



National Park Service Rewrite of Policy on Cell Towers **March 22, 2022**

For the past twenty years, the National Park Service (NPS) policy governing the processing of wireless telecommunications facility applications was spelled out in Reference Manual 53: Special Park Uses: Rights-of-Way: Wireless Telecommunication Facilities (Appendix 5, Exhibit 6, Pages A5-43 to A5-61).

In 2017, PEER filed a complaint with the Interior Office of Inspector General (OIG) alleging, among other things, widespread noncompliance by national parks with the requirements of law, such as the National Environmental Policy Act (NEPA) and NPS policy, principally RM-53.

After investigating PEER's complaint, the OIG issued a report ("The NPS Needs To Improve Management of its Commercial Right-of-Way Program" No. 2018-WR-011) that validated PEER's concerns, concluding –

“We also found that NPS needed to improve its management of the commercial ROW program to better comply with applicable laws, regulations, and policies, primarily RM-53... As a result, parks are not in compliance with RM-53 and Federal land may not be protected from environmental impacts.”

Beginning in April 2020, NPS officials in the Trump administration began developing new procedures in this area, ultimately rescinding RM-53 and replacing it with a new policy RM-53B, on January 11, 2021. This new policy development occurred without public notice or involvement.

The former RM-53 and the now current RM-53B differ in the following ways:

RM-53 contained the following “guidance”:

“The superintendent assures proper compliance (for instance NEPA, NHPA, etc.) is accomplished for each WTF application.”

“ROW permits will only be issued for those requests for which there is no practicable alternative and will not result in a derogation of the resources, values and purposes for which the park was established.”

And, perhaps most importantly:

“The public will be given the opportunity to participate fully and comment on applications for right-of-way permits to construct WTF sites on park property.”

Public involvement started with the park’s receipt of an application and continued through the EA process:

“Following a ‘yes’ or ‘maybe’ decision, and no later than 10 days after receipt of the application, the park will perform the following simultaneous actions...mail notice to the park’s list of potential interested parties advising receipt of application, if the park has developed such a list, or by posting a notice of receipt of application for a WTF site in a newspaper of general circulation in the affected area and/or the nearest metropolitan area newspaper. The purpose of this notice is to notify other FCC licensees... and to promote public and local governmental participation...”

After preparation of an Environmental Assessment (EA), the park was supposed to “initiate a 30 day public comment period by posting a notice in the newspapers as above and in the *Federal Register* of availability of the EA for comment...” [NPS considered this *Federal Register* requirement in RM-53 obsolete after rewriting its NEPA Handbook in 2015.]

It is noteworthy that Director’s Order (DO) 53A, the first policy promulgated by NPS in late 1997 to deal with wireless telecommunications facilities, called for two Federal Register notices to alert the public, one at the application stage and one at the EA stage. That DO was repealed in April 2000.

Under RM-53, a “complete” SF-299 application required the following documentation:

- “Maps showing the ‘before’ and ‘after’ levels and signal strength for the proposed WTF [Wireless Telecommunications Facility] site(s).”
- “Maps showing all other WTF sites and their coverage operated by the applicant up to a 15-mile radius (or other distance determined appropriate by the superintendent).”
- “Propagation maps from the applicant showing its proposed buildout of sites within a 15 mile radius of the proposed site within the next five years (or other distance or time frame determined appropriate by the superintendent).”
- “For each proposed site, a schematic site plan and elevations showing the equipment and antennas to be installed, including supporting structures...” and
- “A realistic photo-simulation acceptable to the park depicting what the proposed WTF(s) and access, if applicable, would look like after installation.”

Just nine days before the end of the Trump administration, NPS finalized RM-53B. NPS offered this explanation as to why these changes were necessary:

“The revisions found herein were necessitated by outdated information and guidance that is confusing, inconsistent with best practices and processes, and out of step with current technology...”

The principal changes affected by RM-53B are –

1. Public notice and involvement are now discretionary, as in the following provisions:
 - “Park Guidance and Planning”: If a telecom site plan is prepared: “As a general principle, the public should be included in the planning process and public comments should be solicited.”
 - Among the “pre-contact preliminary actions” to be taken: “Developing a mailing list of the public who demonstrated their interest in this or similar issues over the years. The public should be included in the planning process and given the opportunity to comment when appropriate.”
 - At the application stage, after receipt of the SF-299: “When a request is received by the park for a telecommunications facility, the park should consider notifying other telecommunications companies authorized to serve the park... The park should also consider whether notification or civic engagement (see Director’s Order #75A) with the public is appropriate, regardless of the level of public notification required by environmental compliance (see Director’s Order #12 and the NPS NEPA Handbook). Civic engagement typically occurs prior to any NEPA public involvement. Installation of telecommunication sites in NPS units is often of interest to the public, and some public notice or civic engagement may be appropriate, especially if expanding service into new areas of the park.”

This change is significant because in approving new or expanded WTFs, the NPS often evades the public notice provisions of NEPA (by issuing a Categorical Exclusion) and NHPA (with a finding of “no adverse effect”). By contrast, RM-53 reminded NPS of its obligation to allow the public to “participate fully and comment on applications for right-of-way permits to construct WTF sites on park property.”

2. Key material is no longer required for a “complete” SF-299:

Among other excisions, these two sets of information are no longer required to be publicly disclosed:

- ✓ "Maps showing all other WTF sites and their coverage operated by the applicant up to a 15 mile radius (or other distance determined appropriate by the superintendent)”; and
- ✓ "Propagation maps from the applicant showing its proposed buildout of sites within a 15 mile radius of the proposed site within the next five years (or other distance or time frame determined appropriate by the superintendent).”

Also no longer required are balloon tests, though the park may request “further materials and studies later, including balloon tests (to assist with signal tests and visibility questions) and further analyses of the impacts of any radio signals.”

Paradoxically, RM-53B continues RM-53’s requirement that, “To reach a decision on the request, the Superintendent should have all of the following documentation in the decision file...

“A managerial finding that the activity will not impair park resources, values, or the purposes for which the park was authorized; is not incompatible with the public interest (or the appropriate standard required for issuance, if there is park-specific legislation); and that there is no practicable alternative to siting the infrastructure in the park. If these standards are not met, the application must be denied.”

However, it is unclear how a Superintendent can determine whether there is “no practicable alternative” to a proposal without knowing of the applicant’s other infrastructure in the area and its plans for the years ahead.

3. The new “Administrative Appeal” section leaves out the public:

RM-53B provides that : “Not all the decisions made by the National Park Service are going to be viewed favorably by the applicant, right-of-way permit holder, or the public. What follows is a broad outline of the appeal process...”

In response to a question as to whether an appeal from a member of the public was possible, Glacier National Park’s Finding of No Significant Impact (FONSI) for its Telecom EA declared:

“The appeal process from RM 53B pertains to the permit applicant. RM 53B does not include a provision for the public to appeal a decision on an NPS ROW permit application.”

4. Modifications to Existing Permits need not require additional NEPA

RM-53B provides –

“A request to amend a permit may require NEPA and other compliance before a decision is made by the Superintendent.”

This discretionary language suggests that antennas and other infrastructure could be expanded or moved without any public notice. At Mt. Washburn in Yellowstone National Park, for example, additional cellular antennas and microwave dishes have been added regularly since 1996. The total number of antennas now on top of Mt. Washburn number between 50 and 60. Yellowstone has yet to release the exact figure.

5. Applications can now be received from not just FCC licensees (as per the Management Policies of 2006), but also wi-fi companies and tower companies.

The NPS Management Policies of 2006 (Section 8.6.4.3) provide that, “Superintendents will accept an application for a telecommunications site only from a Federal Communications Commission licensee or from an agency regulated by the Department of Commerce...”

RM-53B ignores that language and opens the door to applications from many more companies, such as wi-fi and tower companies including start-ups with no demonstrated track records.

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