

Bureau of Land Management, Interior

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of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 2812.8–3 Disposition of property on termination of permit.

Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed 6 months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 2812.9 Appeals.

An appeal pursuant to part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

[41 FR 29123, July 15, 1976]

PART 2860—COMMUNICATIONS USES

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Subpart 2861—General Information

§ 2861.1 What requirements of part 2800 apply to my grant?

Grants issued under this part must comply with the requirements of part 2800, except as otherwise described in this part.

§ 2861.2 What is the objective of the BLM's Communications Uses program?

It is the BLM's objective to authorize and administer communications uses under Title V of the Federal Land Policy and Management Act of 1976 and the regulations in this part to qualified individuals or business or governmental entities and to direct and control communications uses on public lands in a manner that:

(a) Protects the natural resources associated with public lands and adjacent lands, whether private or administered by a governmental entity;

(b) Facilitates the orderly development of communications uses on BLM-administered lands and provides for a safe and high-quality communications environment for the public;

(c) Prevents unnecessary or undue degradation to public lands;

(d) Collects fair market value for communications uses that occupy BLM-administered lands through the collection of annual rental fees;

(e) Promotes the expansion of communications uses in rural America and use of rights-of-way in common wherever practical, considering engineering

and technological compatibility, national security, and land use plans; and

(f) Coordinates, to the fullest extent possible, all BLM actions under the regulations in this part with State and local governments, Tribes, interested individuals, and appropriate quasi-public entities.

§ 2861.5 What acronyms and terms are used in the regulations in this part?

In addition to the acronyms and terms listed in this section, the acronyms and terms listed in part 2800 of this chapter apply to this part. As used in this part:

RMA means the Ranally Metro Area Population Ranking as published in the most recent edition of the Rand McNally Commercial Atlas and Marketing Guide.

Annual inventory certification means a report that the holder of a grant submits to the BLM each year to report the uses within or on their facilities (see § 2866.31(c)).

Base rent means the dollar amount required from an authorization holder on BLM managed lands based on the communications uses with the highest value in the associated facility or facilities, as calculated according to the communications uses rent schedule. If a facility manager's or facility owner's scheduled rent is equal to the highest rent charged a tenant in the facility or facilities, then the facility manager's or facility owner's use determines the dollar amount of the base rent. Otherwise, the facility owner's, facility manager's, customer's, or tenant's use with the highest value, and which is not otherwise excluded from rent, determines the base rent.

Communications facility has the same meaning as *facility* under § 2801.5(b) of this chapter. *Communications site* means an area of public land designated for wireless communications uses that may be limited to a single communications facility, but most often encompasses more than one, and is identified by name, usually featuring a local prominent landmark.

Communications site management plans means implementation-level plans that provide direction to the users for the day-to-day operations of the communications site. *Communications uses*

means any uses associated with the transmission of data, voice, or video, or any other transmission or reception uses authorized by 43 U.S.C. 1761(a)(5). Communications uses may occur in or on a communications facility or a linear facility, such as a telephone line or fiber optic cable line.

Communications uses rent schedule is a schedule of rents for the following types of communications uses, including related technologies, located in a facility associated with a particular grant. All use categories include ancillary communications equipment, such as internal microwave or internal one- or two-way radio, that are directly related to operating, maintaining, and monitoring the primary uses listed below. The Federal Communications Commission (FCC) may or may not license the primary uses. The type of use and community served, identified on an FCC license, if one has been issued, do not supersede either the definitions in this subpart or the procedures in § 2866.30 for calculating rent for communications facilities and uses located on public land:

(i) *Television broadcast* means a use that broadcasts UHF and VHF audio and video signals for general public reception. This category does not include low-power television (LPTV) or rebroadcast devices, such as translators, or transmitting devices, such as microwave relays serving broadcast translators;

(ii) *AM and FM radio broadcast* means a use that broadcasts amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception. This category does not include low-power FM radio; rebroadcast devices, such as translators; or boosters or microwave relays serving broadcast translators;

(iii) *Cable television* means a use that transmits video programming to multiple subscribers in a community over a wired or wireless network. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, or personal or internal antenna systems, such as private systems serving hotels and residences;

(iv) *Broadcast translator, low-power television, and low-power FM radio*

means a use of translators, LPTV, or low-power FM radio (LPFM). 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 true signal to an amplifier or another translator. LPTV and LPFM are broadcast translators that originate programming. This category also includes translators associated with public telecommunication services;

(v) *Commercial mobile radio service (CMRS)* means commercial mobile radio uses that provide mobile communication service to individual customers. Examples of CMRS include: Community repeaters, trunked radio (specialized mobile radio), two-way radio voice dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and other two-way voice and paging services;

(vi) *Facility managers* are grant holders that lease building, tower, and related facility space to a variety of tenants and customers as part of the holder's business enterprise, but do not own or operate communication equipment in the facility for their own uses;

(vii) *Cellular telephone* means a system of mobile or fixed communication devices that uses a combination of radio and telephone switching technology and provides public switched network services to fixed or mobile users, or both, within a defined geographic area. The system consists of one or more cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, or microwave communications link equipment. Examples include: Personal Communication Service, Enhanced Specialized Mobile Radio, Improved Mobile Telephone Service, Air-to-Ground, Offshore Radio Telephone Service, Cell Site Extenders, and Local Multipoint Distribution Service;

(viii) *Private mobile radio service (PMRS)* means uses supporting private mobile radio systems primarily for a single entity for mobile internal communications. PMRS service is not sold and is exclusively limited to the user

in support of business, community activities, or other organizational communication needs. Examples include: Private local radio dispatch, private paging services, and ancillary microwave communications equipment for controlling mobile facilities;

(ix) *Microwave* means communications uses that:

(A) Provide long-line intrastate and interstate public telephone, television, and data transmissions; or

(B) Support the primary business of pipeline and power companies, railroads, land resource management companies, or wireless internet service provider (ISP) companies;

(x) *Internet service provider (ISP)* refers to a holder who utilizes wireless technology to connect subscribers to the internet;

(xi) *Passive reflector* means various types of non-powered 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 communication system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power;

(xii) *Local exchange network* means radio service that provides basic telephone service, primarily to rural communities; and

(xiii) *Other communications uses* means private communications uses, such as amateur radio, personal/private receive-only antennas, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

Customer means an occupant who is paying a facility manager, facility owner, or tenant for using all or any part of the space in the facility, or for communication services, and is not selling communication services or broadcasting to others. The BLM considers persons or entities benefitting from private or internal communications uses located in a holder's facility as customers for purposes of calculating rent. Customer uses are not included in calculating the amount of rent owed by a facility owner, facility manager, or tenant, except as noted in

§§ 2806.34(b)(4) of this chapter and 2866.42. Examples of customers include: Users of PMRS, users in the microwave category when the microwave use is limited to internal communications, and all users in the category of "Other communications uses" (see paragraph (xiii) of the definition of *communications uses rent schedule* in this section).

Duly filed application means an application which includes all the elements required by § 2864.25.

Facility means an improvement or structure, whether existing or planned, that is or would be owned and controlled by the authorization holder. For purposes of communications site rights-of-way, facility means the building, tower, cabinet, and related incidental structures or improvements authorized under the terms of the authorization.

Facility manager means a person or entity that leases space in a facility to communications users and:

- (i) Holds a communication use grant;
- (ii) Owns a communications facility on lands covered by that grant; and
- (iii) Does not own or operate communications equipment in the facility for personal or commercial purposes.

Facility owner means a person or entity that may or may not lease space in a facility to communications users and:

- (i) Holds a communications uses grant;
- (ii) Owns a communications facility on lands covered by that grant; and
- (iii) Owns and operates their own communications equipment in the facility for personal, Federal, or commercial purposes.

Grant means an authorization or instrument (*e.g.*, lease) the BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.*, and those authorizations and instruments the BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority.

Occupant means an entity who uses any portion of a facility owned by a grant holder.

Site means an area, such as a mountaintop, where a holder locates one or more communication or other right-of-way facilities.

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Tenant means an occupant who is paying a facility manager, facility owner, or other entity for occupying and using all or any part of a facility. A tenant operates communication equipment in the facility for profit by broadcasting to others or selling communication services. For purposes of calculating the amount of rent that the BLM charges, a tenant's use does not include:

- (i) Private mobile radio or internal microwave use that is not being sold; or
- (ii) A use in the category of "Other Communications Uses" (see paragraph (xiii) of the definition of *Communications uses rent schedule* in this section).

§ 2861.8 Severability.

If a court holds any provisions of the rules in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

§ 2861.9 When do I need a grant?

You must have an authorization under this part to use public lands for communications uses systems or facilities over, under, on, or through public lands. These include, but are not limited to systems for transmitting or receiving electronic signals and other means of communication by:

- (a) Installing a facility that is not under a current valid authorization; or
- (b) Installing a linear communications facility, such as fiber optic cable.

Subpart 2862—Lands Available for Grants

§ 2862.11 How does the BLM designate communications sites and establish communications site management plans?

(a) The BLM may determine the location and boundaries of communications sites. When establishing a communications site, the BLM coordinates with other Federal agencies, State, local, and Tribal governments, and the public to identify resource-related issues, concerns, and needs.

(b) When determining which lands may be suitable for communications sites, the BLM will consider all factors

described in § 2802.11(b). Additional factors the BLM will consider include, but are not limited to, access to the site, existing infrastructure, signal coverage, available space, and industry demand.

(c) The BLM may establish a communications site management plan to guide the development of communications uses at the site. The plans describe the types of communications uses that are permitted to operate at a communications site.

Subpart 2864—Applying for Grants

§ 2864.10 What should I do before I file my application?

In addition to the suggested actions listed in § 2804.10, before you file your application you should:

(a) Schedule a preliminary application review meeting with the appropriate personnel in the BLM field office having jurisdiction over the lands you seek to use. Preliminary application review meetings help you to plan your project, coordinate with the BLM, and ensure a smooth permitting process. During the preliminary application review meeting, the BLM can:

- (1) Identify potential constraints;
- (2) Determine whether the lands are located inside a communications site management plan area;
- (3) Tentatively schedule the processing of your proposed application; and
- (4) Inform you of your financial obligations, such as processing and monitoring costs and rents.

(b) Request a copy of the most recent communications site management plan for that site if one is available.

(c) Ensure you have all other necessary licenses, authorizations, or permits required for the operation of your facility.

§ 2864.12 What must I do when submitting my application?

(a) You must file your application on a hard copy of Standard Form 299, available from any BLM office or electronically at <http://www.blm.gov>, and fill in the required information as completely as possible. The application must include the applicant's original signature or meet the BLM standards

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for electronic commerce. Your complete application must include the following:

- (1) All necessary information under § 2804.12 of this chapter;
 - (2) Federal Communications Commission (FCC) call sign, or license, for all licensed uses;
 - (3) Geographic Information Systems (GIS) shapefiles, or equivalent format;
 - (4) Draft engineering/construction drawings of your proposed facility;
 - (5) Technical data related to your project; and
 - (6) Draft communications use plan of development.
- (b) The BLM may at any time during the application process request additional information relevant to the permitting of your proposal. You must submit this information before the BLM will continue processing your application.

§ 2864.24 Do I always have to use Standard Form 299 when submitting my application for a Communications Uses authorization?

You must file an application for communications uses using Standard Form 299.

§ 2864.25 How will the BLM process my Communications Uses application?

The BLM will process your communications uses application in accordance with the provisions in § 2804.25. The BLM will notify you in writing with an offer of an authorization or a denial of your application within 270 days of receiving a duly filed application.

§ 2864.26 Under what circumstances may the BLM deny my application?

In addition to the considerations listed in § 2804.26, the BLM may deny your application under this part if:

- (a) The proposed use would interfere with previously authorized uses of public lands, including rights-of-way for communications uses;
- (b) The proposed use presents a public health or safety issue; or
- (c) The proposed use is not in conformance with the applicable resource management plan or communications site management plan.

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§ 2864.35 How will the BLM prioritize my Communications Uses application?

The BLM will prioritize your application in a manner that assists in meeting the needs of underserved, rural, and Tribal communities and first responders to strengthen telecommunications infrastructure throughout the United States.

Subpart 2865—Terms and Conditions of Grants

§ 2865.14 What rights does a grant provide?

In addition to the rights listed in § 2805.14 of this chapter, the authorization provides to you the right to:

- (a) Use the described lands to construct, operate, maintain, and terminate authorized facilities within the right-of-way for authorized purposes under the terms and conditions of your authorization;
- (b) If your authorization specifically allows for subleasing, allow other parties to use your facility for the purposes specified in your authorization and charge fees for such use. If your authorization does not specifically authorize subleasing, you may not let anyone else use your facility and you may not charge for its use unless the BLM authorizes or requires it in writing;
- (c) Allow others to utilize the lands or facilities if the authorization specifies; and
- (d) Hold the grant for a term of 30 years, unless the BLM determines a shorter term is appropriate.

Subpart 2866—Annual Rents and Payments

GENERAL PROVISIONS

§ 2866.14 Under what circumstances am I exempt from paying rent?

- (a) You are exempt from rent under this part if:
- (1) You are a Federal, State, or local governmental entity (except as provided by paragraph (b) of this section);
 - (2) You have been granted an exemption under a statute providing for such; or

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(3) Your facilities were financed in whole or in part, or are eligible for financing, under the Rural Electrification Act of 1936, as amended (REA) (7 U.S.C. 901 *et seq.*) or are extensions of such facilities. However, when a holder who is exempt from rent under REA adds non-eligible tenant uses on the authorization, the holder will become subject to rent in accordance with §§ 2866.30 through 2866.44.

(b) Exceptions:

(1) The exemptions in this section do not apply if you are in trespass.

(2) If you are a governmental entity, you are not exempt from rent when:

(i) The facility, system, space, or any part of the authorization is being used for commercial purposes;

(ii) You are a municipal utility or cooperative whose principal source of revenue is customer charges; or

(iii) You charge the United States rent for occupancy within or on your facility beyond standard operation and maintenance fees.

§ 2866.15 Under what circumstances may the BLM waive or reduce my rent?

(a) The BLM may waive or reduce your rent if you are licensed by the FCC as noncommercial and educational.

(b) The BLM may evaluate and approve, in writing, any requests for waiver or reduction in the annual rent for authorizations granted to:

(1) An amateur radio club (such as Civil Air Patrol) which provides a benefit to the general public or to the programs of the Secretary of the Interior;

(2) A nonprofit organization; or

(3) Holders that demonstrate that their rates will cause undue hardship and that it is in the public interest to waive or reduce the rent (see § 2806.15(b)(5)).

(c) The BLM will not waive or reduce your rent when:

(1) Your organization exists and operates for the principal benefit of its members;

(2) The facility, system, space, or any part of the right-of-way area is being used for commercial purposes;

(3) You charge the United States to occupy your facility; or

(4) You charge rent to your occupant or occupants, beyond standard operation and maintenance fees, when those occupants' use or uses are exempted or waived from rent by the BLM.

(d) The BLM will revoke your existing waiver or reduction of rent if the BLM determines that you no longer meet the criteria above for a waiver or reduction.

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§ 2866.23 How will the BLM calculate my rent for linear rights-of-way for Communications Uses?

The BLM will calculate your rent for linear rights-of-way for communications uses, such as telephone lines and fiber optic cable, as provided in § 2806.23.

§ 2866.30 What are the rents for Communications Uses?

(a) *Rent schedule.* You may obtain a copy of the current schedule from any BLM state, district, or field office, or by writing: Attention to the Division of Lands, Realty and Cadastral Survey, U.S. Department of the Interior, Bureau of Land Management, 1849 C St. NW, Mail Stop 2134LM, Washington, DC 20240. The BLM also posts the current communications use rent schedule at <http://www.blm.gov>.

(1) The BLM uses a rent schedule to calculate the rent for communications uses. The schedule is based on population strata (the population served), as depicted in the most recent version of the Rationally Metro Area (RMA) Population Ranking, and the type of communications use or uses for which the BLM normally grants communication site rights-of-way. These uses are listed as part of the definition of "communications uses rent schedule," set out at § 2861.5.

(2) The BLM will update the schedule annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers, U.S. City Average (CPI-U), as of July of each year (difference in CPI-U from July of one year to July of the following year), and the RMA population rankings.

(3) The BLM will limit the annual adjustment based on the Consumer Price Index to no more than 5 percent. The

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BLM will review the rent schedule to ensure that the schedule reflects fair market value.

(b) *Uses not covered by the schedule.* The communications uses rent schedule does not apply to:

(1) Communications uses located entirely within the boundaries of an oil and gas lease, and solely supporting the operations of the oil and gas lease (see parts 3160 through 3190 of this Chapter);

(2) Communications facilities and uses ancillary to a linear authorization that are entirely within the scope of an authorized linear right-of-way, such as a railroad authorization or an oil and gas pipeline authorization, that solely support the operations authorized by that right-of-way and that are owned and operated by the authorization holder for that right-of-way;

(3) Linear communications uses not listed on the schedule, such as telephone lines, fiber optic cables, and new technologies;

(4) Grants for which the BLM determines the rent by competitive bidding; or

(5) Communication facilities and uses for which a BLM State Director concurs that:

(i) The expected annual rent, that the BLM estimates from market data, exceeds the rent from the rent schedule by at least five times; or

(ii) The communication site serves a population of one million or more and the expected annual rent for the communications use or uses is more than \$10,000 above the rent from the rent schedule.

§ 2866.31 How will the BLM calculate rent for Communications Uses in the schedule?

(a) *Basic rule.* The BLM calculates rents for:

(1) Single-use facilities by applying the rent from the communications uses rent schedule (see § 2866.30) for the type of use and the population strata served; and

(2) Multiple-use facilities, whose authorizations provide for subleasing, by setting the rent of the highest value use in the facility or facilities as the base rent (taken from the rent schedule) and adding to the base rent 25 per-

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cent of the rent from the rent schedule for all tenant uses in the facility or facilities that are not already being used as the base rent (rent = base rent + 25 percent of all rent due to additional tenant uses in the facility or facilities) (see also §§ 2866.32 and 2866.34).

(b) *Exclusions.* When calculating rent, the BLM will exclude customer uses, except as provided for at §§ 2866.34(b)(4) and 2866.42. The BLM will also exclude those uses exempted from rent by § 2866.14 of this subpart, and any uses for which rent has been waived or reduced to zero as described in § 2866.15.

(c) *Annual statement.* By October 15 of each year, you, as a grant holder, must submit to the BLM a certified statement listing any tenants and customers in your facility or facilities and the category of use for each tenant or customer as of September 30 of the same year. The BLM may require you to submit additional information to calculate your rent. The BLM will determine the rent based on the annual inventory certification statement provided. The BLM requires only facility owners or facility managers to hold a grant (unless you are an occupant in a federally owned facility as described in § 2866.42) and will charge you rent for your grant based on the total number of communications uses within the right-of-way and the type of uses and population strata the facility or site serves. If you fail to submit your annual inventory certification by October 15 (by electronic correspondence or postmarked), you may not receive any discounts, reductions, exemptions, or waivers (see §§ 2866.14, 2866.15, and 2866.34), to which you may have been entitled.

§ 2866.32 How does the BLM determine the population strata served for your facility?

(a) The BLM determines the population strata served as follows:

(1) If the site or facility is within a designated RMA, the BLM will use the population strata of the RMA;

(2) If the site or facility is within a designated RMA, and it serves two or more RMAs, the BLM will use the population strata of the RMA having the greatest population;

(3) If the site or facility is outside an RMA, and it serves one or more RMAs, the BLM will use the population strata of the RMA served having the greatest population;

(4) If the site or facility is outside an RMA and the site does not serve an RMA, the BLM will use the population strata of the community it serves having the greatest population, as identified in the current edition of the Rand McNally Road Atlas; or

(5) If the site or facility is outside an RMA, and it serves a community of less than 25,000, the BLM will use the lowest population strata shown on the rent schedule.

(b)(1) The BLM considers all facilities (and all uses within the same facility) located at one site to serve the same RMA or community. However, at its discretion, the BLM may make case-by-case exceptions in determining the population served at a particular site by uses not located within the same facility and not authorized under the same grant. For example, when a site has a mix of high-power and low-power uses that are authorized by separate grants, and only the high-power uses are capable of serving an RMA or community with the greatest population, the BLM may separately determine the population strata served by the low-power uses (if not collocated in the same facility with the high-power uses), and calculate the rent as described in § 2866.30.

(2) For purposes of rent calculation, all uses within the same facility and/or authorized under the same grant must serve the same population strata.

(3) For purposes of rent calculation, the BLM will not modify the population rankings published in the Rand McNally Commercial Atlas and Marketing Guide or the population of the community served.

§ 2866.33 How will the BLM calculate the rent for a single use communication facility grant?

The BLM calculates the rent for a grant authorizing a single-use communication facility from the communications uses rent schedule (see § 2866.30 of this subpart), based on your authorized single use and the population strata it serves (see § 2866.32 of this subpart).

§ 2866.34 How will the BLM calculate the rent for a multiple-use communication facility grant?

(a) *Basic rule.* The BLM first determines the population strata the communication facility serves according to § 2866.32 of this subpart and then calculates the rent assessed to facility owners and facility managers for a grant for a communication facility that authorizes subleasing with tenants, customers, or both, as follows:

(1) The BLM will determine the rent of the highest value use in the facility or facilities as the base rent, and add to it 25 percent of the rent from the rent schedule (see § 2866.30) for each tenant use in the facility or facilities;

(2) If the highest value use is not the use of the facility owner or facility manager, the BLM will consider the owner's or manager's use like any tenant or customer use in calculating the rent (see § 2866.35(b) for facility owners and § 2866.39(a) for facility managers);

(3) If a tenant use is the highest value use, the BLM will exclude the rent for that tenant's use when calculating the additional 25 percent amount under paragraph (a)(1) of this section for tenant uses;

(4) If a holder has multiple uses authorized under the same grant, such as a TV and a FM radio station, the BLM will calculate the rent as in paragraph (a)(1) of this section. In this case, the TV rent would be the highest value use and the BLM would charge the FM portion according to the rent schedule as if it were a tenant use.

(b) *Special applications.* The following provisions apply when calculating rents for communications uses exempted from rent under § 2866.14 of this subpart or communications uses whose rent has been waived or reduced to zero under § 2866.15 of this subpart:

(1) The BLM will exclude exempted uses or uses whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15) of either a facility owner or a facility manager in calculating rents. The BLM will exclude similar uses (see §§ 2866.14 and 2866.15) of a customer or tenant if they choose to hold their own grant (see § 2866.36) or are occupants in a Federal facility (see § 2866.42(a));

(2) The BLM will charge rent to a facility owner whose own use is either

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exempted from rent or whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15), but who has tenants in the facility, in an amount equal to the rent of the highest value tenant use plus 25 percent of the rent from the rent schedule for each of the remaining tenant uses subject to rent;

(3) The BLM will not charge rent to a facility owner, facility manager, or tenant (when holding a grant) when all of the following occur:

(i) The BLM exempts from rent, waives, or reduces to zero the rent for the holder's use (see §§ 2866.14 and 2866.15);

(ii) Rent from all other uses in the facility is exempted, waived, or reduced to zero, or the BLM considers such uses as customer uses; and

(iii) The holder is not operating the facility for commercial purposes (see § 2866.15(c)(2)) with respect to such other uses in the facility; and

(4) If a holder, whose own use is exempted from rent or whose rent has been waived or reduced to zero, is conducting a commercial activity with customers or tenants whose uses are also exempted from rent or whose rent has been waived or reduced to zero (see §§ 2866.14 and 2866.15), the BLM will charge rent, notwithstanding § 2866.31(b), based on the highest value use within the facility. This paragraph (b)(4) does not apply to facilities exempt from rent under § 2866.14(a)(3) except when the facility also includes ineligible facilities.

§ 2866.35 How will the BLM calculate rent for private mobile radio service (PMRS), internal microwave, and "other" category uses?

If an entity engaged in a PMRS, internal microwave, or "other" use is:

(a) Using space in a facility owned by either a facility owner or facility manager, the BLM will consider the entity to be a customer and not include these uses in the rent calculation for the facility; or

(b) The facility owner, the BLM will follow the provisions in § 2866.31 to calculate rent for a grant involving these uses. However, the BLM includes the rent from the rent schedule for a PMRS, internal microwave, or other use in the rental calculation only if the

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value of that use is equal to or greater than the value of any other use in the facility. The BLM excludes these uses in the 25 percent calculation (see § 2866.31(a)) when their value does not exceed the highest value in the facility.

§ 2866.36 If I am a tenant or customer in a facility, must I have my own grant and if so, how will this affect my rent?

(a) You may have your own authorization, but the BLM does not require a separate grant for tenants and customers using a facility authorized by a BLM grant that contains a subleasing provision. The BLM charges the facility owner or facility manager rent based on the highest value use within the facility (including any tenant or customer use authorized by a separate grant) and 25 percent of the rent from the rent schedule for each of the other uses subject to rent (including any tenant or customer use a separate grant authorizes and the facility owner's use if it is not the highest value use).

(b) If you own a building, equipment shelter, or tower on public lands for communication purposes, you must have an authorization under this part, even if you are also a tenant or customer in someone else's facility.

(c) The BLM will charge tenants and customers who hold their own grant in a facility, as grant holders, the full annual rent for their use based on the BLM communications use rent schedule. The BLM will also include such tenant or customer use in calculating the rent the facility owner or facility manager must pay.

§ 2866.37 How will the BLM calculate rent for a grant involving an entity with a single use (holder or tenant) having equipment or occupying space in multiple BLM-authorized facilities to support that single use?

The BLM will include the single use in calculating rent for each grant authorizing that use. For example, a television station locates its antenna on a tower authorized by grant "A" and locates its related broadcast equipment in a building authorized by grant "B." The statement listing tenants and customers for each facility (see § 2866.31(c))

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of this subpart) must include the television use because each facility is benefitting economically from having the television broadcast equipment located there, even though the combined equipment is supporting only one single end use.

§ 2866.38 Can I combine multiple grants for facilities located at one site into a single grant?

If you hold grants for two or more facilities on the same communications site, you may submit an SF-299 application and be subject to cost recovery for the BLM to authorize those facilities under a single grant. The highest value use in all the combined facilities determines the base rent. The BLM then charges for each remaining use in the combined facilities at 25 percent of the rent from the rent schedule. These uses include those uses the BLM previously calculated as base rents when the BLM authorized each of the facilities on an individual basis.

§ 2866.39 How will the BLM calculate rent for a grant for a facility manager's use?

(a) The BLM will follow the provisions in § 2866.31 to calculate rent for a grant involving a facility manager's use. However, the BLM includes the rent from the rent schedule for a facility manager's use in the rental calculation only if the value of that use is equal to or greater than the value of any other use in the facility. The BLM excludes the facility manager's use in the 25 percent calculation (see § 2866.31(a)) when its value does not exceed the highest value in the facility.

(b) If you are a facility owner and you terminate your use within the facility, but want to retain the grant for other purposes, the BLM will continue to charge you for your authorized use until the BLM amends the grant to change your use to facility manager or to some other communications use.

§ 2866.40 How will the BLM calculate rent for an authorization for ancillary Communications Uses associated with Communications Uses on the rent schedule?

If the ancillary communication equipment is used solely in direct support of the primary use (see the defini-

tion of communications uses rent schedule in § 2861.5 and the definition of ancillary in § 2801.5 of this chapter), the BLM will calculate and charge rent only for the primary use.

§ 2866.41 How will the BLM calculate rent for communications facilities ancillary to a linear grant or other use authorization?

When a communications facility is authorized as ancillary to (*i.e.*, used for the sole purpose of internal communications) a grant or some other type of use authorization (*e.g.*, a mineral lease or sundry notice), the BLM will determine the rent using the linear rent schedule (see § 2866.20) or rent scheme associated with the other authorization, and not the communications uses rent schedule.

§ 2866.42 How will the BLM calculate rent for Communications Uses within a federally owned communications facility?

(a) If you are an occupant of a federally owned communication facility, you must have your own grant and pay rent in accordance with these regulations; and

(b) If a Federal agency holds a grant and agrees to operate the facility as a facility owner under § 2866.31, occupants do not need a separate BLM grant, and the BLM will calculate and charge rent to the Federal facility owner under §§ 2866.30 through 2866.44.

§ 2866.43 How does the BLM calculate rent for passive reflectors and local exchange networks?

The BLM calculates rent for passive reflectors and local exchange networks by using the same rent schedules for passive reflectors and local exchange networks as the Forest Service uses for the region in which the facilities are located. You may obtain the pertinent schedules from the Forest Service or from any BLM state or field office in the region in question. For passive reflectors and local exchange networks not covered by a Forest Service regional schedule, the BLM will use the provisions in § 2806.70 of this chapter to determine rent. See the Forest Service regulations at 36 CFR chapter II.

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§ 2866.44 How will the BLM calculate rent for a facility owner's or facility manager's grant which authorizes Communications Uses?

This section applies to a grant that authorizes a mixture of communications uses, some of which are subject to the communications uses rent schedule and some of which are not. The BLM will determine rent for these grants under the provisions of this section.

(a) The BLM establishes the rent for each of the uses in the facility that are not covered by the communications uses rent schedule using § 2806.70 of this chapter.

(b) The BLM establishes the rent for each of the uses in the facility that are covered by the rent schedule using §§ 2866.30 and 2866.31.

(c) The BLM determines the facility owner or facility manager's rent by identifying the highest rent in the facility of those established under paragraphs (a) and (b) of this section and adding to it 25 percent of the rent of all other uses subject to rent.

Subpart 2868—Communications Uses Trespass

§ 2868.10 What is a Communications Uses Trespass?

In addition to the provisions of § 2808.10 of this chapter, holders of a grant must comply with this section. The following are prohibited:

(a) Placement of any type of facilities such as generators, fuel tanks, equipment cabinets, additional towers or wind or solar power generation equipment on the public lands without formal BLM authorization to do so;

(b) Subleasing communications facilities by allowing another entity to place equipment or utilize your tower without having BLM subleasing authority to do so; or

(c) Affixing communications equipment, such as antennas, to vegetation or rocks on public lands without express authorization to do so.

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PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

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