



Public Employees for Environmental Responsibility

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Randy King
Superintendent
Mount Rainier National Park
55210 238th Ave East
Ashford, WA 98304

RE: PEER Comments on 2016 Paradise Cellular Installation

Dear Superintendent King:

On behalf of Public Employees for Environmental Responsibility (PEER), I am submitting the below scoping comments on the proposed 2016 Paradise Cellular Installation in Mount Rainier National Park (MORA). The park is soliciting comments on two right-of-way permit applications from Verizon Wireless and T-Mobile to install and co-locate wireless communications facilities within the Jackson Visitor Center at Paradise.

The coverage maps posted by the Park at National Park Service's Planning, Environment and Public Comment (PEPC) site indicate that these proposed antennas would provide cell coverage not only in the small development at Paradise, but also in parts of the designated wilderness surrounding the area.

For the reasons articulated below, PEER urges that these proposed right-of-way applications be denied.

I. The Cellular Proposal Conflicts with the Very Purpose of This Park

National Park Service (NPS) Management Policy 8.6.4.3 provides that “As with other special park uses, telecommunications proposals must meet the criteria listed in sections 1.4.7.1 and 8.2 to prevent unacceptable impacts. In addition, when considering whether to approve, deny, or renew permits, superintendents will... consider whether the proposal would cause unavoidable conflict with the park’s mission, in which case the permit will be denied.”

Policy 1.4.7.1 defines unacceptable impacts as “impacts that, individually or cumulatively, would:

Be inconsistent with a park's purpose or values, or

Unreasonably interfere with... the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.”

MORA's Foundation Document dated April 2015 describes the purpose of the park as follows:

“The purpose of Mount Rainier National Park is to protect and preserve unimpaired the majestic icon of Mount Rainier, a glaciated volcano, along with its natural and cultural resources, values, and dynamic processes. The park provides opportunities for people to experience, understand, and care for the park environment, and also **provides for wilderness experiences and sustains wilderness values.**” [Emphasis added]

The provision of cellular service as proposed is inherently incompatible with preserving the Park's wilderness character. Verizon has promoted its 4G antennas based on how fast movies and video games can be downloaded and played. (See, e.g., “What is 4G LTE and Why it Matters” at Verizon's website, verizonwireless.com) The first sentence reads:

“It's faster and downloads more pictures, lets consumers watch movies anytime and video chat on-the-go.”

These uses obviously conflict with preserving the “wilderness values” at MORA.

II. Cell Coverage Incompatible with Wilderness Management

A. Preempts MORA's Wilderness Stewardship Plan

In 2015, MORA proposed a Wilderness Stewardship Plan to guide the management of visitor use and enjoyment of the Mount Rainier Wilderness, while preserving its character. The proposed plan and its effects will be analyzed initially in a draft environmental impact statement, to be released at some time in the future. Many other steps will be required on the way to a final plan.

Accordingly, MORA is nowhere near completing its Wilderness Stewardship Plan.

As noted, this cellular proposal at Paradise would have obvious impacts on wilderness experience and values. Thus, it appears to be imprudent for MORA to even consider this cellular proposal before its Wilderness Stewardship Plan is complete.

B. Diverges from Best Wilderness Management Practices

Yellowstone National Park (without a single acre of designated wilderness) has conceded the obvious impacts on its backcountry from cell towers inside the Park. Consider these statements accompanying Yellowstone's Wireless Plan EA FONSI in 2009:

“The plan restricts towers, antennas, and wireless services to a few limited locations in the park, in order to protect park resources and limit the impact on park visitors.”

Further, Yellowstone's FONSI declares:

“Cell phone coverage would not be promoted or available along park roads outside developed areas, or promoted or available in any of the backcountry.”

“... limiting cell service was one of the primary means for the Wireless Communications Services Plan to protect park resources and visitor experience.”

We would also direct MORA officials to examine the stance taken by Maine's Baxter State Park officials, who are charged with keeping that park in a “primitive” state (similar to the requirements for managing federally-designated wilderness). BSP's “Standard Operating Procedures Manual” provides:

17. “Use of Electronic Devices in Baxter State Park: The use of hand-held electronic devices in Baxter State Park has been increasing... The use of these devices, both by staff and Park visitors, has the potential to degrade the ‘forever wild’ nature of the Park and the opportunities the Park is to provide... Park donor Percival P. Baxter stated that the Park is to be a place where we can leave behind ‘the trappings of unpleasant civilization.’”

“To the greatest extent possible, Park staff must work together to educate and encourage Park visitors to experience the Park ‘in the right, unspoiled way.’ Park staff must use prudent and thoughtful judgment in the use of electronic devices in a way that provides effective administration of public service, park operations and resource protection while maintaining the Park as a rustic, primitive and wild place.”

Similarly, BSP's “Policy Statement” on the issue of electronic devices states:

“All levels of Park staff will work to encourage visitors to enjoy the Park without the use of electronic devices and that, if such devices must be used, to consider their use only in such a way that the enjoyment of the wilderness experience by others is not impaired and that electronic devices are not used as a substitute for knowledge, judgment and skill in a remote, wilderness environment.”

C. Violates NPS Director's Order on Wilderness

The proposed right-of-way would send cell signals into designated wilderness. That outcome flies directly in the face of the new Director's Order (#41) on Wilderness Management which provides that “commercial services may be limited to preserve opportunities for primitive recreation or other aspects of “wilderness character.” (§7.3) In addition, that policy directs parks to protect natural soundscapes.

Encouraging people to watch live sports programming or check current activity on Wall Street while backpacking through the wilderness of Mt. Rainier would seem to be the antithesis of protecting the wilderness experience. In short, the proposal facilitates people in the wilderness having access to all of the comforts of their living room or a Starbucks.

D. Violates Wilderness Act Prohibition against Commercial Services

The Wilderness Act contains two explicit references to commercial activity. First, it states that “[e]xcept as specifically provided for in this chapter . . . there shall be no *commercial enterprise* and no permanent road within any wilderness area designated by this chapter. . . .” 16 U.S.C.A. § 1133(c) [Emphasis added].

Second, it states that “[c]ommerical services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the area.” *Id.* at (d)(5) [Emphasis added].

Neither the term “commercial enterprise” nor the term “commercial services” is defined within the Act, and there has been only very limited litigation on the proper interpretation of either phrase. For example, the Ninth Circuit (whose jurisdiction includes MORA) defined the phrase “commercial enterprise” simply as “a project or undertaking of or relating to commerce.” *The Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1061 (9th Cir. 2003), *amended on reh’g en banc in part sub nom. Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 360 F.3d 1374 (9th Cir. 2004).

The NPS has internally defined a “commercial service” as “one that relates to or is connected with commerce wherein work is performed for another person or entity, when the primary purpose is the experience of wilderness through support provided for a fee or charge and when the primary effect is that the wilderness experience is guided and shaped through the use of support services provided for a fee or charge.” National Park Service, *Wilderness Stewardship Reference Manual 41*, Appendix A (2013). Permissible commercial services generally entail the “provision of outfitter and guide services to recreational users.” Craig W. Allin, *Understanding the Wilderness Act of 1964* (2002).

The prohibition on commercial activity is strongly articulated, with only limited exceptions that are specifically articulated within the Act (such as preexisting mining and grazing rights). 16 U.S.C.A. § 1133(c). The Ninth Circuit has also noted that “[t]here is no exception given for commercial enterprise in wilderness when it has benign purpose and minimally intrusive impact.” *The Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d at 1062. This ruling has been interpreted as indicating that there is an “automatic presumption” that a commercial enterprise should be disallowed, in the absence of an affirmative exception permitting its conduct. Katherine Daniels Ryan, *Preservation Prevails over Commercial Interests in the Wilderness Act: Wilderness Society v. United States Fish & Wildlife Service*, 32 Ecology L. Q. 539, 562 (2005). Furthermore, courts have considered the limitations on commercial enterprise to be “one of the strictest prohibitions of the Act.” *Californians for Alternatives to Toxics v. U.S. Fish and Wildlife*, 814 F.Supp.2d 992, 1016 (E.D.Cal.2011); *see also Wilderness Watch, Inc. v. U.S. Fish and Wildlife Serv.*, 629 F.3d 1024, 1040 (9th Cir.2010).

Before permitting commercial activities to take place within a wilderness area, the relevant management agency must make a specialized “finding of necessity.” *High Sierra Hikers Ass’n. v. Blackwell*, 390 F.3d 630, 646 (9th Cir.2004). The ultimate activity permitted may not extend beyond that necessary to “achieve the goals of the Act.” *Id.* at 647.

The installation of cellular antennas and the corresponding spread of cellular coverage into the MORA wilderness is clearly “a project or undertaking of or relating to commerce.” *The Wilderness Soc’y v. U.S. Fish & Wildlife Serv.*, 353 F.3d at 1061. These wireless providers are for-profit commercial enterprises and would have no interest in installing cellular facilities within MORA if they did not seek to use the network to expand options for its paying customers. Nor may MORA argue that it needs cellular coverage in order to “meet minimum requirements for the administration of the area. . . .” 16 U.S.C.A. § 1133(c).

Consequently, approval of these rights-of-way which would spread cellular signals into MORA’s wilderness would be a violation of the Wilderness Act.

III. No Consideration of Soundscape Impacts

By projecting cell signals into the Park’s wilderness areas, the MORA proposal will cause increased noise from visitor use of cellular devices. Thus, approving the proposal would, as noted above, ignore NPS directives that the Park is supposed to protect the natural soundscape.

Moreover, the purpose of the expanded cell coverage is to encourage the use of devices that play music and videos and allow cellphone calls. By their very nature, these devices make sound which is often not just audible but, to some, obnoxious.

As also noted above, other parks have recognized that the incessant chirp of cell phones, downloaded music, and streaming videos, all of which would be enabled by this new cellular facility, have an undeniable impact on park soundscapes. Yellowstone National Park’s 2008 Wireless Plan Environmental Assessment acknowledged these soundscape impacts and contained mitigation measures, such as designated “cellphone-free” zones.

IV. Adverse Public Safety Effects Not Analyzed

As PEER pointed out in our May 16, 2013 letter to you, providing cellular coverage along the road from Longmire to Paradise may pose a distinct threat to public safety. It would just be a matter of time before a distracted driver went right off the mountain along that hairpin road. It is for that reason that Yellowstone officials specifically rejected coverage along its roads. Mount Rainier’s winding roads are far more dangerous than Yellowstone’s.

Similarly, Grand Teton National Park officials have blamed distracted drivers for an increase in deaths of many large mammals each year, and have instituted a special program to reduce such deaths. This impact on wildlife from cell coverage, especially along roadways, is something that merits serious analysis.

Finally in this regard, MORA has already examined and rejected cellular coverage for public safety reasons. After a series of search and rescue incidents within MORA between Dec. 12, 2011 and Jan. 16, 2012 leading to five fatalities, you “requested that a Board of Review be conducted to review investigative material related to all of these mishaps.” The Park issued a report on March 21, 2012 (a copy of which was provided to PEER pursuant to its 2012 FOIA request). On page 7 of that report, the Board made this important observation:

“... the Board acknowledged that in National Parks, unlike commercial recreational establishments (i.e., amusement parks), the NPS mission places a high priority on providing a visitor experience that is not controlled by park management, but strives to provide experiences where nature and wild processes are the primary controlling factors. The Board also recognizes that visitors to the parks have, and in many cases, desire, the freedom and responsibility to make their own choices on where they will go, how well they choose to prepare, and how they plan or safeguard their trip, within the legal constraints of that particular park—this is not the responsibility of government. The Board also recognizes that the numerous variables of environment and weather in a place like Mount Rainier, along with visitor variables including level of training, skills, physical ability, equipment, and judgment make it impossible to expect that all future mishaps on the mountain could be prevented.”

This conclusion remains valid and should be kept in mind if some post hoc public safety argument for approval should arise.

V. Telecommunications Act Does Not Require Approval

Section 704(c) of the Telecommunications Act of 1996 opened the door to cell towers on federal lands. But that law merely required the President to establish procedures for executive agencies to use when considering applications for telecommunications facilities on federal lands. It does not require MORA or any other park to approve a single cellular facility.

The legislative history makes it clear that parks have full authority to reject any proposal submitted. Members of the House Commerce Committee added Section 704(c) to the telecom bill through an amendment on May 17, 1995, and they made it very clear what they had in mind:

“The Committee recognizes, for example, that use of the Washington Monument, Yellowstone National Park, or a pristine wildlife sanctuary, while perhaps prime sites for an antenna and other facilities, are not appropriate and use of them would be contrary to environmental, conservation, and public safety laws.”

MORA’s designated wilderness surrounding Paradise would seem to be such a “pristine wildlife sanctuary” where modern cell coverage would be inappropriate.

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