



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, D.C. 20240

National Policy Memorandum

Office of Trust Services
Division of Real Estate Services

Number: NPM-TRUS-40

Effective: 5/05/21

Expires: 5/05/22

Title: Streamlining the Rights-of-Way (ROW) Application Process for Telecommunications Projects

1. Purpose

This memorandum establishes Bureau of Indian Affairs (BIA) policy for the efficient and effective processing of ROW applications for telecommunications projects.

On July 11, 2019, the Federal Communications Commission (FCC) released a Report and Order *In the Matter of Transforming the 2.5 GHz Band* (WT Docket No. 18-120), in which the FCC adopted a priority window for Tribal Nations to obtain access to the 2.5 GHz band on rural Tribal lands. The application for the 2.5 GHz Rural Tribal Priority Window (Priority Window) opened February 3, 2020, and closed September 2, 2020. The FCC began to grant license applications in late 2020 and continues to grant new licenses as pending applications are reviewed. Tribes that are granted licenses under the Priority Window are subject to strict deadlines for building out broadband network infrastructure to serve 50 percent of the population in the license area within two years of receiving the license, and 80 percent of the population within five years. For many Tribes, their ability to successfully meet these deadlines and to retain these licenses is contingent on their ability to obtain ROW for their telecommunications projects in a timely fashion.

On December 21, 2020, Congress passed the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 which provided \$1 billion for a new Tribal Broadband Connectivity Grant Program at the U.S. Department of Commerce. Eligible uses for the grant funds include “broadband infrastructure deployment” on Tribal lands, meaning any tract in which the surface estate, or an undivided interest in the surface estate, is owned by one or more Tribes in trust or restricted status. The term also includes the surface estate of lands held in trust for a Tribe but reserved for BIA administrative purposes and includes the surface estate of lands held in trust for an Indian corporation chartered under section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. 477). Grant recipients are required to expend awarded funds within one year of receiving them. Unexpended funds may be rescinded. The Secretary of Commerce has the authority to

extend this deadline for infrastructure projects, under certain conditions; however, this is not mandatory.

The 2016 ROW regulations at 25 CFR 169 incorporated many streamlining initiatives, including: established timeframes for the processing and approval of ROWs, and providing to the maximum extent possible, deference to the Tribes' determination of documents needed. On Tribal lands it is necessary not only to maximize the use of federal funds, but also to provide Tribes with the maximum flexibility and opportunity to leverage these programs for the benefit of the Tribe.

2. Scope

This policy applies to all BIA programs, offices, regions, and agencies involved in the ROW process.

3. Policy and Procedures

It is the BIA's policy to comply with all federal laws and regulations as well as Department of the Interior (DOI) policies regarding the processing and approval of ROW applications.

BIA has determined that ROW applications for the purpose of broadband infrastructure provide a direct benefit to the Indian land. If an application package is received by the BIA, a review of the package must be made within five business days as to whether the package is complete or not. BIA will implement the following additional steps to simplify and streamline the processing of ROW applications that are part of, or related to, broadband infrastructure:

A. ROW Applications for Tribal Lands Where Tribe Owns 100% of the Tract

- 1) If the Tribe, or a Tribal utility, is the applicant, the Tribe does not need BIA approval of the ROW.
 - a. The application and map of definite location must be filed with the BIA for recording in the system of record, the Trust Asset and Accounting Management System (TAAMS).
 - b. If the ROW is part of a broadband project funded under a Tribal Broadband Connectivity Program Grant, a copy of the grant may be the authorizing document rather than a Tribal resolution.
- 2) If the applicant is a third party:
 - a. The Tribe may exercise all of the regulatory permissions, including negotiating for any payment amount, waiving the valuation requirement, waiving the bond and insurance requirements, etc.
 - b. The ROW will be one grant for all of the tracts traversed by the ROW.

- c. Approval of the application must occur immediately upon making the determination that the application is complete.

B. ROW Applications for Allotted Lands

- 1) If the Tribe, or Tribal utility, or a third party is the applicant:
 - a. The individual Indian owners may negotiate for any payment amount, and may waive the valuation requirement.
 - b. The ROW may be approved for the negotiated amount per 25 CFR 169.110.
 - i. An appraisal valuation will be requested from the Appraisal and Valuation Services Office (AVSO), unless waived; if the amount negotiated is less than the valuation, the grantee will be required to meet the valuation amount within 30 days of notification.
 - ii. If the amount negotiated is more than the valuation, no further action will be taken.
 - c. BIA will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land, for the purposes of calculating the requisite consent based on BIA records on the date the application is submitted to the BIA (25 CFR 169.107(c)).
 - d. If the Tribe already owns the majority of the interests, consent of the other fractional owners is not required, but the Tribe must notify the co-owners.
 - e. Approval of the application must occur immediately upon making the determination that the application is complete.

C. ROW Applications for Multiple Tracts

- 1) Applicants may submit one ROW application for multiple contiguous tracts.
- 2) BIA will issue one grant for all of the tracts traversed by the ROW for the broadband project.

4. Roles and Responsibilities

- A. Director, BIA (DBIA)** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the BIA's Realty program. The DBIA serves as the Senior Accountable Official for this program, and has primary responsibility for implementing and executing BIA programs in accordance with statute, regulation, and Departmental policy.

- B. **Deputy Bureau Director (DBD), Field Operations, BIA** is responsible for overseeing the Regional Directors (RDs) and disseminating policy relevant to the regions.
- C. **DBD, Office of Trust Services (OTS), BIA** is responsible for ensuring that statutory and regulatory timetables for ROW applications are met, and that guidance is available to regional and BIA agency staff tasked with processing ROW applications; initiating periodic program reviews of regional and agency programs; and assisting in the development and dissemination of trust resource policy to the RDs.
- D. **Director, Division of Real Estate Services (DRES), OTS** is responsible for overall policy and guidance development within the division, including establishing Realty program policies and standards to comply with statutory and regulatory requirements; day-to-day oversight of the Realty program; ensuring technical assistance and training is provide to BIA regions as needed; conducting program reviews; and managing BIA’s federal reporting requirements as they relate to the Realty program.
- E. **RD** serves as the Senior Accountable Official for the Realty program in his/her respective region, and is responsible for reviewing and acting on any ROW applications that are not otherwise delegated to the BIA agency level.
- F. **BIA Agency Superintendent** is responsible for managing his/her respective organization’s Realty program compliance in day-to-day operations, and coordinating reviews of ROW applications. Superintendents are responsible for implementing Realty responsibilities at the appropriate level as re-delegated by the DBD Field Operations or RD. Such delegation will only be made when the BIA agency or program office has appropriate expertise on staff or are otherwise readily available.
- G. **Regional Realty Program Manager** is responsible for reviewing ROW applications that are not otherwise tasked to the BIA agency level, and providing technical assistance throughout this process to the appropriate Superintendent as needed.

5. Approval

Darryl LaCounte Digitally signed by Darryl LaCounte
Date: 2021.05.05 22:40:17 -0400'

Darryl LaCounte
Director, Bureau of Indian Affairs

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