

Real Property

TO: Heads of Federal agencies

SUBJECT: Assessment of fees and recovery of costs for antennas of Federal agencies and public service organizations

1. Purpose. This bulletin provides all Federal agencies with general guidelines for assessing antenna placement fees on other Federal agencies, State and local government agencies, and charitable, public service and public safety, and non-profit organizations. State and local government agencies, charitable, public service and public safety, and non-profit organizations are referred to as "public service organizations" throughout this bulletin. (The use of the phrase "public service organization" is not intended to include Federal organizations or agencies, even though such organizations may also provide public services.)

While there may be other agency-specific statutory provisions that authorize Federal agencies to perform certain tasks, studies, surveys, or analyses when making their property available to other Federal agencies and the general public, this bulletin is intended to identify several typical costs and common authorities.

This bulletin is not a grant of authority, but merely a source of informational guidance. It contains much of the same guidance as GSA Bulletin FMR 2007-B2, and includes updated information concerning the assessment of fees and recovery of costs in connection with the placement of antennas on Federal property. It is recommended that Federal agencies consult their legal counsel prior to instituting any action relating to this bulletin.

2. Expiration. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Background.

a. The use of wireless telecommunications equipment has been increasing and is expected to continue to increase in the future. The Telecommunications Act of 1996 recognizes the increasing importance of wireless telecommunications services and provides guidance for the rapid deployment of new telecommunications technologies.

b. The General Services Administration (GSA), Office of Governmentwide Policy (OGP), has taken a leadership role concerning the Federal Government's policy on the placement of wireless telecommunications equipment on Federal real property.

c. On March 14, 2007, based on input from an evaluation panel representing several landholding Federal agencies, GSA published in the Federal Register GSA Bulletin FMR 2007-B2, "Placement of Commercial Antennas on Federal Property" (72 FR 11881). The bulletin provides updated guidance on evaluating requests for siting telecommunications service antennas on Federal property.

d. This bulletin is in furtherance of the efforts of the interagency evaluation panel to provide guidance to Executive agencies on the assessment of fees for antennas and other related equipment that are dependent in whole or in part on the Federal spectrum rights for their transmissions. This guidance is focused generally on the placement of antennas belonging to other Federal agencies and certain public service organizations. Much of this guidance also may be useful when considering locating antennas and assessing fees for antenna placements on Federal property for other types of wireless telecommunications transmissions.

e. The Federal Communications Commission regulates the conditions and procedures under which communications entities offer and operate domestic wireless communications. This bulletin is intended to serve only as guidance on the assessment of fees and recovery of costs for locating antennas of other Federal agencies and certain public service organizations on Federal property.

f. The Administrator of GSA is authorized and directed to charge for all space and services provided to Federal agencies in accordance with 40 U.S.C. § 586. Other Federal agencies, independent regulatory commissions and mixed-ownership Government corporations are subject to their own applicable statutory authorities when providing antenna space and services to other Federal agencies and public service organizations, and are encouraged to follow this guidance to the extent consistent with their missions and policies.

g. Since there are numerous authorities applicable to Federal agencies relating to the assessment of fees and recovery of costs when providing antenna space and services, each agency should consult its legal counsel prior to initiating any action relating to this bulletin.

4. Assessment of Fees and Recovery of Costs.

In addition to any other applicable authorities, Executive agencies may assess fees or recover costs when providing antenna space and services in accordance with the authorities described in Subsections 4.a and 4.b, below. GSA, and Executive agencies operating under a delegation of authority from GSA, must provide antenna sites and assess fees in accordance with the authorities described in Subsection 4.c, below.

a. When Providing Antenna Sites to Other Executive Agencies.

(1) *Authorities for assessing fees against other Executive agencies.* Unless prohibited by law, regulation or internal agency policy, Executive agencies should consider using one of the legal authorities described in this Subsection 4.a(1) when deciding whether to assess user fees for the placement and servicing of antennas belonging to other Federal agencies. Each authority has certain benefits or limitations, which are discussed in further detail below, depending on the assessing agency's own programmatic needs.

(A) Section 704(c) of the Telecommunications Act of 1996, Pub. L. 104-104 (Feb. 8, 1996), 47 U.S.C. § 332 note. This provision authorizes Federal agencies to charge "reasonable fees" to providers of telecommunications services, including other Federal agencies, whose antennas and equipment are for telecommunications services that are dependent, in whole or in part, upon the use of Federal spectrum rights for their transmission. The legislative history accompanying Section 704 offers little guidance on what might constitute a reasonable fee to assess another Federal agency that might qualify as such a provider of telecommunications services. For purposes of this provision, the phrase "reasonable fees" could be construed to allow agencies to charge "market-based" rents or user fees to public service antenna service providers (i.e., rents or fees that are based on comparable private sector rates even when those fees exceed the ouleasing agency's actual costs). However, Federal interagency transactions typically are based on actual cost reimbursements, and to avoid possible questions about excessive charges, it is recommended that agencies assess fees that are based on its actual costs when charging other Federal agencies under this authority. Moreover, unless the assessing agency has independent statutory authority to retain such monetary proceeds, any fees collected pursuant to the Telecommunications Act must be deposited in the U.S. Treasury as miscellaneous receipts.

(B) 40 U.S.C. § 586(c). If an Executive agency, other than GSA, provides "space and services" (which GSA has concluded includes space for antenna sites) to another Federal agency, the agency providing the antenna space (and related services) is authorized to charge the antenna-siting agency at rates approved by the Administrator of General Services.

Typically, these rates should approximate commercial charges for comparable space and services (i.e., the agency is authorized to assess market-based rental rates and fees for siting the antenna, even if these charges exceed the agency's actual costs). Any amounts received by the Executive agency are to be credited to the appropriation or fund initially charged for providing the space or service; provided, however, that any amounts collected in excess of the actual operating and maintenance costs of the space or service must be deposited in the U.S. Treasury as miscellaneous receipts.

In some instances, agencies occupying Federal property that is under the custody and control of GSA may, under a delegation of the Administrator's authority, charge for "space and services" (including providing space and related services for antennas) under 40 U.S.C. §§ 121(e)(1) and 586. Such fees or charges must approximate commercial charges for comparable space and services (i.e., market rates) and the proceeds from such charges or fees must be deposited into GSA's Federal Buildings Fund (40 U.S.C. § 592).

(C) The Economy Act, 31 U.S.C. § 1535. Although the Economy Act does not authorize a Federal agency to charge another Federal agency a user fee for the use of an interest in real property, in most instances it can be used as authority by a Federal agency to be reimbursed by the antenna-siting agency for the agency's actual costs incident to locating and maintaining another agency's antenna. Federal agencies are cautioned that inter-agency transactions under the Economy Act are limited to "goods and services" and that the lease of sites for antennas (e.g., building rooftop space or other real property locations that might be suitable for antenna placements) would not qualify as a good or service. Nevertheless, Federal agencies may consider this authority to recoup the costs of other goods and services that might be incidental to the siting and servicing of another agency's antenna. Such incidental services might include protecting, maintaining and actually locating the antenna and its related equipment on the site. Additional regulatory guidance on charging for Economy Act services can be found at 48 C.F.R. Subpart 17.5.

(2) Types of antenna siting costs Executive agencies may recover from other agencies.

(A) Executive agencies may charge fees to other Federal agencies that will recoup the agency's actual cost (if any) of providing the antenna space or service. In addition to recouping these costs, the agency also may recover the cost of all necessary and incidental expenses it incurred in the siting of antennas on its property. Typical costs that might be necessary and incidental to the placement of antennas and related telecommunications equipment on Federal property include:

- Preparation of an Environmental Impact Statement or Environmental Assessment under the National Environmental Policy Act of 1969, as amended, and, if required, development of a communications site plan;
- Engineering evaluation to avoid electromagnetic intermodulations and interference;
- Various other studies or analyses of the impact of antennas and equipment on the current and planned Federal use(s) of the property;
- Preparation or recording of leases, licenses, easements, releases, surveys, title searches, or other documents; and

- Utilities, protection and necessary access to the site.

(B) In some instances, particularly when the costs in (2)(A), above, are minimal, or when it is not practicable or possible to identify individual cost components, the agency may estimate its aggregate actual cost and incorporate that amount into a single lump sum charge or a nominal user fee. These types of charges, to the maximum extent possible, should reflect the agency's actual costs for siting Federal agency antennas.

(C) Under Federal appropriations law, it is impermissible for one agency to use its financial resources to augment the operations of another agency, in the absence of express statutory authority to do so. For this reason, any time an Executive agency incurs costs for placing an antenna of another Federal agency on its property, unless the agency has independent authority to spend its appropriated funds to support another agency's antenna siting activities, the agency should charge the agency whose antenna is being located on its property for all costs associated with the siting and servicing of the antenna.

(D) If there is any question about what costs can be incurred as necessary and incidental expenses to the placement of an antenna or related equipment on agency property, agency legal counsel should be consulted prior to the agency's incurring those costs.

b. When Providing Antenna Sites to Certain Public Service Organizations.

(1) Authorities for providing sites and charging fees to certain public service organizations.

(A) Section 704(c) of the Telecommunications Act of 1996, Pub.L. 104-104 (Feb. 8, 1996), 47 U.S.C. § 332 note. This provision authorizes Federal agencies to make available on a fair, reasonable and nondiscriminatory basis, Federal property, rights-of-way and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. This provision can be used to make Federal sites available to certain public service organizations (e.g., emergency broadcast systems and public service radio stations, and local fire, police and rescue organizations), if such organizations' telecommunications services are dependent, in whole or in part, upon the utilization of Federal spectrum rights. However, this authority has obvious limitations where a public service organization's services are not dependent on the Federal spectrum rights for their transmission or reception. For instance, the Telecommunications Act authority would not be applicable when the antenna is used for non-Federal spectrum broadcasts, or for broadband, microwave or data relay services. When a public service organization's

telecommunication services are not dependent upon the Federal spectrum rights, Federal agencies likely will have to rely on their individual agency authorities to make antenna sites available and to assess fees. As noted in Section 4.a(1)(A), above, unless otherwise authorized by law to retain antenna siting proceeds, agencies collecting fees pursuant to the Telecommunications Act must deposit these fees in the U.S. Treasury as miscellaneous receipts.

(B) 40 U.S.C. § 581(h). This provision, formerly known as the Public Buildings Cooperative Use Act, authorizes GSA to lease space in or around "public buildings" (as defined in 40 U.S.C. § 3301(a)(5)) to persons, firms or organizations engaged in "commercial, cultural, educational, or recreational activity" (as defined in 40 U.S.C. § 3306(a)), at rental rates established by the Administrator of General Services that are equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the building.

When a Federal agency receives an antenna siting request from a public service organization, and that agency is occupying space in a public building that is under the jurisdiction, custody or control of GSA, the agency should refer the requesting public service organization to the appropriate GSA Public Buildings Service regional office. The referring agency should also advise the GSA regional office whether or not the referring agency recommends that GSA accommodate the antenna siting request. If GSA decides to make space available for an antenna, the lease, permit or other rental agreement will expressly provide that the antenna placement not be disruptive to other tenants in the building or the surrounding area.

This authority, while also available to other agencies through a delegation of authority from GSA, is limited to certain areas in and around public buildings (e.g., major pedestrian access levels, rooftops or courtyards). Furthermore, any proceeds received under a lease or other agreement executed pursuant to 40 U.S.C. § 581(h) must be deposited into GSA's Federal Buildings Fund and credited to the appropriation from the Federal Buildings Fund applicable to the operation of the building. For these reasons, this authority will be of limited use to agencies other than GSA that are considering siting public service organization antennas in rural or remote locations or intending to retain the proceeds from these antenna leases or other agreements.

GSA, and Executive agencies operating under a delegation of authority from GSA, may, under certain circumstances, charge a rental rate less than the prevailing market rate, if the space is to be used for non-commercial purposes and the Administrator of General Services determines such other rate to be in the public interest (40 U.S.C. § 581(h)(2)). The decision to charge less than the prevailing commercial rate rests solely with the Administrator and will depend on the nature of the activity conducted on the property (e.g., an antenna outlease of a very short duration or for broadcasts of an important public service and educational nature). The Administrator will charge market-based rental rates for

all antenna leases, permits or other rental agreements with organizations engaged in commercial activities. Federal agencies should advise GSA officials about the nature and duration of the antenna site arrangement before requesting a delegation under this authority.

(C) 31 U.S.C. § 9701. This provision expresses the sense of Congress that each service or thing of value provided by an agency to a person is to be self-sustaining to the extent possible. It authorizes the head of each Federal agency to assess fees that are fair and based on the costs to the Federal Government, the value of the service or thing to the recipient, the public policy or interest served, and other relevant facts.

(D) 40 U.S.C. § 1314. Authorizes the Executive agency having control of real property of the Federal Government to grant easements in, over or on the real property to a State, a political subdivision or agency of a State, or a person, if the head of the agency decides the easement will not be adverse to the interests of the Federal Government, subject to reservations, exceptions, limitations, benefits, burdens, terms, or conditions that the head of the agency considers necessary to protect the interests of the Federal Government. The grant may be made without consideration, or with monetary or other consideration. This easement authority may be used to site antennas and related equipment on Federal property in support of constructing new and improving existing telecommunication infrastructure, provided that such installation does not impact adversely the interests of the Federal Government.

(E) Federal Management Regulation, 41 C.F.R. §§ 102-79.70 – 79.100. These sections provide regulatory guidance on siting antennas on Federal property for Federal agencies operating under, or subject to, the authorities of the Administrator of General Services.

(F) President Clinton's Memorandum of August 10, 1995, entitled "Facilitating Access to Federal Property for the Siting of Mobile Services Antennas," 60 F.R. 42023, 40 U.S.C. § 581 note. This Presidential Memorandum, which is still in effect, does not grant independent statutory authority to Executive agencies to assess user fees; however, it does provide guidance to agencies on procedures to use to facilitate access to Federal property for the siting of telecommunications service provider equipment. The Memorandum provides that, with respect to the assessment of fees for the siting of such equipment, unless otherwise prohibited by or inconsistent with Federal law, Executive agencies shall charge fees based on market value for siting antennas on Federal property, and may use competitive procedures if not all applicants can be accommodated.

(G) Office of Management and Budget Circular A-25. This Office of Management and Budget (OMB) Circular, entitled "User Charges," revised July 8, 1993, provides guidelines that Federal agencies should use to assess fees for Federal Government services and for the sale or use of Federal Government property

or resources.

(H) Department of Commerce Report on "Improving Rights-of-Way Management Across Federal Lands: A Roadmap for Greater Broadband Deployment" (April 2004). For antenna sites on non-GSA property, Federal agencies are directed to the Department of Commerce Report for additional guidance.

(2) *Fees and costs Executive agencies may assess certain public service organizations.* Executive agencies should, whenever possible, assess market-based fees (i.e., fees potentially in excess of actual costs), when public service organizations site antennas on Federal property. Federal agencies also should recover any additional costs they incur associated with use of the property, right-of-way or easement. An exception to this general rule, as discussed in greater detail in Section 4.b(1)(B), above, is when the public service organization is using the space for non-commercial purposes and the Administrator of General Services determines that a rate other than the prevailing commercial rate is in the public interest and should be charged. However, the account into which an antenna siting fee is to be deposited depends on the authority under which the antenna site is made available and the fee assessed.

c. GSA's Authorities to Provide Sites for Antennas and Related Equipment and to Assess Fees.

Enumerated below is a summary of the authorities that govern GSA's ability to provide sites and services for antennas and related equipment to Federal agencies and certain public service organizations on GSA-controlled real property and to assess fees for such antenna sites and services. As discussed in Sections 4.a and 4.b, above, some of these authorities are also applicable to Executive agencies acting under a delegation from GSA. Except for fees received pursuant to Section 704(c) of the Telecommunications Act of 1996, which must be deposited in the U.S. Treasury as miscellaneous receipts unless the assessing agency has independent statutory authority to retain such fees, the antenna siting proceeds generated by GSA pursuant to the authorities described below may be deposited in GSA's Federal Buildings Fund.

(1) 40 U.S. C. § 581(g). This provision authorizes the Administrator of General Services to obtain payments for services, space, quarters, maintenance, repair or other facilities furnished to a Federal agency.

(2) 40 U.S.C. § 586(b). This provision authorizes the Administrator of General Services to charge anyone furnished space and services at rates that approximate commercial charges for comparable space and services (including rooftop antenna space). This section further authorizes the Administrator to exempt anyone from these charges, if the Administrator determines that the charges would be infeasible or impractical.

(3) 40 U.S.C. § 581(h)(1). As discussed in greater detail in Section 4.b(1)(B), above, this provision authorizes the Administrator to lease space on major pedestrian access levels, courtyards or rooftops of any public building to persons, firms, or organizations engaged in commercial, cultural, educational, or recreational activities (as defined in 40 U.S.C. § 3306(a)), establish rental rates for such leased space equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the building and negotiate terms and conditions that protect the public interest.

(4) 40 U.S.C. § 581(h)(2). As discussed in greater detail in Section 4.b(1)(B), above, this provision authorizes the Administrator to make available, on occasion, or lease at a rate and on terms and conditions that the Administrator considers to be in the public interest, rooftops, courtyards and certain other areas in public buildings to persons, firms or organizations engaged in cultural, educational or recreational activities (as defined in 40 U.S.C. § 3306(a)) that will not disrupt the operation of the building. This authority can only be used if the public service organization is engaged in a non-commercial activity.

(5) The Economy Act, 31 U.S.C. § 1535. As discussed in greater detail in Section 4.a(1)(C), above, this provision authorizes GSA to provide, on a reimbursable basis, goods and services to other Federal agencies, including any goods or services that might be related to the placement of another agency's antenna on GSA-controlled property.

(6) 31 U.S.C. § 9701. As discussed in greater detail in Section 4.b(1)(C), above, this provision authorizes GSA to assess fees that are fair and based on the value of the service or thing provided by the agency. Since GSA typically assesses fees that are based on commercial charges for comparable space and services as required by its authorities set forth in Title 40 of the United States Code, GSA seldom relies on this authority.

(7) Section 704(c) of the Telecommunications Act of 1996, Pub. L. 104-104 (Feb. 8, 1996), 47 U.S.C. § 332 note. As discussed in greater detail in Sections 4.a(1)(A) and 4.b(1)(A), above, this provision authorizes GSA to charge reasonable fees for the use of GSA property by agencies or organizations whose antennas and related equipment are for telecommunications services that are dependent, in whole or in part, upon the use of Federal spectrum rights for their transmission. Insofar as GSA has several other authorities from which to choose from when negotiating antenna siting agreements with telecommunications service providers, GSA will seldom rely upon this authority.

(8) President Clinton's Memorandum of August 10, 1995, entitled "Facilitating Access to Federal Property for the Siting of Mobile Services Antennas," 60 F.R. 42023, 40 U.S.C. § 581 note. As discussed in greater detail in Section 4.b(1)(F),

above, this Presidential Memorandum, although not an independent grant of authority to assess user fees, does provide guidance to agencies on procedures to use to facilitate access to Federal property for the siting of telecommunications service provider equipment. Consistent with this Presidential Memorandum and GSA's statutory authority to charge commercial equivalent rates when providing space and services to accommodate antennas, GSA will continue to assess market-based fees, whenever practical and feasible.

(9) 40 U.S.C. § 1314. As discussed in greater detail in Section 4.b(1)(D), above, this easement authority may be used to site antennas and related equipment on Federal property under GSA's jurisdiction, custody or control. The grant may be made without consideration, or with monetary or other consideration, at the discretion of the head of the agency.

(10) Section 412 of the GSA General Provisions, Consolidated Appropriations Act, 2005, Pub. L. 108-447 (Dec. 8, 2004). This provision granted GSA new and additional real property disposition authority and the authority to retain proceeds from the disposal of its real property. In addition to giving GSA authority to retain the net proceeds from its real property disposals, Section 412 granted GSA additional new authority to dispose of its real and related personal property by various means, including by sale, lease, exchange, or otherwise. This authority is in addition to GSA's numerous other existing statutory authorities applicable to the use and disposal of real property under its jurisdiction, custody or control. For GSA-controlled property leased under Section 412 to accommodate antennas and related equipment, the proceeds of any such lease would be deposited into GSA's Federal Buildings Fund.

(11) Subchapters III and IV of Chapter 5 of Subtitle I of Title 40 of the United States Code. These are GSA's traditional authorities for the disposal of surplus property. Surplus real property may be leased under these authorities to site antennas and related equipment on property under the jurisdiction, custody or control of GSA. In light of the Section 412 authority discussed in the immediately preceding paragraph, GSA may now retain the proceeds from such disposals and deposit them into the Federal Buildings Fund.

(12) Federal Management Regulation, 41 C.F.R. §§ 102-79.70 – 79.100. As discussed in Section 4.b(1)(E), above, these sections provide regulatory guidance on siting antennas on Federal property under the jurisdiction, custody or control of GSA.

(13) Office of Management and Budget Circular A-25. As discussed in Section 4.b(1)(G), above, this OMB Circular provides guidelines that GSA should use to assess fees for services it offers and for the sale or use of property or resources under its jurisdiction, custody or control.

5. Additional Information

Further information regarding this bulletin may be obtained by contacting Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501-1737, or stanley.langfeld@gsa.gov.

Dated:



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