



Pacific PEER

Public Employees for Environmental Responsibility

June 9, 2020

Compliance Office, Attention:
AccessParks Broadband Proposal
P.O. Box 168
Yellowstone National Park, Wyoming 82190

RE: PEER Comments on AccessParks Broadband Proposal

These comments are submitted on behalf of Public Employees for Environmental Responsibility (PEER). For the reasons articulated below, PEER urges Yellowstone National Park (YNP) to reject the application for the right-of-way facilitating the AccessParks Broadband Proposal.

As described, this proposal would install 484 antennas within historic lodges, visitor centers, and other buildings to bring broadband throughout most of the park's developed areas. It would also entail 39 additional and sizable antennas throughout the park, including twelve microwave dishes on existing towers (including six at Mt. Washburn).

1. AccessParks Should Be Limited to a Pilot Project, If Approved at All

A. Project Extends Well Beyond Stated Purpose

The YNP summary posted on the National Park Service's (NPS) Planning, Environment and Public Comment (PEPC) site describing this project declares:

“This proposal would replace, improve, and expand existing Wi-Fi service provided to Xanterra Travel Collection restaurant and lodging patrons and employees.”

PEER does not object to this purpose, nor have we objected to previous Xanterra efforts to provide Wi-Fi to its employees and customers.

However, the proposed approval goes far beyond this stated purpose. It would authorize Wi-Fi coverage throughout the park's developed areas, far beyond Xanterra-operated facilities.

YNP's presentation of this plan should be faulted for its lack of clarity and candor. It is not clear what AccessParks will actually install, and when. It is clear, however, that the scope of the proposal, and presumably any subsequent right-of-way, extends to structures park-wide.

As we understand it, AccessParks wants this far broader project due to concerns about securing competitive advantage. This company's ability to block out competitors from serving YNP concessioners and visitors should not be the determining factor governing YNP decision-making. This is especially the case given the adverse impacts this project will have on YNP assets and resources, as detailed below.

B. YNP Wireless Committee Recommended a Pilot Project



Pacific PEER

Public Employees for Environmental Responsibility

According to YNP documents obtained by PEER through the Freedom of Information Act (FOIA), the park's Wireless Committee, consisting of senior officials responsible for handling telecommunications issues, concluded its February 2020 review of the AccessParks proposal by writing:

“The Wireless Committee recommends a pilot project at Mammoth Hot Springs to allow the NPS to adequately assess the performance and monitor the proper installation of equipment on high value public properties.... The Committee considered all relevant feedback received during the November 14-29, 2019 public scoping comment period, in addition to all relevant law, policy, and planning documents to come to this recommendation.”

The FOIA documents also include a draft letter (from mid-February 2020) from Superintendent Cameron Sholly to Tim Rout of AccessParks offering AccessParks a “pilot project in the Mammoth Hot Springs authorized area” for 2020.

According to press reports, AccessParks rebuffed this overture and insisted upon pursuing a park-wide plan.

It is not clear why the prudential concerns expressed by YNP's expert staff were disregarded. The decision about what actions should be taken with park resources should reside with NPS managers, not corporate applicants. This appears to be a case of the tail wagging the dog, at the expenses of park values.

2. Reliability of Equipment Not Assured

Among the documents PEER obtained via FOIA was a 2019 email from a Lake Mead official who wrote that “in less than two years most of the [AccessParks] equipment has been replaced once or twice.” The Lake Mead official provided Yellowstone officials with many reasons to be cautious, questioning the quality of AccessParks's Wi-Fi system and noting the “growing pains” and “continued hiccups” in that park's relationship with AccessParks.

We could find no information at the PEPC site about the reliability of the equipment AccessParks proposes to install in historic buildings inside YNP.

What is certain is that AccessParks will have to swap out its antennas on a regular basis at Yellowstone. YNP has not specified any approval or compliance process that AccessParks will have to undergo before replacing old equipment or installing new equipment, even if those new replacement antennas are larger, more visible, and more numerous.

PEER urges that the AccessParks right-of-way be limited to a relatively short period so that its performance and equipment reliability can be reviewed, and the public afforded an opportunity to weigh in on whether this broadband system should be continued, improved, or discontinued



Pacific PEER

Public Employees for Environmental Responsibility

altogether.

3. Authentic Ambiance of Yellowstone’s Historic Structures Sacrificed

The YNP summary for this project notes that “most (more than 75%)” of the antennas will be placed on or in National Register of Historic Places eligible structures.

A. 2009 Yellowstone Plan Promised Wi-Fi-Free Zones

YNP’s original Wireless Plan was approved in April 2009 via a Finding of No Significant Impact (FONSI) under the National Environmental Policy Act (NEPA). That FONSI stipulated:

“This FONSI modifies Alternative C in regards to Wi-Fi in lodging. In order to protect the experience expected at historic lodging locations, the availability of Wi-Fi will not be approved at the Lake Hotel, Old Faithful Inn, the Roosevelt Lodge, Old Faithful Lodge, Lake Lodge or the Mammoth Hotel. Wi-Fi will be limited in these areas, to the greatest extent possible, by limiting the approval of technologies under the park’s control in these areas.”

The FONSI further provided that –

“WiFi will not be approved if:

- the lodging structure is a National Historic Landmark (NHL).
- the lodging structure is likely to become a National Historic Landmark.
- in a lobby of historic lodging.
- most visitors are likely to expect a historic or rustic setting or experience.”

Under “Substantive Comments”, the FONSI elaborated under the heading “Limit Wi-Fi to specific areas or omit completely” by noting:

“... in response to comments, **the NPS will limit Wi-Fi more specifically than described in the EA** [Environmental Assessment]. Because Wi-Fi signals can be limited in the distance they can travel by the choice of equipment used, equipment choices will be made to meet the goals of this plan. The preferred alternative states that Wi-Fi will be limited to employee dorms, medical clinics, lodging units, general stores, and administrative facilities. Wi-Fi would be available for administrative use by concessioners and partner organizations. The park would work with its concessioners to develop Wi-Fi-free zones. In order to protect the experience expected from historic lodging, Wi-Fi will not be approved at the Lake Hotel, Old Faithful Inn, the Roosevelt Lodge, Old Faithful Lodge, Lake Lodge (except the cafeteria), or the Mammoth Hotel. Wi-Fi will not be approved, to the extent possible, from these areas by limiting technologies under the park’s control in these areas.” (Emphasis added)



Pacific PEER

Public Employees for Environmental Responsibility

B. YNP Reversed Its Promise with No Public Notice

Yellowstone’s promise to “protect the experience expected at historic lodging locations” by ensuring Wi-Fi-free zones vanished a decade later based upon decisions reached in secret and implemented without public notice. In May 2018, YNP quietly issued a Categorical Exclusion exempting from NEPA review a decision to amend the 2009 Wireless Plan such that Wi-Fi would be allowed anywhere cellular service is allowed. The following month, YNP quietly issued a second “Cat Ex” restoring the exception for the Old Faithful Inn and Lake Hotel.

Thus, without any public input, YNP completely jettisoned almost all measures to preserve the historic ambiance of its internationally recognized historic inns. The only explanation articulated in these two one-page reversals was –

“The rationale for this change is the technological advancement during the past decade.”

It is certainly ironic that how the visiting public would experience being inside historic structures would be a function of the current and changing state of technology.

Perhaps the timing of this stealth reversal was not coincidental in that the first AccessParks proposal for Wi-Fi was formally submitted in March 2018. Thus, it appears YNP altered key provisions of its Wireless Plan to accommodate the latest vendor.

Notably, YNP NEPA coordinator Ray McPadden has indicated that the Park would issue a Cat Ex “to cover all the actions in the [AccessParks] proposal.” We presume that this Cat Ex is already drafted, thus making a mockery of both this Section 106 public comment process and NEPA requirements (see below).

PEER urges YNP to rescind both of the previous Cat Exs and return to the original Wi-Fi restrictions of its 2009 Wireless Plan. Alternately, PEER urges YNP to take steps to ensure that Wi-Fi-free zones are reserved in all lobbies and lounges or other public settings inside historic buildings.

C. Marring Historic Structures

Approval of the AccessParks proposal will authorize new penetration for antennas in the rooftops of the Old Faithful Inn and Lake Hotel, two National Historic Landmarks – the most protected category of historic sites.

In its letter finding that these National Historic Landmarks will not be adversely affected, the Wyoming State Historic Preservation Office wrote:

“The installations on the Lake Hotel National Historic Landmark and the Old Faithful Inn National Historic Landmark will be placed on sections of flat roofs and will not be readily visible from the ground.”



Pacific PEER

Public Employees for Environmental Responsibility

Nonetheless, these new antennae will be visible. For example, the plan calls for a 36” antenna on the rooftop of the Lake Hotel. Moreover, when equipment is upgraded these structures may well become more visible.

Section 800.10 of Section 106 regulations for the National Historic Preservation Act provides:

“Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly or adversely affected by an undertaking.”

PEER urges that YNP impose a condition on the AccessParks right-of-way to require initiation of new Section 106 consultation prior to installation of any new structures on or within National Historic Landmarks.

4. No-Bid Approach Shut Out Competition

The FOIA documents PEER obtained also indicate that there are at least two competitors to AccessParks – a company called “GX2” and one called “Wi-fi in the Park LLC.” Both companies complained to YNP officials about their exclusion from consideration of providing broadband services. One company even suggested that political connections to former Secretary of the Interior Ryan Zinke gave an inside track to AccessParks. Both companies expressed interest through correspondence in submitting competing proposals. The records PEER obtained do not reflect any definitive follow-up by YNP on these requests.

To the extent that there are viable broadband competitors, both the process and the outcome would have been improved by the public’s ability to evaluate their proposals.

5. Repeated NEPA Violations

As indicated above, YNP is already planning to address NEPA compliance through another Cat Ex. NPS Director’s Order (DO) 12 governing application of the NEPA precludes use of a Cat Ex for construction projects except for minor construction projects. This project is certainly not minor, as it involves work on nearly 500 structures, as well as additional antennas and dishes.

Moreover, the DO-12 Field guide bars use of a CE for any project which has “the potential to be controversial because of disagreement over possible environmental effects.” This is clearly a controversial proposal. YNP received more than 3,000 public comments in November during the first public comment period, almost all negative. Parenthetically, this project is yet another example of YNP ignoring public opposition, as it has routinely approved virtually every wireless expansion over the past 20 years regardless of the extent of expressed public opposition.



Pacific PEER

Public Employees for Environmental Responsibility

In addition, the principal rationale cited by NPS for using a Cat Ex is that any environmental effects were already analyzed back in 2008, when the YNP Wireless Plan was developed. This rationale certainly does not, as explained above, bear up to any critical scrutiny.

In addition, a Cat Ex is not appropriate for this project because it involves alteration to historic structures and changes the visitor experience within those structures. Further the proposal involves the use of an illegal structure in recommended wilderness (see below).

Each one of those factors would preclude issuance of a Cat Ex. Moreover, YNP's pre-determination of its decision to issue a Cat Ex also violates NEPA requirements that the agency must fully consider all public comments before reaching a conclusion.

Further, YNP has not openly evaluated alternatives. As noted above, YNP should have assessed a pilot project and allowed competition. Such alternatives should have been presented in a formal Environmental Assessment.

More broadly, Yellowstone's reliance on Cat Exs to evade NEPA compliance has reached new heights. The current proposal is an amendment to an amendment to an amendment of an existing plan, all without any of the evaluation required by NEPA.

6. Significant Visual Impacts Ignored

To service the 484 antennas installed in or on employee housing and visitor lodging facilities at Canyon Village, Grant Village, Lake Village, Mammoth Hot Springs, and Old Faithful, the AccessParks proposal will require a network of 39 additional antennas, each approximately 3-foot high. In addition, six microwave dishes, three of which will be 6-feet in diameter microwave antennas will be installed on towers at Old Faithful, Grant Village, and Fishing Bridge. In addition, as noted above, AccessParks antennas would also be placed on the rooftops of the Old Faithful Inn and Lake Hotel.

Each of these constitutes an undeniably adverse impact on Yellowstone's scenery – one of the key resources that Yellowstone is obligated by law to preserve and protect.

While it can be argued that the additional adverse effects of this proposal on park viewsheds is minimal, this argument masks the continued, ongoing deterioration of park scenery. Using existing towers would represent only a marginal addition to the current level of unsightliness caused by telecom equipment clutter. By addressing adverse impacts on viewsheds in this incremental fashion, YNP never assesses the cumulative impact of all its incremental decisions.

The current situation on Mt. Washburn is a case in point. This proposal also entails additional equipment at the summit of Mt. Washburn, where a hiker now comes upon more than 50 telecom antennas and microwave dishes. The AccessParks proposal would add six more microwave dishes to Mt. Washburn, including three on the metal sheath surrounding the historic fire lookout.



Pacific PEER

Public Employees for Environmental Responsibility

Mt. Washburn is one of Yellowstone's most popular hiking destinations because of the stunning panoramic views it offers. Precisely because of this commanding vantage point, telecom companies covet its historic fire lookout as the place to deploy their facilities to maximize signal coverage. Thus, over time, the park has allowed Mt. Washburn, one of its most iconic vistas, to be transformed into a massive, unsightly telecommunications bunker.

Just as YNP has, through permit after permit over the years, mutated Mt. Washburn into an eyesore, with this proposal YNP again is poised to permit an incremental blight on its viewshed. Rather than inflicting death by the proverbial thousand cuts, Yellowstone is sacrificing its scenery to a death by a thousand antennas.

7. No Cost Recovery for Past Park Expenditures

According to the FOIA records PEER has reviewed, Yellowstone has been dealing (almost non-stop) with AccessParks in developing this proposal since January 2018. During this period, records indicate that YNP has not collected a single penny from the company. The constant involvement by several senior officials, including the superintendent, over the past nearly three years has thus far cost the taxpayers the equivalent of hundreds of thousands of dollars. Yet, PEER could find no invoice to AccessParks for all of this YNP staff time.

In Yellowstone's May 28, 2020 press release, one of the bullets is:

“The NPS will recover all costs associated with the application. No government funds will be expended whether the installation is approved or denied.”

This forward-looking language implies that all of the costs associated with the November 2019 AccessParks application, since withdrawn, and other past YNP in-kind costs have been forgiven or waived.

A Department of Interior Office of Inspector General audit issued in July 2019, entitled “The NPS Needs to Improve Management of Commercial Cellular Facilities’ Right-of-Way Permits and Revenues” (Report No.: 2018-WR-011) recommends, as its title implies, that parks should significantly tighten its cost recovery procedures. YNP has apparently not implemented this audit's recommendations.

PEER urges YNP to ensure that ALL costs associated with this application (including staff time for all iterations and pre-negotiations leading up to this application) are fully recovered. Otherwise, YNP's handling of this matter will result in a substantial taxpayer subsidy to the applicant. PEER would also urge that YNP make full cost recovery before issuing any right-of-way.

8. Project Reflects Skewed Priorities



Pacific PEER

Public Employees for Environmental Responsibility

A. Timing

The current proposal and associated public comment period took place during a period of a national emergency caused by a pandemic. During much of this period the park was closed.

Given all of the challenges facing the park during these weeks—and the challenges it will face in future weeks—any proposal involving Wi-Fi should have been tabled, as the park leadership should be occupied with other, far more pressing matters, including ensuring the health of employees, visitors, and gateway communities.

Notably, YNP unveiled the prior AccessParks package and opened public comment last November, near the Thanksgiving holiday. The timing of both these proposals suggests that YNP decision-makers have lost some perspective on the relative importance of this project.

Perhaps this is explained in part by a lot of impatience by, and pressure from, AccessParks as expressed to YNP officials, as evidenced by FOIA documents. However, Yellowstone's priorities should be determined by the public's and not a vendor's interests.

B. Tree Removal

The AccessParks proposal involves use of the CenturyLink passive reflector in recommended wilderness in the Old Faithful area.

In September 2019, again with no notice given to the public, YNP authorized and then executed the removal of approximately 100 lodgepole pines by chain-sawing them down. Not surprisingly, this clearing operation was approved via a Cat Ex.

That Cat Ex document indicates that the removed trees were decades old, sprouting after the 1988 fires.

The Cat Ex states that the reason for removal was that the “radio beam path has become severely degraded over the years due to obstruction from these pines.” The timing for removing these offending trees also suggests that this clearing was done to make this signal pathway better for AccessParks, as well as CenturyLink and the other users of the reflector.

PEER's attempt through FOIA to find out more about this tree cutting has been delayed beyond the public comment deadline on this project. NPS policy requires a formal approval process for the installation of a commercial facility in recommended wilderness, but we have not been able to obtain the records documenting whether this facility complied with NPS policy.

In addition, the AccessParks proposal document posted at PEPC contains a photo simulation with the reflector area redacted, but the legal basis for this redaction is not given.



Pacific PEER

Public Employees for Environmental Responsibility

In any event, the removal of 100 trees from recommended wilderness in a national park to strengthen telecommunication signal strength epitomizes what is wrong with this proposal and the misplaced priorities driving park decision-making.

###