U. S. Department of the Interior
Fish and Wildlife Service
Region 7, Alaska

ANILCA 810 SECTION DETERMINATION
ANILCA TITLE XI FINDINGS
RIGHT-OF-WAY APPLICATION DECISION
AMMENDMENT TO THE TOGIAK NATIONAL WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN

TERRA Southwest Broadband Telecommunications Project

U.S. Fish and Wildlife Service (FWS) received an application from United Utilities, Incorporated (UUI) to construct, operate and maintain two microwave repeater facilities as part of a project to provide broadband telecommunications services for the communities of Southwestern Alaska. The two microwave repeater stations are proposed for installation on Togiak National Wildlife Refuge (Togiak Refuge). These facilities meet the definition of "transportation or utility system" (TUS) as described in Alaska National Interest Lands Conservation Act (ANILCA) Section 1102(4)(B)(v): *Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals and other means of communication* and the decision to allow a TUS must meet the provisions of 43 CFR 36.7. The facilities require the granting of a Federal Right-of-Way (ROWs) and an amendment to the Togiak Refuge Comprehensive Conservation Plan. Lands involved are not located within the National Wilderness Preservation System.

The FWS has completed an Environmental Assessment (EA) (herein incorporated by reference) describing three alternatives and associated impacts to the human environment. A Finding of No Significant Impact was signed on April 11, 2011.

ANILCA SECTION 810 DETERMINATION

Based on the analysis provided in the EA, none of the alternatives considered would significantly reduce subsistence uses because of direct effects on wildlife or habitat or that would significantly increase competition for resources or alter their distribution or location. Similarly, none of the alternatives would significantly reduce subsistence uses because of limitations on access by physical or legal barriers, to harvestable resources.

This evaluation concludes that none of the alternatives would result in significant restrictions of subsistence uses.

COMPATIBILITY DETERMINATION

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C 668cc-668ee, states that "The Secretary is authorized, under regulations as [s]he may prescribe, to – (A) permit the use of any area within the [National Wildlife Refuge] System for any purpose, including but not limited to

hunting, fishing, public recreation and accommodations, and access whenever [s]he determines that such uses are compatible" and that "...the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." A compatible use is defined as "A proposed or existing wildlife-dependent recreational use or other use of a national wildlife refuge that, based on sound professional judgment will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge."

The Refuge Manager has made a Compatibility Determination, incorporated here by reference and has found the granting of the Right-of-Way would not materially interfere with or detract from the purposes of Togiak Refuge or from the National Wildlife Refuge System Mission.

ANILCA TITLE XI FINDINGS

The provisions of 43 CFR 36.7 require the following findings:

(i) The need for and economic feasibility of the TUS;

The USDA Rural Utilities Service (RUS) awarded a grant and a loan to UUI under the American Recovery and Reinvestment Act of 2009 through the Broadband Initiatives Program for the purpose of delivering reliable and affordable broadband service from the internet backbone in Anchorage, Alaska to 65 communities and more than 9,000 households in the Bristol Bay and Yukon Kuskokwim Delta regions in Southwest Alaska. This project would address the need for more reliable broadband service and would provide rural Alaskan communities opportunities to facilitate economic development, improve service to health care providers, schools, government, tribal, and non-profit entities and residential users. RUS made grant and loan awards based upon a defined set of evaluation criteria. In awarding UUI the grant and loan, RUS determined that the project is needed and is economically feasible. The Service accepts the RUS conclusion.

(ii) *Alternative routes and modes of access including a determination with respect to whether there is an economically feasible and prudent alternative to routing the system through or within an area;*

The Economically Feasible and Prudent Alternative Evaluation of Alternatives Report (David Ross Group 2011) found that a technically feasible alternative exist, but that they are not economically feasible and prudent. The most likely alternative was fully evaluated in the EA (Alternative 3).

(iii) The feasibility and impacts of including different TUSs in the same area;

No other TUSs exist or are planned in this area.

(iv) Short and long term social, economic and environmental impacts of national, State or local significance;

Short and long term social, economic and environmental impacts of national, State, or local significance were analyzed as part of the EA. No significant impacts were identified.

(v) The impacts, if any, on the national security interests of the United States;

The EA identified no national security concerns as secondary effects of this project. The project would be likely to enhance national security through more reliable communication.

(vi) *Any impacts that would affect the purposes for which the Federal unit or area concerned was established*;

The Compatibility Determination, based in large part on the analysis in the EA, found that there would be no impacts which would materially interfere with the purposes for which the Refuge was established.

(vii) Measures which should be instituted to avoid or minimize negative impacts;

Mitigation measures are described in the EA and Compatibility Determination and will be included as stipulations in the Right-of-Way permit.

(viii) The short and long term public values which may be adversely affected by approval of the TUS versus the short and long term public benefits which may accrue from such approval;

The EA evaluated the short and long term impacts to the public, both adverse and beneficial. No significant adverse impacts were identified.

(ix) Impacts, if any, on subsistence uses.

The EA, the ANILCA 810 determination included in this document, and the Compatibility Determination describe potential impacts to subsistence resources and users. There were no significant impacts identified.

Based on the EA, ANILCA 810 Determination (above), the Compatibility Determination, the Economically Feasible and Prudent Alternative Evaluation of Alternatives Report (incorporated here by reference), and Right-of-Way Application documents, I find the following: that

provisions of ANILCA Title XI and 43 CFR 36.7 have been met; that the proposed project is needed and economically feasible; that no alternative locations or configurations are economically feasible; that mitigation measures to lessen impacts will be employed; and that no significant adverse impacts are likely to occur as a result of approving the proposed Right-of-Way.

RIGHT-OF-WAY APPLICATION DECISION

Based on the analysis provided in the EA, the Compatibility Determination, and the above findings, I authorize the issuance of a Right-of-Way permit, with appropriate terms and conditions, for the proposed microwave towers and associated facilities. This Right-of-Way is contingent on BLM authorization of similar facilities at Cone Mountain, as that authorization would also be necessary for the successful completion of the TERRA-SW project.

AMMENDMENT TO THE TOGIAK REFUGE COMPREHENSIVE CONSERVATION PLAN

The 2009 Togiak Refuge Comprehensive Conservation Plan classifies all refuge lands into one of five management categories. A management category is used to define the level of human activity appropriate to a specific area of the refuge. The lands upon which the facilities would be constructed are classified as Minimal Management. Minimal Management is designed to maintain the natural environment with very little evidence of human-caused change. Ground-disturbing activities are to be avoided whenever possible. The facilities for which the Right-of-Way will be granted are not appropriate for Minimal Management. Compatible economic uses of refuge resources that result in alterations to the natural environment may be authorized in Intensive Management areas. Based on the analysis provided in the EA, the Compatibility Determination and the above findings and determinations, I hereby reclassify the lands for which this Right-of-Way is granted as Intensive Management. This reclassification applies only to the lands within the boundary of the Right-of-Way as specified in the permit and applies only as long as the Right-of-Way is in effect. Upon the successful decommissioning and rehabilitation of the sites, these lands will revert to Minimal Management status.

Geoffrey L. Haskett
Regional Director

4/15/11
Date

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