

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT OFFICE
3040 BIDDLE ROAD
MEDFORD, OREGON 97504

**Categorical Exclusion Determination and Decision Record
Charter Communications 66979**

**Right-of-Way Grant under Title V of the Federal Land Policy and Management Act (as Amended), P.L. 94-579, and the regulations at 43 CFR 2800
CX-ORM070-2012-016-**

A. Background:

BLM Office: Grants Pass Resource Area, Medford District
2164 NE Spalding Ave
Grants Pass, OR 97526

Categorical Exclusion Number: ORM070-2012-016-CX

Description of Proposed Action

Charter Communications has applied for a right-of-way grant authorizing a new fiber optic line that runs from Grants Pass to Crescent City, Ca. This line will provide fiber optic connectivity through the Oregon Health Network for Sutter Coast Hospital. The majority of the line has been installed along Highway 199 either on PacifiCorp poles, separate Charter poles or underground conduit. The right-of-way is twenty (20) feet wide; totals 3.34 miles in length and includes an area of 8.09 (rounded to 8.1) acres.

The majority of the line has been installed aerially within either the existing Oregon State Highway 199 or PacifiCorp right-of-way. A portion of the line has been installed underground at Hayes Hill within the Highway right-of-way in the previously disturbed area of the cut bank. The underground cable in this segment was plowed in at a depth of 30-36 inches in a 6 inch wide trench. Following is a summary of the method of line installation in each of the BLM sections:

Map	General Location	Width (FT)	Length (LF)	Method
37-7W-17	Slate Creek	20	160	Charter Poles
37-7W-19	Hayes Hill	20	3059	Underground Conduit
37-8W-25	Anderson Creek	20	308	Charter Poles
38-8W-27	\$8 Mountain	20	1965	Charter Poles
40-8W-18	O'Brien	20	5105	Joint Use Poles
41-9W-3	Rock Creek	20	1842	Charter Poles
41-9W-9	Whiskey Creek	20	5188	Charter Poles

Installation of the most southerly portion of the line, near the California-Oregon border, remains to be completed. The line runs along Forest Service road FS 4402, southeast of the community of O'Brien, where it crosses BLM in T.41 S., R. 9 W., Sections 3 and 9, W.M., Josephine County,

Oregon. In Sections 3 and 9, new poles will be installed within the PacifiCorp right-of-way at a distance of 47 feet from the centerline of PacifiCorp's authorization. According to the drawings submitted, Charter will be installing 2 poles in Section 3 and 8 poles in Section 9. The poles will be 40 feet in height with the line attached 33 feet from ground level. Access to the pole locations will be via existing roads and or along the PacifiCorp right-of-way. PacifiCorp has two FLPMA authorizations (ORE 073 and OR 58263) for their facilities in Sections 3 and 9.

Design Features of the Proposed Action

- All activities would comply with the applicable Federal and State laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances). A written plan for the use of such substances would be submitted to the Authorized Officer prior to approval.
- Any cultural and/or paleontological resource (historic or prehistoric site or object) found shall be immediately reported to the Authorized Officer. Operations would cease until a written authorization to proceed is issued by the Authorized Officer.
- Holder shall protect existing roads, utility lines, communication facilities, and like improvements during construction, operation, maintenance, and termination of the system.
- The Holder shall not obstruct any road without the prior approval of the Authorized Officer. Damage caused by the Holder to roads, public utilities and/or improvements shall be promptly repaired by the Holder to a condition which is satisfactory to the Authorized Officer.
- Natural vegetation shall be cleared or trimmed only when necessary to provide suitable access for installation, operations, maintenance, safety, and termination of the system.
- All ground disturbing equipment shall be washed in order to remove any dirt or vegetation that may harbor noxious weed seeds prior to entering or operating on BLM lands.
- To prevent/reduce the import the disease to Port-Orford-cedar, schedule projects during the dry season or incorporate unit scheduling and vehicle and equipment washing.

B. Land Use Plan Conformance

This proposal is consistent with policy directed by the following:

- *Final Supplemental Environmental Impact Statement and Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (Northwest Forest Plan FSEIS, 1994 and ROD, 1994) as amended
- *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement and Record of Decision* (EIS, 1994 and RMP/ROD, 1995)
- *Final Supplemental Environmental Impact Statement: Management of Port-Orford-Cedar in Southwest Oregon* (FSEIS, 2004 and ROD, 2004)

- *Medford District Integrated Weed Management Plan Environmental Assessment (1998)* and tiered to the *Northwest Area Noxious Weed Control Program (EIS, 1985)*

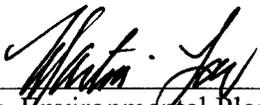
The proposed action is in conformance with the applicable land use plan because it is specifically provided for in the management objective in the Medford District Resource Management Plan that directs the BLM to "Continue to make BLM-administered lands available for needed rights-of-way where consistent with local comprehensive plans, Oregon statewide planning goals and rules, and the exclusion and avoidance areas identified in the RMP (RMP, p. 82).

C. Compliance with NEPA

The proposed action qualifies as a categorical exclusion under Department of Interior Manual 516 DM 11.9, E (14) which allows for "Grants of rights-of-way for an overhead line (no pole or tower on BLM land) crossing over a corner of public land."

Also, DM 11.9, E (16), allows for "Acquisition of easements for an existing road or issuance of leases, permits, or rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes."

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in CFR § 46.215 apply.

Reviewer 
Martin Lew, Environmental Planner

Date: 7/24/2012

D. NEPA Categorical Exclusion Review

Extraordinary circumstances (CFR § 46.215) provides for a review of the following criteria for categorical exclusion to determine if exceptions apply to the proposed action based on actions which may:

1. *Have significant adverse effect on public health or safety.*

Yes No

Remarks:

2. *Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.*

Yes No

Remarks:

3. *Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.*

Yes No

Remarks:

4. *Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental effects.*

Yes No

Remarks:

5. *Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.*

Yes No

Remarks:

6. *Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.*

Yes No

Remarks:

7. *Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.*

Yes No

Remarks: After field review and review of cultural resource records and files, no significant cultural resources (referred to as Historic Properties in the National Historic Preservation Act) will be disturbed or impacted by proposed project activities. No cultural resources have been recorded within the project area of potential effect (APE).

8. *Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.*

Yes No

Remarks: No effect would occur to terrestrial species listed (northern spotted owl, marbled murrelet), or proposed to be listed (fisher), on the List of Endangered or Threatened Species, and no effect on designated or proposed Critical Habitat primary constituent elements and physical and biological features, for these species. No seasonal restriction is required for these species. There would be no effects to fish or aquatic resources. Fish were not affected by the proposed actions.

9. *Violate a Federal law, or a State, local, or Tribal law or requirement imposed for the protection of the environment.*

Yes No

Remarks:

10. *Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).*

Yes No

Remarks:

11. *Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites. (Executive Order 13007).*

Yes No

Remarks: No traditional use areas or sacred sites have been identified within the project corridor; no known ceremonial or religious sites will be affected by proposed project activities.

12. *Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive order 13112).*

Yes No

Remarks:

**U.S. DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
MEDFORD DISTRICT**

Decision Record

Charter Communications 66979

Right-of-Way Grant under Title V of the Federal Land Policy and Management Act (as Amended), P.L. 94-579, and the regulations at 43 CFR 2800

CX-ORM070-2012-016-

Proposed Action: The proposed federal action is to issue a Right-of-Way Grant pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 USC 1761) authorizing a new fiber optic line that runs from Grants Pass to Crescent City, CA. This line will provide fiber optic connectivity through the Oregon Health Network for Sutter Coast Hospital. The majority of the line has been installed along Highway 199 either on PacifiCorp poles, separate Charter poles or underground conduit. The right-of-way is twenty (20) feet wide; totals 3.34 miles in length and includes an area of 8.09 (rounded to 8.1) acres.

All activities associated with maintaining the line segments would be in compliance with the terms and conditions of the OR 66979 right-of-way grant and the Design Features listed in the CX.

Decision and Decision Rationale

Based upon the attached Categorical Exclusion, it is my decision to issue a Right-of-Way Grant to Charter Communications as described in the Proposed Action.

The Proposed Action has been reviewed by the Grants Pass Resource Area staff and appropriate Design Features, as specified above, will be incorporated into the proposal. Based on the attached NEPA (National Environmental Policy Act) Categorical Exclusion Review, I have determined the proposed action involves no significant impact to the environment and no further environmental analysis is required.



Allen Bollschweiler, Field Manager
Grants Pass Resource Area

7/24/12

Date

ADMINISTRATIVE REMEDIES:

Administrative review of right-of-way decisions requiring National Environmental Policy Act (NEPA) assessment will be available under 43 CFR Part 4 to those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410 (a) – (c)). Other than the applicant/proponent for the right-of-way action, in order to be considered a "party to the case" the person claiming to be adversely affected by the decision must show that they have

notified the BLM that they have a “legally cognizable interest” and the decision on appeal has caused or is substantially likely to cause injury to that interest (See 43 CFR § 4.410(d)).

EFFECTIVE DATE OF DECISION

This is a land decision on a right-of-way application. All BLM decisions under 43 CFR Part 2800 remain in effect pending an appeal (See 43 CFR § 2801.10) unless the Secretary rules otherwise. Rights-of-Way decisions that remain in effect pending an appeal are considered as “in full force and effective immediately” upon issuance of a decision. Thus, this decision is now in effect.

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a “legally cognizable interest” to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a “party to the case.” (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:30 p.m.) not more than 30 days after the date of service. Only signed hard copies of a notice of appeal that are delivered to:

*BUREAU OF LAND MANAGEMENT
GRANTS PASS INTERAGENCY OFFICE
Grants Pass Resource Area
2164 NE Spalding
Grants Pass, OR 97526*

will be accepted. Faxed or e-mailed appeals will not be considered.

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant’s success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board and the Regional Solicitor at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations. 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification

that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The IBLA will review any petition for a stay and may grant or deny the stay. If the IBLA takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until IBLA makes a final ruling on the case.

HOW TO FILE AN APPEAL

For additional information contact:

Allen Bollschweiler, Field Manager, Grants Pass Resource Area
Grants Pass Interagency Office
Bureau of Land Management
2164 NE Spalding
Grants Pass, OR 97526
(541) 471-6653

Or

Martin Lew, Grants Pass Resource Area Environmental Planner, at (541) 471-6504

Additional contact addresses include:

- U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, MS 300-QC
Arlington, Virginia 22203
- Regional Solicitor
Pacific Northwest Region
U.S. Department of the Interior
805 S.W. Broadway, Suite 600
Portland, Oregon 97205