



United States Department of the Interior

NATIONAL PARK SERVICE

Shenandoah National Park
3655 U.S. Hwy. 211 East
Luray, Virginia 22835-9036

IN REPLY REFER TO:

PARK DIRECTIVE NO. PARK MGMT - 505

Subject: Wireless Telecommunication Facilities

INTRODUCTION

This document gives the background and sets forth Shenandoah National Park's Wireless Telecommunication Facility (WTF) policy and the procedures that will be followed in review of requests for WTF sites in Shenandoah National Park (SHEN).

BACKGROUND

An August 10, 1995, Executive Memorandum from the President directed the heads of all departments and agencies to facilitate access to Federal property for the purpose of siting mobile services antennas.

On February 8, 1996, the President signed the Telecommunications Act of 1996 (47 U.S.C. 332). Section 704[©] of the Act requires the President to develop procedures by which Federal departments and agencies may make available Federal properties, rights-of-way, and easements for wireless telecommunication services.

On March 29, 1996, GSA issued a notice in the Federal Register (61 FR 14100) of general procedures for implementing the provisions of Section 704[©] of the Act. These general procedures, together with the Executive Memorandum, are applicable to all Executive departments and agencies.

In Director's Order #53A of December 1, 1997, the NPS Director stated that "The NPS will follow the requirements and intent of the Act, the Executive Memorandum and the GSA procedures, while also recognizing its responsibility for complying with provisions of the National Park Service Organic Act, the National Environmental Policy Act (NEPA), the National Historic Preservation Act of 1996 (NHPA), and other statutes applicable to the operation of units of the National Park System."

Procedures applicable to permitting WTF sites in units of the National Park System are set forth in NPS-53, Rights-of-Way guidelines, Appendix 8.

POLICY

SHEN's WTF policy is based on the premise that we will comply fully with laws and statutes, and with NPS procedures. Its objective is to guide discussions/negotiations towards achievement of mutual interests.

- SHEN will encourage co-location where possible.
- Right-of-way permits will only be issued for those requests for which there is no feasible and prudent alternative and will not result in a derogation of the resources, values and purposes for which the park was established.
- SHEN will not issue any new right-of-way permits or widen or lengthen any existing rights-of-way for WTF sites in designated wilderness areas, in Historic Districts, or in Natural Heritage Areas. SHEN will not issue any new right-of-way permits or widen or lengthen any existing rights-of-way on undisturbed areas for WTF sites unless archeological surveys demonstrate no impact on archeological resources. This includes the installation of utilities to support WTF sites.
- SHEN will not issue right-of-way permits for additional WTF sites that will affect the historic views from the Skyline Drive.
- SHEN will only accept applications for a WTF site from a Federal Communications Commission (FCC) licensee authorized to provide the service.
- 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.
- SHEN will assure proper compliance (for instance NEPA, NHPA, etc.) is accomplished for each WTF application.. Compliance will be performed by park staff, but the data gathering needed for the compliance process, including a balloon test to assist in the analysis of visual impacts, may be performed by a contractor under park staff oversight. The applicant is responsible for payment of all compliance costs.

OVERVIEW

The following is a brief overview of the WTF application and permitting process. All SHEN personnel who are involved in any part of this process must follow the procedures and meet the timelines detailed in this section.

PRE-APPLICATION

- All inquiries related to this subject will be referred to the Long-Term Special Park Uses Coordinator (SPUC) in the Superintendent's Office. He/she will gather information from the potential applicant and will advise them of the requirements and information the park would need. He/she

will schedule a meeting(s) with the potential applicants and involved park staff--if possible prior to the receipt of an application.

For details related to what should occur during the pre-applications process, see Attachment A, and for what must be included in an application, see Attachment B.

RECEIPT OF WRITTEN APPLICATION (60 day clock starts!)

The park must notify the applicant in writing of the preliminary decision on the application (yes, no, or maybe) prior to day 60 after receipt. The 60-day clock does not start until the application is deemed complete by the park.

- The park has 10 days from receipt of an application to notify the applicant, in writing, whether the application is complete. The park SPUC will coordinate review by appropriate park staff [including Division of Natural and Cultural Resources (DNCR) staff, to initiate preliminary NEPA and NHPA review] of the application and will draft the notification for the Superintendent's signature.
- The park SPUC will send the required copy of the application material to Field Operations Technical Support Center (FOTSC), Attention: Chief of Radio Frequency Management.
- Upon determination that the application is complete, the SPUC will prepare the notice that SHEN must publish within 10 days in the Federal Register and local area newspapers, advising of the pending application and requesting public comment. The comment period shall be 30 days.
- The SPUC will coordinate park staff analyzation of comments received from the public and staff.

For detail as to what is involved in this initial application review, see Attachment C.

POST APPLICATION

- The SPUC will set up a meeting with the applicant and appropriate park staff to discuss and review what will be required to process the application, including costs (see Attachment E) and time estimates.
- The SPUC will complete a PCF and forward it, along with relevant information in the application to the Chief of Natural and Cultural Resources to formally initiate the NEPA and NHPA compliance processes. These processes must be completed before a right-of-way permit is finalized. (The NEPA and Section 106 processes may trigger another public comment period.) The compliance process will determine

whether or not "no derogation" or "mitigatable derogation" of park resources, values or purposes will occur.

- Additional surveys and/or data may be required based on NEPA and Section 106 review.
- If the NEPA and Section 106 reviews have determined that "no derogation" or "mitigatable derogation" of park resources, values or purposes will occur, the SPUC will coordinate the review of all materials to assess "no derogation" or "mitigatable derogation" of park resources, values or purposes.
- The SPUC will draft a right-of-way permit with copy to be sent to involved park staff for comment, then to the applicant for comment.
- Applicant and staff comments will be reviewed by involved park staff, and, if approved, the right-of-way permit prepared and finalized by the SPUC.
- If the application is approved at the park level, the SPUC will draft a cover memo for the Superintendent's signature and send the right-of-way permit to the Regional Director for approval and signature, following review by the Superintendent and Assistant Superintendent.

For details, see Attachment D.

Approved:

Douglas K. Morris

2/11/00

Douglas K. Morris
Superintendent

Date

ATTACHMENT A

Initial Contact

Once a park has been contacted by an FCC licensee authorized to provide a wireless communications service, the park must inform the Licensee of the requirements of applicable laws, NPS policy, procedures, and 36 CFR Part 14 for obtaining a right-of-way permit. In addition, the potential applicant should be advised that information submitted in applications for rights-of-way are subject to disclosure under the Freedom Of Information Act (FOIA). All applicants must advise the park whether they consider any of the protected information containing trade secrets or confidential, commercial, or financial information exempt from disclosure under FOIA. The park, after review of the material claimed for protection from public disclosure, may request a justification from the applicant to assist the Superintendent in making a decision pursuant to the FOIA.

The park would discuss proposed sites with the licensee to determine which zones, areas, locations, and types of installations are likely to not result in a derogation of park resources, values and purposes.

The park would review the location of existing utility systems and roads. If utility service and access to the proposed site is already in existence, the park must consider what additional impacts the proposed use might cause and the possibility of additional utility rights-of-way needed. If access to the proposed site is not in existence, the park must evaluate what impact construction of an access road connecting existing roads with the proposed site would have, as well as the required additional utility services. The potential applicant should be made aware that the NPS decision process considers the full footprint of a WTF site: the tower-antenna-base structure facilities; the access road required for construction and service; and the supplying power and telephone lines. Since only a small portion of the park has been archeologically surveyed, new roads, utilities and other ground-disturbing activities will require a Phase I archeological survey to determine potential impacts to archeological resources. Should any of these disparate parts be found to cause unmitigatable impacts, the entire application would be denied.

The park would provide an estimate, to the extent possible, of the anticipated timetable for processing a right-of-way application and permit if the WTF site is approved. An estimate should also be provided, if possible, of the anticipated costs, including the land and/or facility use fee required pursuant to 36 CFR Part 14. A formal appraisal or comparability determination, however, should wait for receipt of an application for the use.

If the requested use is to place an antenna on an existing tower already under NPS permit (co-locate), then the applicant must first obtain permission, in writing, from the existing permittee. After such permission has been obtained, the applicant must then apply for a separate right-of-way permit from the NPS. A copy of the written permission shall be attached to the formal application.

ATTACHMENT B

Application Form

Receipt of a completed application is the first formal notice that the applicant is requesting use of park property. The park must use "STANDARD FORM 299 APPLICATION FOR TRANSPORTATION AND UTILITY SYSTEMS AND FACILITIES ON FEDERAL LANDS" as their application form. The information or requirements listed below are fundamental for all applications.

- Full description of the requested land or facility use in the park, including proposed number of sites, types of sites, equipment and antennas (including structures) to be located at each site, required new (or modification of existing) electrical and telephone service for each site, location of the sites in the park, and existing or proposed roads to be used for access to the proposed site.
- Maps showing the "before" and "after" service levels and signal strength for the proposed WTF 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, connections to telephone and electrical service, and how the applicant will access the site for construction (with a list of construction equipment to be used) and ongoing maintenance.
- Copy of the FCC license authorizing the applicant to provide wireless telecommunications services for that area, along with a map showing the boundaries of the authorized service area and the relationship of that area to the park's boundaries.
- Payment of the one time application fee required pursuant to 36 CFR Part 14 (minimum fee \$250.00 for WTF sites), and submitted with the completed application.
- A realistic photo-simulation acceptable to the park depicting what the proposed WTF(s) and access, if applicable, would look like after installation.

ATTACHMENT C

Initial Application Review

Once an application has been received, the Superintendent will take the following actions within 60 days of receipt of the completed Application and the application fee:

- Develop an administrative record documenting all work related to review of the application. Include all prior contacts with applicant if relevant.
- Determine that the application is complete and so notify the applicant in writing. If the application is not complete, or the application fee is not enclosed, the application is either returned in whole to the applicant to be resubmitted with the missing information or fee, or the applicant is notified of and requested to supply the specific missing information. The park has 10 days from initial receipt of the incomplete application to return the package to the applicant for re-submittal, or notify the applicant of the specific missing material. Once the park receives a resubmitted package from the applicant, the park has 10 days to review such information and notify the applicant that the package is now complete. The 60 day clock will not start until the park determines that the application is complete.
- Within 10 days of receipt and acceptance of a complete application, the Superintendent will: a) post a notice of receipt of application for a WTF site in a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper and in the Federal Register; b) mail notice to the park's list of potential interested parties, if the park has developed such a list; c) advise local governments of the pending application; and d) contact and send a copy of the application to the Chief of Radio Frequency Management, FOTSC, Denver, to initiate a technical review. Such notices shall provide a 30 day comment period. The FOTSC review will be completed within 10 working days of receipt of such notice, to determine if the proposed use will conflict with communications facilities and technologies.
- The Superintendent may make an initial estimate of administrative costs involved and discuss payment schedules with the applicant.
- The Superintendent will, concurrent with the Federal Register and public notification, initiate the collection of data to identify potential impacts to resources, and public use. The purpose of this action is to determine the obvious presence or absence of derogation of resources, values or

purposes for which the park was established, and to prepare for compliance actions that may be required to make this determination.

- If the park determines that more applications for a particular WTF site have been received than can be accommodated at that location without a derogation of park resources, values or purposes, then the park may conduct a sealed bid process using the applicable GSA or other procedures to select the applicant(s) who will then be allowed to submit the additional compliance documentation to obtain a right-of-way permit.
- Upon receipt of public comments and staff evaluation, the Superintendent will make a preliminary determination and advise the applicant in writing and prior to expiration of the 60 day period, that the requested use is: approved; or denied; or will require further evaluation to comply with legislation and regulation.
 - If the review of the application to date is unable to resolve outstanding questions within the initial 60 day time frame, then the Superintendent notifies the applicant in writing that the application will require further study to resolve these questions. The Superintendent invites the applicant to meet and identify future requirements, actions, and the estimated time frame to accomplish this.
 - If the application is denied, the administrative record must support that determination. The letter of denial must include the relevant portions of the administrative record detailing reasons for the denial, state that the applicant may appeal the park's decision, and include the name and address of the official to whom the appeal should be sent.

At the end of the 60 day period, the park has completed the first phase of the process as directed by the GSA procedures. If the application is not denied, the park must meet with the applicant to discuss the next steps in the process.

ATTACHMENT D

Post Application Phase

The second phase of the permitting process begins with a meeting between the applicant and the park. At this meeting the park describes any further compliance, mitigation, or other issues that must be completed prior to issuing a right-of-way permit. Tentative time frames and projected administrative costs should also be explained. The remainder of the right-of-way process, as described in Appendix 8, is followed. There still remain certain points unique to WTF sites that are needed to complete the parks evaluation, and if appropriate, may be used as permit conditions.

- Documentation as to how the applicant will prevent the proposed WTF site from causing interference with other existing sites operated by the Service or other private parties, either in or adjacent to the park.
- A study prepared by an independent licensed electrical engineer calculating the non-ionizing electromagnetic radiation (NIER) which will result from the proposed WTF site (each site for multiple-site applications), and also the total NIER for co-location sites or the site in combination with nearby sites, and a statement comparing these figures and stating that the proposed facility will meet applicable NTIA standards for reducing radiation hazard to a harmless level. Note that if the proposal is approved, the resultant right-of-way permit should require that the actual NIER should be measured by an independent licensed electrical engineer after the wireless communications facility site(s) has commenced operation. A copy of the study described above, as well as any resultant reports, must be sent to the FOTSC, Denver files.

In addition, the park must continue to compile the administrative record, documenting all work related to the application and the decision process.

ATTACHMENT E

Fees and Charges

The policies and procedures found in NPS-53 Chapter 7, Management of Permit Fees, and Appendix 8, Rights-of-Way, apply to permits for telecommunications facilities. Because of the special nature of these facilities, there may be additional factors to consider. The applicant shall be responsible for:

- All costs associated with review and approval of the initial application package including but not limited to the FOTSC review, and all costs involved in posting and review of the public announcement and Federal Register notices.
- The NPS recognizes that Service and/or public benefits may result from authorizing the use of park lands for WTF sites. The decision to approve or disapprove an application should not, however, be based on such potential benefits. Benefits such as real property or air time, proposed by an applicant, would be treated as donations, and must be in addition to full payment of all fees and cost recovery (i.e., cannot be used to offset fees and/or charges).
- At the discretion of the Superintendent, costs of review and processing may be collected from the applicant at any time during the process, for instance up front, during the approval process, or prior to execution of the right-of-way permit by the Regional Director. These costs include but are not limited to those for the comprehensive assessment (if applicable), the appraisal or comparability study, all compliance, and other costs required by the park associated with permit determination and issuance.
- The facility and/or land use fee for the right-of-way permit required by 36 CFR Part 14 must be determined and the applicant provided with that figure. In determining the facility and/or land use fee, parks should bear the following in mind:
 - The Service is required to determine the fair market value fee for use and occupancy of NPS facilities and/or lands. While it may be appropriate for a park to accept information on comparable fees from an applicant, (as well as other sources), the final determination of fees is solely the responsibility of the park and should reflect fair market value.
 - Parks may determine the facility and/or land use fee using sound business management principles, including but not limited to appraisal, or comparability with similar uses within the surrounding area, such as by using annually updated USFS RENT SCHEDULE FOR

COMMUNICATIONS USESA (FR 68074 Dec. 30, 1997). If more than one of the above methods is employed to determine the fee, the higher figure will always be used.

ATTACHMENT F

The ROW Permit

The authority for issuing right-of-way permits for telecommunication purposes is found in 16 U.S.C. 5. Requests for WTF sites will be treated the same as those for any other right-of-way in the park in that they are subjected to the same scrutiny for derogation of resources, values and purposes, including NEPA and cultural resource compliance. There are, however, major differences between WTF and other utility rights-of-way. These include the technical review and approval required by the Chief of Radio Frequency Management, Field Operations Technical Support Center (FOTSC), Denver, and the possible addition of a separate access to the site for purposes of construction and operation.

The terms and conditions of right-of-way permits for WTF sites, in addition to those listed in Appendix 8, will also reflect the Service's objectives for such sites, including but not limited to:

- creating the maximum potential for future co-location; requiring stringent visual and other mitigation measures;
- maximizing use of existing park utilities and infrastructure precluding any other use or sub-permitting by the applicant;
- incorporating the best practices of other Federal, state, and local agencies in approving such sites on public lands;
- listing of specific resource protection measures and possible mitigation for the required access road to the WTF site as well as additional utilities needed to service/supply the site.
- contain a provision that it will be terminated in the event of the expiration, transfer, or revocation of the permittee's FCC license for provision of the WTF service.

The term of the permit will be for no more than 10 years or the remaining term of the applicants FCC License, as applicable. The Superintendent may recommend to the Region a waiver to lengthen the term of the permit upon request from the applicant. Such recommendation may, among other things, be based upon consideration of the cost of the facility, its useful life, impacts on visitor use, and long term affects on and/or loss of the use of park land. Both request and decision must be in writing and recorded in the administrative record.

A draft copy of the right-of-way permit, especially the conditions, should be given to the applicant for comment. The legal description must include the access corridor as part of the WTF site footprint.

Once all compliance documentation has been reviewed and approved, the park has completed its final review of the submitted facility documentation, and is in agreement with the applicant on all of the terms and conditions of the draft right-of-way permit, the park will prepare the final right-of-way permit to be signed by the applicant. If there have been no changes from the standard form right-of-way permit pre-approved by the Solicitor's Office, then no further legal review will be required. If, however, circumstances have required deviations from the standard form, the permit will require Solicitor's Office review.

The park will originate a minimum of four original copies of the right-of-way permit and have each signed by the applicant. These four signed copies, along with a cover memorandum requesting approval of the WTF site(s) and permit, the signed approval from FOTSC, a copy of all signed NEPA and NHPA compliance documents and all other approving documentation, are then forwarded to the Regional Director for approval and signature.

After execution of all four original copies of the right-of-way permit by the Regional Director, one original copy is returned to the permittee, the park Superintendent, and the Chief of Radio Frequency Management, FOTSC, Denver. The fourth copy is kept at the parks/regions central files, depending on that protocol. Once signed by the Regional Director, the right-of-way permit is in effect and construction may begin. The park will manage the permittee's construction of its WTF site(s) according to the park and Service's standards.