks, ND-MN	New Ibena, LA	Ashtabula, OH	Nogales, AZ
Ames, IA	Grand Junction, CO	Mewport, RI	Bartiesville, OK	Sauit Ste. Marie,-
Anderson, SC	Great Falls, MT	Oshkosh, WI	Brunswick, ME	MI
Annapolis, MD	Greeley, CO	Owensboro, KY	(incl. Bath)	
Anniston, AL	Hanover, PA	Paducah, KY-IL	Burlington, IA	
Auburn, AL	Hattiesburg, MS	Parkersburg, WV-OH	Butte, MTIA-IL	
(incl. Opelika)	Hazleton, PA	Pascagoula, MS-AL	Clinton, IA-IL	
Auburn, NY	Hilo, HI	Pine Bluff, AR	Clovis, NM	
Augusta, ME	Holland, MI	Pittsfield, MA	E. Liverpool, OH-WV	
Bangor, ME	Hot Springs, AR	Pocatello, ID	Enid, OK	
Beckley, WV	Idaho Falls, ID	Porterville, CA	Findley, OH	
Bellingham, WA	Iowa City, IA	Port Huron, MI	Fort Dodge, IA	
Benton Harbor, MI	Ithaca, NY	Portsmouth, OH-KY	Galesburg, IL	
(incl. St. Joseph)	Jackson, TN	Pottstown, PA	Grand Island, NE	
Bismark, ND	Jamestown, NY	Pottsville, PA	Greenville, MS	
Bowling Green, KY	Janesville, WI	Quincy, IL	Hopkinsville, KY	
Brunswick, GA	Jefferson City, MO	Rapid City, SD	Hutchinson, KS	
Butler, PA	Jonesboro, AR	Richmond, IN-OH	Laurel, MS	
Cape Girardeau, MO	Joplin, MO-KS	Rochester, MN	Leavenworth, KS	
Carbondale, IL	Kankakee, IL	Rock Hill, SC	Lewiston, ID-WA	
Carlisle, PA	Kingston, NY	Rocky Mount, NC	Manhattan, KS	
Casper, WY	Kokomo, IN	Rome, GA	Mankato, MN	
Charlottesville, VA	La Crosse, WI-MN	Roswell, NM	Marietta, OH-WV	
Cheyenne, WY	Lancaster, OH	Rutland, VT	Marshall, TX	
Chico, CA	Las Cruces, NM	St. Cloud, MN	Minot, ND	
Clarkburg, WV	Latrobe, PA	St. Joseph, MO-KS	Natchez, MS-LA	
Cleveland, TN	Lawrence, KS	Salisbury, MD-DE	Northampton, MA	
Columbia, MO	Lawton, OK	Salisbury, NC	Oil City, PA	
Columbus, IN	Lebanon, PA	San Angelo, TX	(incl. Franklin)	
Columbus, MS	Lewiston, ME	Sandusky, OH	Salina, KS	
Concord, NH	(incl. Auburn)	Santa Fe, NM	Stillwater, OK	
Cumberland, MD-WV	Lockport, NY	Sharon, PA-OH	Vicksburg, MS-LA	
Danville, IL	Logan, UT	Sheboygan, WI	Waterville, ME	
Danville, VA-NC	Lompoc, CA	Sherman, TX		
Davis, CA	Longview, WA-OR	(incl. Denison)		
Decatur, AL	Lufkin, TX	State College, PA		
De Kalb, IL	Manitowoc, WI	Sumter, SC		
De Land, FL	Marion, IN	Taunton, MA		
Dothan, AL	Marion, OH	Temple, TX		
Dover, DE	Martinsville, VA	Texarkan, TX-AR		
Dubuque, IA-WI-IL	Meridian, MS	Titusville, FL		
Eau Claire, WI	Michigan City, IN-MI	Torrington, CT		
Elmira, NY	Middletown, NY	Uniontown, PA		
Eureka, CA	Missoula, MT	Valdosta, GA		
(incl. Arcata)	Monroe, MI	Venice, FL		
Fairbanks, AKM	Montpelier, VT	Victoria, TX		
Fairmont, WV	(incl. Barre)	Washington, PA		
Farmington, NM	Morgantown, WV-PA	Watertown, NY		
Florence, AL	Morristown, TN	Watsonville, CA		
Florence, SC	Murfreesboro, TN	Wausau, WI		
Fond du Lac,WI	Muskogee, OK	Yuba City, CA		
Freeport, TX	Nampa, ID	(incl. Marysville)		
(incl. Lake Jackson)	(incl. Caldwell)	Zanesville, OH		
Gadsden, AL	Napa, CA			
Glen Falls, NY	Newark, OH			

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Chapter 40—Special Uses Administration

48—Communications.

48.1—Communications Uses. This special-uses group includes a variety of communications use categories which utilize National Forest System land. Typically the use occurs on a designated site and includes buildings, towers, and other support improvements.

1. *Authority.* Authorizations for all communications uses are issued under the authority of the Act of October 21, 1976 (43 U.S.C. 1761). This authority must be cited on all authorizations issued for communications uses.

2. *Objectives.* The objectives of communications use management are to authorize only those uses which meet forest land and resource management plan objectives; to facilitate the orderly development of sites to provide a safe and high quality communications environment; to maximize efficient use of the communications site; and to collect fair market value fees for communications uses on National Forest System lands.

3. *Policy.* Except for single uses which involve minor development (such as personal receive only use, resource monitoring use, or temporary use), communications sites must be designated before a new authorization for communications use can be issued. Communications site designation is a land use allocation and shall be made through the land resource management planning process (FSM 1920).

Fees for communication uses shall be assessed in accordance with direction in chapter 30 of this Handbook.

Authorized officers shall not consider or issue authorizations that involve bartering or augmentation of goods or services, such as requiring the holder to provide free government use of facilities or construction of other improvements not associated with the use.

4. *Responsibility.* The Regional Forester is responsible for approval of communication site plans; this responsibility may be delegated to the Forest Supervisor. Following communications site plan approval, Forest Supervisors have the authority to issue special-use permits, within the guidelines of the site plan. This responsibility may be delegated to the District Ranger.

5. *Definitions.* Definitions for other technical terms not listed in this section may be found in Federal Standard 1037 (FS 1037A), a standard glossary of telecommunication terms available from the General Services Administration.

Attenuation. Decrease in magnitude of current, voltage, or power of a signal in transmission between points. May be expressed in decibels (dB).

Band Width. A portion of the frequency spectrum authorized for use by a specific license; measured in kilohertz (KHz) or megahertz (MHz). Of concern is the amount of spectrum authorized: that is, a small amount (15 KHz) for two-way radio, a larger amount (6 MHz) for television broadcast, and a very large amount (many MHz) for radar.

Base Rent. The fee amount determined by the highest value use in a communications site facility. Base rent is applicable only to a facility owner's fee.

Beam Path. Direction or corridor of energy radiated from a directional antenna. Usually refers to microwave, which requires an unobstructed point-to-point corridor.

Continuous Broadcast or Constant Carrier. A continuously operating transmitter, not a microwave.

Communications Site. An area of National Forest System land designated through the land and resource management planning process. A communications site may be limited to a single communications facility, but most often encompasses more than one. Each site is identified by name; usually a local prominent landmark, such as Bald Mountain Communications Site.

Customer. An individual, business, organization, or agency that is paying a facility owner or tenant for communications services and is not re-selling communication services to others. Private (other use category) and internal (private mobile radio services category) communication uses leasing space in a building and not re-selling communication services to others are considered customers for fee calculation purposes.

Effective Radiated Power. The power supplied to the antenna multiplied by the relative gain of the antenna in a given direction.

Effective Receiver Sensitivity. The signal level required to detect and reproduce usable information from the local electromagnetic environment.

Electromagnetic Compatibility. The ability of telecommunications equipment, subsystems, or system to operate in their intended operational environments without suffering or causing unacceptable degradation because of electromagnetic radiation or response. Refers to coexistence of different types of equipment in the same area.

Facility. A building, tower, and/or other physical improvement that is built, installed, or established to house and support authorized communications uses.

Facility Manager. The holder of a Forest Service communications use authorization who leases space for other communication users. A facility manager does not directly provide communications services to third parties.

Frequency Assignment. The process of authorizing a specific frequency, group of frequencies, or frequency band to be used at a certain location under specific conditions such as band width, power, azimuth, duty cycle, or modulation.

Gain. The increase in effective signal power in transmission under stated conditions. (Note: Power gain is expressed in decibels.)

Harmful Interference. Any transmission, radiation, or induction which specifically degrades, obstructs, or interrupts the services provided by such stations.

High Gain Antenna. An antenna whose effective radiated power in a given direction is greater than the input power.

Microwave. High frequencies commonly between 900 and 30,000 megahertz.

Mobile Station. A two-way radio station designed for operation when in motion or at unspecified points.

Noise. An undesired disturbance within the useful frequency band.

Noise Floor. Existing volume (magnitude) of electronic noise power measured in decibels and referred to as an electronic value (such as milliwatt).

Omnidirectional Antenna. An antenna whose radiation pattern is nondirectional in azimuth (meaning it radiates or receives in 360 degrees).

Point-to-point Radio Communications. Radio communications between two fixed stations.

Polarization (Polarity). Term referring to antenna radiation polarity, which can be horizontal, vertical, or circular.

Radiation Pattern. A graphical representation of power radiation of an antenna, usually shown for the two principal planes, vertical and horizontal.

Receiver Desensitivity. A consequence of undesired reradiated frequency energy entering a receiver. Reduces the ability to receive weaker signals.

Repeater. A device that simultaneously transmits all properly coded input signals received, or in the case of pulses, amplifies, reshapes, retimes, or performs a combination of any of these functions on an input signal for retransmission.

Reradiation. Energy radiated by a galvanic junction in a nonlinear manner. Sources may include radio equipment, antennas, metallic debris, defective structural components, unterminated antenna cables, or passive repeater.

Tenant. A communications user who rents space in a communications facility and operates communications equipment for the purpose of re-selling communications services to others for profit. Tenants may hold separate authorizations, without subtenancy rights, at the full schedule fee based on the category of use.

Trunking. A system which allows a number of radio channels to be operated as a single system allowing service to multiple users.

Wave Guide. A hollow metallic conduit within which electromagnetic waves may be propagated.

7. *Authorization and Administration.*

(4) *Issuance of Authorizations.* Use the appropriate authorization form to authorize use of National Forest System lands for communications uses by facility owners. Tenants in a facility owner's building are not required to have a separate authorization. If, however, a tenant requests an authorization, authorize tenant use using Form FS–2700–4a, Special-Use Permit for Communications Uses (ch. 50), without tenant occupancy rights, and charge the tenant the full schedule fee for that use (ch 30).

(5) *Fee Calculation.* Calculate fees for communications uses in accordance with the direction in chapter 30. Fees for new sites may be established using a prospectus.

48.11—Broadcast Uses.

48.11a—Television Broadcast. This category includes facilities licensed by the Federal Communications Commission (FCC) that broadcast UHF and VHF audio and video signals for general public reception and the communications equipment directly related to the operation, maintenance, and monitoring of the use.

Users include television stations (major and independent networks) that generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants, and donations. Broadcast areas may overlap State boundaries. This category of use relates only to primary transmitters and not to any rebroadcast systems such as translators, transmitting devices such as microwave relays serving broadcast translators, or holders licensed by the FCC as low power television (LPTV).

48.11b—AM and FM Radio Broadcast. This category includes facilities licensed by the Federal Communications Commission (FCC) that broadcast AM and FM audio signals for general public reception and the communications equipment directly related to the operation, maintenance, and monitoring of the use.

Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants, and donations. Broadcast areas often overlap State boundaries. This category of use relates only to primary transmitters and not to any rebroadcast systems such as translators, microwave relays serving broadcast translators, or holders licensed by the FCC as low power FM radio.

48.11c—Cable Television. This category includes FCC-licensed facilities that transmit video programming to multiple subscribers in a community over a wired or wireless network, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. These systems normally operate as a commercial entity within an authorized franchise area. The category does not include rebroadcast devices, or personal or internal antenna systems such as private systems serving hotels or residences.

48.11d—Broadcast Translator, Low Power Television, and Low Power FM Radio. This category of use consists of FCC-licensed translators, low power television (LPTV), low power FM radio (LPFM), and communications equipment directly related to the operation, maintenance, or monitoring of the use. Microwave facilities used in conjunction with the systems are included in the category. Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. Low power television and FM radio stations are broadcast translators that originate programming. This category of use includes translators associated with public telecommunications service.

48.12—Non-Broadcast Uses.

48.12a—Commercial Mobile Radio Service (CMRS) and Facility Manager. This category of use includes FCC-licensed facilities providing mobile radio communications service to individual customers, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. Examples of mobile radio systems in this category are two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and internal and private communications uses not sold for a profit (that is, private mobile radio, internal microwave, and so forth). Some holders may not hold FCC licenses or operate communications equipment, but they may lease building, tower, and related facility space as part of their business enterprise and act as facility managers.

48.12b—Cellular Telephone. Cellular telephone includes holders of FCC-licensed systems and related technologies for mobile communications that use a blend of radio and telephone switching technology to provide public switched network services for fixed and mobile users within a geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and the communications equipment directly related to the maintenance and monitoring of the use.

48.12c—Private Mobile Radio Service. This use category includes holders of FCC-licensed private mobile radio systems primarily used by a single entity for the purposes of mobile internal communications, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. The communications service is not sold to others and is limited to the user. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

48.12d—Microwave. This use includes holders of FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communications equipment directly related to the operation, maintenance, or monitoring of the use, such as mobile radio service.

48.12e—Local Exchange Network. This use refers to a radio service which provides basic telephone service, primarily to rural communities.

48.12f—Passive Reflector. Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A passive reflector commonly serves a microwave communications system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require site visits for maintenance or monitoring.

48.13—Other Communications Uses. This category includes holders of FCC-licensed private communications uses such as amateur radio; personal/private receive-only antennas designed for the reception of electronic signals to serve private homes; natural resource and environmental monitoring equipment used by weather stations, seismic stations, and snow measurement courses; and other small, low power devices used to monitor or control remote activities. These facilities are personally owned and not operated for profit.

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