

SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES NEAR NATIONAL SCENIC TRAILS

RESOLUTION

WHEREAS, Congress has designated specific National Scenic Trails, for “conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass;”¹

WHEREAS, Congress has recognized the rapid technological advancements in wireless telecommunications services, and has acknowledged the importance of promoting the development and swift deployment of new technologies including wireless networks, and has set forth a strong national policy that favors uniform access to telecommunications services across the country, including rural areas;²

WHEREAS, the President has directed the Federal government, as a matter of policy, to encourage the “efficient and timely implementation of such new technologies and the concomitant infrastructure buildout” consistent with the “protection of natural and cultural resources;”³

WHEREAS, the National Environmental Policy Act (“NEPA”),⁴ as implemented by the Federal Communications Commission, requires telecommunications providers to consider the environmental impact of their facilities, except those actions which the Commission has determined do not have a significant environmental impact;

WHEREAS, the siting of wireless telecommunications facilities near National Scenic Trails requires a fair and reasonable consideration of both the needs of the public who rely on dependable wireless telecommunications services, and the public’s desire for conservation and management of the United States’ natural and cultural resources, its federal lands, and its National Scenic Trails;

WHEREAS, consultation and coordination between the wireless telecommunications industry and Managing and Supporting Trail Organizations (“MSTO”) at the earliest possible stage in the site planning process can avoid significant delays in the site approval process, particularly delays resulting from “eleventh-hour” siting conflicts between the Applicant and the MSTOs;

WHEREAS, CTIA is the international trade association of the wireless telecommunications industry representing both wireless carriers and manufacturers, and has consistently been in the forefront on antenna siting issues;

WHEREAS, PCIA is the international trade association representing providers of personal communications services (PCS), paging and messaging services, and fixed wireless services, as well as site managers and manufacturers. PCIA has worked to foster a fair and reasoned approach to the development of the facilities necessary for full- fledged competition in the wireless industry;

WHEREAS, the MSTOs are non-profit organizations responsible for the establishment, management, and/or maintenance of the National Scenic Trails in cooperation with the Federal government, and the American Hiking Society is a national nonprofit organization dedicated to promoting hiking and to establishing, protecting and maintaining foot trails in America;

WHEREAS, the parties wish to formulate and implement voluntary guidelines that will facilitate notice and cooperation when wireless telecommunication facilities are proposed to be sited near National Scenic Trails in accordance with the principles set forth in the National Trails System Act,¹ Section 704(c) of the Telecommunications Act of 1996,² the Executive Memorandum of August 1995,³ and the Federal Communications Commission’s procedures implementing the National Environmental Policy Act of 1969.

NOW, THEREFORE, CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION (“CTIA”), PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION (“PCIA”), APPALACHIAN TRAIL CONFERENCE, CONTINENTAL DIVIDE TRAIL ALLIANCE, FLORIDA TRAIL ASSOCIATION, ICE AGE PARK AND TRAIL FOUNDATION, NORTH COUNTRY TRAIL ASSOCIATION, PACIFIC CREST TRAIL ASSOCIATION, POTOMAC HERITAGE TRAIL COORDINATING COUNCIL, and AMERICAN HIKING

SOCIETY on behalf of the Natchez Trace National Scenic Trail (the "MANAGING AND SUPPORTING TRAIL ORGANIZATIONS" or "MSTOs"), which are the Parties, hereby resolve to work in a cooperative spirit and use their best efforts to implement the following guidelines for voluntary early notification of the siting of wireless telecommunications facilities near National Scenic Trails.

IN WITNESS WHEREOF, this Resolution has been executed on October 5, 1999, and is effective upon execution.

Jay Kitchen, President
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
500 Montgomery Street, Suite 700
Alexandria, VA 22314
TEL 703-739-0300, FAX 703-836-1608, e-mail KitchenJ@PCIA.com, www.pcia.com

Thomas Wheeler, President
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1250 Connecticut Avenue, Suite 800
Washington D.C. 20036
TEL 202-785-0081, FAX 202-887-1629, e-mail Twheeler@ctia.org, www.wow-com.com

David Startzell, Executive Director
APPALACHIAN TRAIL CONFERENCE
799 Washington Street, P.O. Box 807
Harpers Ferry, West Virginia 25425-0807
TEL 304-535-6331, FAX 304-535-2667, e-mail info@atconf.org, www.atconf.org

Bruce Ward, Director
CONTINENTAL DIVIDE TRAIL ALLIANCE
P.O. Box 628
Pine, Colorado 80470
TEL 303-838-3760, FAX 303-838-3960, e-mail CDNST@aol.com, www.CDTrail.org/

Richard Schuler, President
FLORIDA TRAIL ASSOCIATION
P.O. Box 13708
Gainesville, Florida 32604-1708
TEL 352-378-8823, FAX 352-378-4550, e-mail fta@florida-trail.org, www.florida-trail.org

Christine Thisted, Executive Director
ICE AGE PARK AND TRAIL FOUNDATION
207 East Buffalo Street, Suite 515
Milwaukee, Wisconsin 53202
TEL 414-278-8518, FAX 414-278-8665, e-mail cthisted@sbtsi.com, www.iceagetrail.org/

Robert Papp, Executive Director
NORTH COUNTRY TRAIL ASSOCIATION
49 Monroe Center, Suite 200B
Grand Rapids, Michigan 49503
TEL 616-454-5506, FAX 616-454-7139, e-mail NCTAssoc@aol.com, www.northcountrytrail.org

Robert Ballou, Executive Director
PACIFIC CREST TRAIL ASSOCIATION
5325 Elkhorn Boulevard, #256
Sacramento, California 95842
TEL 916-349-2109, FAX 916-349-1268, e-mail trails@pcta.org, www.pcta.org

David Lillard, President
AMERICAN HIKING SOCIETY
1422 Fenwick Lane
Silver Spring, Maryland 20910
TEL 301-565-6704, FAX 301-565-6714, e-mail mmsloan@americanhiking.org, www.americanhiking.org

Harry Belin, President
POTOMAC HERITAGE PARTNERSHIP
1623 28th Street, NW
Washington D.C. 20007
TEL 202-338-6222, FAX 202-333-6733, e-mail PHP1623@aol.com

GUIDELINES FOR VOLUNTARY EARLY NOTIFICATION FOR THE SITING OF PROPOSED WIRELESS FACILITIES NEAR OR ON NATIONAL SCENIC TRAILS

I. Acknowledgements

- A. The Parties acknowledge that the goal of the wireless telecommunications industry is to provide seamless wireless coverage across the United States, that the goal of the trails community is to protect the natural experience and resources of the National Scenic Trails, and the Parties' joint goal is to facilitate dialogue and cooperation when a wireless telecommunications facility may be sited near a National Scenic Trail. The Parties further acknowledge that by working together, it may be possible to find solutions that permit reliable wireless telecommunications coverage without sacrificing the values embodied in the National Scenic Trails.
- B. The Parties acknowledge that achieving seamless wireless telecommunications coverage is a component of the national policy to encourage rapid deployment of wireless telecommunications to the entire nation, including rural areas. The Parties acknowledge that having such seamless and reliable coverage, including coverage near National Scenic Trails, provides important benefits for those using the trails, including ready and reliable access to emergency, law enforcement, and public safety services as well as other government and commercial services that use radio communications. The Parties further acknowledge that seamless and reliable wireless service coverage generally requires the siting of wireless telecommunications facilities according to reasonable and objective technical criteria.

II. Implementation of Voluntary Guidelines

A. Voluntary Early Notification

Wireless telecommunications carriers and site management companies ("Applicants") are strongly encouraged to contact the appropriate Managing and Supporting Trail Organization ("MSTO") as early as possible in the siting process. If an Applicant or other entities propose to site a wireless telecommunications facility within one mile of a National Scenic Trail, then the Applicant will voluntarily notify the MSTO of the applicable National Scenic Trail no later than five business days after filing a siting application with the applicable local, municipal, or state authorities. A "notification" includes the geographic coordinates identifying the location of the proposed wireless facility site, and its height above ground. The notification may contain the name of the governmental body which will handle the application, and the description of the entire facility, including accompanying structures, access roads, antennas and other attachments. The geographic coordinates and other commercially sensitive information disclosed in the "notification" are subject to the Confidentiality provisions set forth in Section V.C. of this Resolution. The voluntary notification envisioned in this Subsection can help the wireless industry and the MSTOs avoid potential conflicts.

B. Review and Comment after Notification

The MSTO will have 15 business days after receipt of notification to review and comment to the Applicant on the probable impact(s) of the proposed wireless telecommunications facility within one mile of a National Scenic Trail. During the 15-business day period for review and comment, the MSTO will consult with trail and hiking organizations that are the primary users of the relevant National Scenic Trail. If there are extenuating circumstances in which the MSTO may need additional time for review and comment, the MSTO should contact the Applicant as early as possible during the 15-business day period. The MSTO and the Applicant should then reach a mutually agreeable period of time for extension of the review and comment period.

C. Guidance by Managing Trail Organization

Based on an objective analysis of the evidence, the MSTO will advise the Applicant if the proposed wireless telecommunications facility may have a significant visual impact on the National Scenic Trail. Such analysis may include whether or not a proposed facility would be visible from specified points on or near a National Scenic Trail footpath, during the various stages of foliage, and at various times of day. It may also include reasonable suggestions as to how visual impacts might be reduced, and whether a proposed facility would have significant individual or cumulative impacts detectable from the Trail. Generally, this analysis will not encompass broad environmental issues; rather the analysis offered by the MSTO should normally be limited to the potential visual impacts a proposed facility would have from the vantage of persons physically situated on a National Scenic Trail. The MSTO will provide this information in writing no later than 15 business days after receipt of notification, except when there are extenuating circumstances as provided in Section II.B. of this Resolution.

1. If the MSTO advises the Applicant that the proposed facility will have no significant visual impact on the National Scenic Trail, this determination establishes a presumption that visual issues related to the proximity of the proposed facility to a National Scenic Trail are resolved and the Applicant may proceed with other aspects of the permitting process.
2. If the MSTO advises the Applicant that a proposed wireless telecommunications facility may have a significant visual impact on a National Scenic Trail, representatives of the MSTO and the Applicant will use good faith efforts to address the possibility of mitigating such impact(s). These efforts may include, but are not limited to, recommendation and consideration of alternative locations for the proposed facility, recommendation and consideration of other existing or planned support structures, and/or recommendation and consideration of modifications to the design of the facility that may mitigate impact(s) yet maintain the necessary coverage area and quality of the signal.
3. If the MSTO and the Applicant are successful in developing alternative solutions that will: (a) mitigate impact(s) to the relevant National Scenic Trail in a cost effective manner for the Applicant, (b) maintain the necessary coverage area, and (c) maintain the quality of the signal, the Applicant may proceed with other aspects of the permitting process. Such resolution establishes a presumption that visual issues related to the siting of the proposed facility and the National Scenic Trail have been addressed to the satisfaction of the MSTO, the relevant trail and hiking organizations which primarily use the National Scenic Trail, and the Applicant.

D. Time Limitations for Resolution of Outstanding Issues

1. In the event that the MSTO recommends that alternative solutions would be necessary, the time frame for the respective parties to reach an understanding on a mutually acceptable solution should not be expected to exceed 15 business days, with this period to begin at the time the MSTO provides the Applicant its determination of whether, in its opinion, the proposed facility may have a significant visual impact.
2. If, at the end of the 15-business day period established for resolution of outstanding issues, the MSTO and the Applicant cannot reach a mutually acceptable solution and the Applicant has tried to address the substantive concerns of the MSTO, the Applicant would be expected to proceed with its plans to build the facility. Such plans would entail ensuring that any and all federal, state, and local requirements are met, and the MSTO would likewise be free to pursue its rights and remedies so that these requirements are met. During the 15-business day period, the Applicant and MSTO may submit voluntarily to alternative dispute resolution.

E. Certification Letter

1. Should the MSTO and the Applicant reach a mutually acceptable solution on a proposed facility or an alternate arrangement that would entail the construction of a facility at an

alternate location or in a revised configuration, in accordance with the resolution of issues as set forth in Section II.C., the MSTO will provide the Applicant with a letter of certification indicating that such issues have been addressed to the satisfaction of the MSTO and the Applicant. In the letter of certification, the MSTO shall include a list of the relevant trail and hiking organizations that were consulted during the early notification process.

2. The Applicant may use the letter of certification to support its application before the local, municipal or state zoning authority and before the Federal Communications Commission. If the Applicant desires to elicit an additional letter of certification from the Federal agency administering a particular National Scenic Trail, the MSTO may facilitate these discussions. Even though such Federal agencies may have no direct authority over wireless facilities located on non-federal land, such agencies do have environmental expertise which may be persuasive to the Federal Communications Commission, or to local authorities.
3. A letter of certification indicates that the MSTO and the Applicant have satisfactorily resolved their respective concerns and viewpoints. However, there is no explicit or implied requirement in this Resolution that an Applicant must have a letter certification in order to meet any and all federal, state, and local requirements for approval of the facility.

III. Scope of the Voluntary Guidelines

A. Proposed Sites Within One Mile Of A National Scenic Trail

The voluntary guidelines are applicable to proposed sites for wireless telecommunications facilities that are within one mile of a National Scenic Trail. Reference in this document to the location of a "National Scenic Trail" refers to the centerline of a Trail's existing or planned footprint.

B. Existing Wireless Telecommunications Facilities Within One Mile of A National Scenic Trail

Existing wireless telecommunications facilities that have been constructed prior to the effective date of the Resolution and that are within one mile of a National Scenic Trail are not subject to these guidelines. However, planned modifications to existing structures that would entail an overall increase in height above ground level of the structure and any attached appurtenance of 25 feet or more or that would require new or additional FAA-directed aviation lighting measures would be subject to the guidelines.

C. Collocated Facilities

Applicants are encouraged to collocate facilities when it is technically and economically feasible to do so. Efforts to collocate any wireless base stations, antenna, transmitters, equipment on an existing support structure or within the footprint of an existing telecommunications compound are not subject to the early notification process, except under the following circumstances:

1. Applicant proposes to erect a new antenna support structure within the footprint of an existing telecommunications compound;
2. Applicant proposes to increase the height above ground level of the structure and any attached appurtenance more than 25 feet;
3. The proposed height of any new or existing building or equipment shelter within the perimeter of an existing telecommunications compound or fenced area would exceed the height of any existing building or shelter located in the compound or fenced area; or
4. The proposed structure would require any new or additional FAA-mandated aviation lighting measures.

D. Modification or Replacement of an Existing Structure

A proposal to modify or replace an existing structure or to affix an antenna to an existing structure, with no increase in height or substantial alteration of its design or appearance, is not subject to the early notification process, except if:

1. The structure was constructed after the effective date of this Resolution, and
2. The structure has not been the subject of any early notification to the appropriate MSTO or its designated agent.

E. Definition of Telecommunications Compound

For the purpose of this Resolution, a telecommunications compound is the area of land, immediately surrounding a telecommunications structure or tower, which is designated for the exclusive use of the wireless carrier or tower company or their customers. Any building or shelter used by the carrier or tower company or their customers to house telecommunications equipment is located within the compound. Many compounds are surrounded by a secure fence. The footprint of a fenced compound would be the area located within the secure fence. The footprint of an unfenced compound would be the smallest circular area, surrounding the tower or structure, which could encompass the building and shelters needed for the use of telecommunication service providers who use the structure.

F. Proposed Sites on Federal Lands and Within One Mile of a National Scenic Trail

The guidelines are not applicable to proposed sites on federally owned land. In the event that a proposed site falls within one mile of a National Scenic Trail, and the proposed site is within land areas owned by a Federal agency, the Federal agency's procedures governing the siting of wireless telecommunications facilities supersede these guidelines. At the request of an Applicant, the MSTOs may facilitate discussions between the Applicant and the Federal agency.

G. When Early Notification Is Unnecessary

Proposed sites that are more than one mile from a National Scenic Trail are outside the scope of this Resolution. Under certain circumstances, MSTOs and Applicants may find it mutually beneficial to have a cooperative working relationship on proposed sites that are more than one mile but less than four miles from a National Scenic Trail, particularly when constructing new or expanded towers 200 feet or higher above ground level which require lighting. While the signatories to this Resolution strongly encourage the formation of such alliances, the MSTO and the Applicant are not obligated to do so.

IV. Failure To Provide Early Notification or To Act in Good Faith

Applicants who fail to provide early notification may be precluding full and fair consideration of environmental issues in the local permitting process.⁵ In the event that Applicants fail to provide early notification as set forth in Section II.A., or if Applicants do not use good faith efforts to address the significant visual impact that a wireless telecommunications facility may have on a National Scenic Trail, the MSTO reserves the right to request that the appropriate Federal agency(ies), including the Federal Communications Commission ("FCC"), require further environmental review to ensure consideration of potential visual impacts to the affected National Scenic Trail. After the 15-business day period, the MSTO may also submit this type of request if the MSTO and the Applicant cannot agree on steps to eliminate or mitigate the impact to the Trail. Such requests may be submitted to the FCC in accordance with Sections 1.1307(c) and 1.1313 of Title 47 of the Code of Federal Regulations.

V. MSTO Database and Designated Officials

A. Establishment and Availability of Database

1. MSTOs will voluntarily establish a database that delineates the location of the National Scenic Trails covered under these guidelines. The MSTOs will be responsible for the database which is subject to the availability of funds.
2. In the event that wireless carriers and site management companies encounter discrepancies or inconsistencies in the data, the MSTO will work with the carrier or site management company to clarify and resolve any confusion or disagreement about the validity of the data.
3. The database will be made accessible to wireless carriers and site management companies for the purpose of siting wireless telecommunications facilities. Individual wireless carriers and site management companies should access the database early in the siting process to determine whether a proposed facility would fall within one mile of a National Scenic Trail. The database should be consulted as early as the research and identification of a "search ring" by the applicant but no later than filing of a siting application.
4. Wireless carriers and site management companies will not be charged a fee to access the database. However, wireless carriers, site management companies, and wireless telecommunications industry organizations may wish to offer financial or technical assistance, on a strictly voluntary basis, to individual MSTOs to ensure that accurate data is available and accessible to companies exploring the possible development and construction of wireless facilities near National Scenic Trails.
5. The database shall be updated as more accurate information becomes available. Digital mapping of all National Scenic Trails may not be immediately available. In addition, part of the National Scenic Trails may be relocated as better recreational or scenic opportunities arise. Accordingly, the database will be updated to reflect such relocations. Furthermore, parts of the National Scenic Trails do not exist on the ground yet. As those sections are planned or built, the MSTOs shall provide updated information for the database.

B. Designation and Duties of MSTO Officials

1. Each MSTO will designate an official(s) within its organization to address issues relating to the siting of wireless telecommunications facilities in proximity to National Scenic Trails. The official will be the contact person for early notification and will be responsible for interacting with Applicants, local trail and hiking organizations, and local zoning and permitting authorities. However, an MSTO may arrange for the American Hiking Society to act as its agent for the early notifications.
2. When the MSTO is notified by an Applicant, the designated official in each MSTO will be responsible for providing Applicants with details on the type of information it considers in its Section II.C. analysis of whether a proposed siting may have a significant visual impact on the National Scenic Trail.
3. The official should have a basic understanding of wireless technology and should seek the appropriate technical expertise, if necessary, to assist the MSTO in determining whether the proposed site will have a significant visual impact on the National Scenic Trail.
4. The MSTOs will compile at least annually a list of the designated official(s) for their respective National Scenic Trails, including directions for transmitting the early notifications. This list will be published annually and provided to CTIA and PCIA for dissemination to their members.

C. MSTOs' Treatment of Applicant's Confidential and Proprietary Information

Under certain circumstances, the MSTO may request technical and marketing information from a wireless carrier or site management company that may be confidential and proprietary information. The MSTO shall protect such information from disclosure to third parties, using the same degree of care used to protect its own confidential and proprietary information of like importance, but in any case using no less than a reasonable degree of care. While the MSTO may disclose such information to their employees and volunteers who have a need to know, these employees and volunteers are bound to protect the received confidential and proprietary information from unauthorized use and disclosure.

VI. Dissemination of Information and Outreach

- A. The Parties will disseminate the guidelines set forth in this Resolution to their respective memberships in a timely manner and in the media they deem appropriate. Such media may include, but are not limited to, print, audio, electronic media, interactive media, or internet website. Any party wishing to issue a press release or similar notice to the public regarding these guidelines will consult with other parties referenced in the press release or public notice.
- B. Notwithstanding Section VI.A., CTIA will include the guidelines in its training materials and seminars on antenna siting issues in a manner it deems appropriate and will encourage its members to do the same. PCIA will also reference the consensus guidelines in relevant informational and educational literature it provides to its members and will, as appropriate, include this information in seminars and other forums addressing siting and environmental matters.
- C. CTIA and PCIA will work with MSTOs and the American Hiking Society to develop the best possible training tools for implementing the guidelines for voluntary early notification. Training tools may include manuals and/or videos, subject to availability of funds.

VII. Withdrawal of Petition

In consideration of the wireless industry's voluntary early notification, the MSTOs and the American Hiking Society agree to withdraw without prejudice their Petition for Clarification of the Federal Communications Commission's rules governing NEPA compliance with respect to all wireless facilities within one mile of a National Scenic Trail. However, all Parties to this Resolution reserve the right collectively or individually to petition the Federal Communications Commission with respect to the category of actions which fall within Section IV of this Resolution.

VIII. Amendments

This Resolution may be amended with the consent of all the signatories. Such Amendments may include the addition of other components of the national trails system, including National Historic Trails.

¹ National Trails System Act, as amended, 16 U.S.C. § 1242(a)(2) (1998).

² Telecommunications Act of 1996, Pub. Law 104-104, 110 U.S. Stat. 152 (1996). *See also* H.R. CONFERENCE REPORT No. 104-458, at 113; 1996 U.S.C.C.A.N. 124; H.R. REP. NO. 103-111, 1993 U.S.C.C.A.N. 580, 581 ("promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas").

³ Executive Memorandum of August 10, 1995, Facilitating Access to Federal Property for the Siting of Mobile Service Antennas, 60 Fed. Reg. 42023 (Aug. 14, 1995).

⁴ National Environmental Policy Act, 42 U.S.C. § 4321 et. seq. (1998).

⁵ See In the Matter of Implementation of the National Environmental Policy Act of 1969, Report and Order, FCC 97-1042, 49 FCC 2d. 1313, 1329 (1974). The FCC reiterated these remarks when it amended its NEPA rules in 1986. See Amendment of Environmental Rules in Response to New Regulations Issued by the Council on Environmental Quality, Report and Order, FCC 79-163, [60 RR2d 13], n. 17 and accompanying text.