

Committee on Natural Resources

Rob Bishop, Chairman
Mark-Up Memorandum

June 20, 2017

To: All Committee on Natural Resources Members

From: Majority Committee Staff – Terry Camp
Subcommittee on Federal Lands (x6-7736)

Markup: **H.R. 2425 (Rep. Jared Huffman)**, To support the establishment and improvement of communications sites on or adjacent to Federal lands under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture through the retention and use of rental fees associated with such sites, and for other purposes.
June 22 & 27, 2017; 1324 Longworth HOB

H.R. 2425 (Rep. Jared Huffman), “Public Lands Telecommunications Act”

Summary of the Bill

H.R. 2425, introduced by Congressman Jared Huffman (D-CA-2), directs the Secretary of the Treasury to establish separate special accounts for the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), the Bureau of Land Management (BLM), the Bureau of Reclamation (BOR), and the U.S. Forest Service (USFS), for the deposit of rental fees received by such agencies for communications use authorizations on federal lands that are granted, issued, or executed by them. These revenues will remain available for expenditure, to the extent and in such amounts as are provided in advance in appropriations Acts, for agency activities related to communications sites.

Background

The Public Lands Telecommunications Act seeks to expand development of telecommunications infrastructure on and near federal lands, with an underlying goal of expanding the availability of broadband connectivity to rural areas. The bill is modeled after the success of previous legislation providing fee retention authority to federal land management agencies, with the idea being that rental fees collected from service providers and retained by the agency are reinvested to expand broadband and telecommunications deployment.

High speed broadband in the United States is crucial for economic development, public safety, and quality of life. Federal programs have been established to incentivize and subsidize broadband infrastructure investment in unserved and underserved rural areas. Major existing broadband funding streams are centered in two federal entities. The Connect America Fund at

the Federal Communications Commission (FCC) subsidizes the operation of both fixed and mobile broadband networks in rural areas. Rural Utilities Service (RUS) programs at the U.S. Department of Agriculture (USDA) provide loans and grants to private and public entities seeking to deploy broadband networks in underserved and unserved rural areas.

According to the FCC's *2016 Broadband Progress Report*, both rural and tribal communities lag significantly behind urban areas in terms of access to fixed, advanced broadband networks. The report notes that more than 39 percent of Americans living in rural areas lack access to fixed advanced broadband, as compared to just 4 percent of American living in urban areas. Similarly, 41 percent of Americans living on tribal lands lack access to fixed advanced broadband.¹ Of the approximately 34 million Americans that lack access to advanced broadband, nearly 25 million live in rural areas or on tribal lands. Additionally, of those Americans living in rural areas that do have access to advanced telecommunications, only 13 percent have access to more than one provider.²

When advanced broadband access is compared with demographical statistics, the proportion of the population without access, on average, is highest in counties with the lowest median household income, the lowest population density, the highest rural population rate and the highest poverty rate.³

In addition to the connectivity needs of rural areas and tribal lands, federal land management agencies increasingly recognize that improving communications infrastructure on public lands is essential to their mission in the 21st-century. Connectivity can improve visitor access, experience, and safety, as well as aid in efficient land management.

According to the BLM, "A wide range of communication facilities and related technologies (e.g., radio, television, cellular, microwave, etc.) may be located on public land."⁴ Each federal land management agency has a complex set of statutory authorities, regulations, and internal policies that govern the siting and monitoring of telecommunications sites under the agency's jurisdiction. For example, under provisions at 54 U.S.C. Sec. 100902, the NPS has the authority to issue permits for rights-of-way for telecommunications facilities on NPS lands. The agency's permitting procedures are guided by regulations at 36 C.F.R. Part 14, and policy guidance in the agency's Management Policies 2006, Section 8.6.4.3. Additionally, NPS Director's Order #53 and its accompanying Reference Manual #53 give further policy guidance on utility rights-of-way.

The land management agencies collect both cost reimbursements and rental fees for telecommunications siting. While the agencies are authorized to retain the cost reimbursements

¹ Federal Communications Commission, "2016 Broadband Progress Report." Page 34. Accessed June 19, 2017 https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1.pdf

² 2 Ibid. Page 38

³ 3 Ibid. Page 42

⁴ Bureau of Land Management, "Lands and Realty, Communications Sites." Accessed June 19, 2017. <https://www.blm.gov/programs/lands-and-reealty/right-of-way/communication-sites>

at the issuing sites to cover costs of administering the use authorizations, the rental fees themselves go into the general Treasury fund. In some cases, agencies have reported that the lack of retention authority for the rental fees is a disincentive to collecting the fees.⁵

The Subcommittee on Federal Lands held a hearing on H.R. 2425 on May 23, 2017.

Major Provisions

- Provides definitions of terms such as: communications sites, communications use, communications use authorization, and rental fee.
- Directs the Department of the Treasury to establish separate special accounts for the NPS, FWS, BLM, BOR, and USFS for the deposit of rental fees received by the agencies for communications use authorizations on federal lands.
- Authorizes rental fees deposited into the special account for each agency to remain available for expenditure, as provided in advance in appropriations acts, for agency activities related to communications sites.
- Authorizes DOI and the USFS to enter into cooperative agreements to carry out activities related to communications sites.

Cost

A CBO cost analysis has not been completed at this time.

Administration Position

The Administration position is unknown at this time.

Anticipated Amendments

Representative Huffman will offer an ANS. The ANS was crafted in consultation with majority staff. The ANS: 1) broadens the definition of “communications use” to ensure the definition is not unintentionally limiting; 2) clarifies that all rental fees collected shall be competitively neutral, technology-neutral, and nondiscriminatory with respect to other uses of the communications site; 3) makes minor changes to the authorized uses of collected fees; and 4) makes other technical corrections.

Effect on Current Law

None

5 National Park Service. “RM-53 Reference Manual Special Park Uses.” Page A5-8. Accessed June 19, 2017. <https://www.nps.gov/policy/dorders/rm53.pdf>