



Public Employees for Environmental Responsibility

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October 27, 2017

Ms. Mary Kendall
Deputy Inspector General
U.S. Department of Interior
1849 C Street, NW
Mail Stop 4428
Washington, DC 20240

Re: Request for Performance Evaluation and Financial Audit of National Park Service Cellular Tower Approvals

Dear Ms. Kendall:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to request that your office review National Park Service (NPS) approval of commercial cellular and wireless facilities within park units. Our review of NPS performance indicates that national parks are often approving these commercial facilities –

- In violation of federal laws to protect environmental and historical resources on parklands;
- In utter disregard of NPS policies and rules to govern this process;
- Under circumstances which forfeit revenues owing to the federal treasury;
- In derogation of important national park values for conservation of scenery, natural soundscapes, and the ability of visitors to commune with nature; and
- In the almost complete absence of public notice or involvement.

Request

In our view, this is a multi-faceted problem in a highly decentralized agency. PEER requests that your office approach these issues in a holistic fashion and conduct –

1. A comprehensive review for compliance with law and NPS policy;

2. A financial audit of revenue collected and uncollected, as well as to determine whether those funds are properly allocated to the U.S. Treasury; and
3. An analysis to develop recommendations for ensuring proper official oversight and meaningful public involvement.

Preface

PEER believes that the systemic approach we have outlined is necessary because of three inter-related dynamics:

First, cellular companies are increasingly seeking placement of their commercial facilities inside national parks in order to spread their coverage areas (a factor often cited in their television and radio ads). In addition, due to the advent of 4G (Fourth Generation) signals requiring greater bandwidth, telecom companies want to upgrade and expand equipment and services even where they existed previously. Consequently, more commercial carriers are reaching out to more parks, even parks largely consisting of designated wilderness, such as Olympic and Mt. Rainier.

Second, NPS exercises little oversight over the telecom programs of individual parks. Tellingly, NPS does not even know which parks have cell towers, how many and where they are located. Further, NPS takes no apparent steps to ascertain whether its policies are followed in individual parks or to take superintendents to task for noncompliance.

Third, individual park superintendents and their staff often have no training in, and a poor understanding of, the relevant laws, NPS policies, and how the approval process is supposed to function. This weakness is compounded by the lack of public notice and involvement in which these factors can be illuminated and considered.

The net result of these factors is that the telecom companies functionally make all of the decisions about location, height, design, and signal coverage. This industry dominance means that park scenery, soundscapes, and serenity values are often needlessly sacrificed. It also means that these companies take financial advantage of unprepared park managers.

Rationale

To underline how thoroughgoing the breakdowns in this process have become we point to Yosemite National Park. While not atypical, Yosemite exhibits nearly every aspect of the failures a national park can encounter.

Documents obtained by PEER under the Freedom of Information Act (FOIA) indicate that Yosemite –

1. Lacks a Management Structure

Over the years, Yosemite has approved construction of six cellular towers. The park claims that it owns four of the towers, a stance that would put this national park into the telecom business.

Park management does not know who owns one tower and believes that Verizon owns the sixth tower, according to emails we obtained.

Both Verizon and AT&T have made apparently illegal transfers of towers and rights-of-way to third parties.

In addition, there is confusion about rental income collected by Verizon from companies co-locating on these towers.

Moreover, Yosemite National Park has approved all of these facilities with Special Use Permits carrying nominal fees. From 1996 onward, Yosemite should have issued right-of-ways (ROWs) which allow consideration of market value. Further, Park emails indicate that there is some concern about companies' delinquency in paying even these Special Use Permit fees.

We believe that Yosemite was alerted to the need for ROWs by the PEER FOIA asking for copies of them. Consequently, Yosemite is now scrambling to issue at least 14 new ROWs.

Until they are finally drafted, however, we cannot compare what Yosemite has been collecting versus the current fair market value of these ROWs. Yosemite "just received the appraisal report" for Verizon's Yosemite sites (according to a September 15, 2016 park e-mail to a Verizon contractor). As a result, we do not know whether Yosemite will finally start collecting the current fair market value of Verizon's and the other companies' ROWs. Nor do we know how much revenue has already been lost to the U.S. Treasury.

2. Appears to Have Violated Federal Law

The two laws at issue are the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

With respect to NEPA, in 2010 the Park completed an Environmental Assessment (EA) for a "Parkwide Communications Data Network." Two points about this EA:

- 1) Some of Yosemite's towers had already been constructed by the time this EA was done; and
- 2) This EA explicitly excluded cellular matters.

Nonetheless, the Park continued to "tier" off this inapplicable EA as it approved more cellular installations.

In addition, the Park issued inappropriate Categorical Exclusions (Cat-Ex) from NEPA, such as approving a wholly new tower under a Cat-Ex for "Upgrading or adding new overhead utility facilities to existing poles, or replacement poles which do not change pole line configurations."

The NHPA violations were even more blatant. For example, Yosemite Valley, a National Historic Site, contains unsightly cell equipment installed without the proper historic resource review. Instead, Park officials repeatedly self-certified compliance with NHPA without required consultation with the California State Historic Preservation Office.

Finally, documents show that Yosemite officials repeatedly self-certified compliance with both

statutes despite flagrant non-compliance.

3. Completely Disregards NPS Policies

Besides the absence of ROWs, the Park ignored the requirements of NPS Reference Manual (RM) 53, which stipulates that companies file a SF-299 application for cellular facilities with the park containing –

- ✓ Maps showing the “before” and “after” service levels and signal strength for the proposed wireless telecommunication facility (WTF);
- ✓ Maps showing all other WTF sites and their coverage operated by the applicant up to a 15 mile radius;
- ✓ 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;
- ✓ Schematic site plans and elevations showing the equipment and antennas to be installed; and
- ✓ Realistic photo-simulations depicting what the proposed WTFs would look like after installation.

This process was absent in every Yosemite cell tower approval.

In addition, the Park had no documents reflecting its compliance with NPS policies protecting soundscape and scenery.

Finally, Yosemite did not even comply with its own “Guidelines for the Siting, Design, Construction and Operations of Wireless Telecommunications Facilities.” It is unclear why Yosemite developed these park-specific guidelines if it had no intention of paying any attention to them.

4. Blocked Public Involvement

NEPA Fundamentals (p. 12 of the NEPA Handbook of 2015) provide: “Public involvement is a key component of the NEPA process. The White House Council on Environmental Quality regulations require agencies to “encourage and facilitate public involvement to the fullest extent possible in making decisions...”

Similarly, NHPA (through the Section 106 regulations) emphasizes early public input: “The agency official shall ensure that the section 106 process is initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process.”

Further, RM-53 (Page A5-51) also requires that following receipt of the SF-299 application, the Park must provide notice to “other Telecommunication companies and other interested parties.” In addition, notice must be sent to the Park’s “list of potential interested parties” (if the Park has

one), or to “a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper.”

Needless to say, no effective notice to the public has been provided by Yosemite throughout this process. We learned about this stream of Park actions only by examining documents obtained under FOIA.

Without public notice, there is also no opportunity for public oversight. The absence of that oversight has helped facilitate the above-described violations of law and policy as well as potential financial losses to the taxpayer.

Conclusion

We hope that the scope of the problems we have outlined convinces your office of the need to undertake both a performance review of this process and a financial audit to determine if revenues are properly allocated. We also believe that unless your office recommends management reforms to prevent recurrence of abuses, they will continue.

PEER has extensive documentation of these deficiencies at Yosemite, as well as similar problems at a number of other national parks. Should you choose to conduct this review, we will make arrangements to transmit the volumes of documents we have collected on all these parks that underline these concerns.

Thank you for your consideration of this matter.

Sincerely,

Jeff Ruch
Executive Director