



Office of the People's Counsel District of Columbia

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Elizabeth A. Noël
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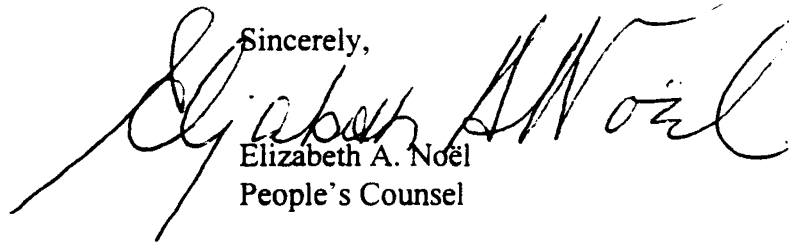
July 1, 1998

Adrienne Coleman
Superintendent, Rock Creek Park
National Park Service
3545 Williamsburg Lane, N.W.
Washington, D.C. 20008

Dear Ms. Coleman:

Please find enclosed for filing an original and one copy of the Office of the People's Counsel's Preliminary Comments on Bell Atlantic Mobile Inc's Applications for Access to National Park Service Property for Siting of Mobile Services Antennas.

Sincerely,



Elizabeth A. Noël
People's Counsel



Herbert H. Jones, III

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ZONING COMMISSION

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ZONING COMMISSION
District of Columbia
CASE NO.01-02
EXHIBIT NO.32

**BEFORE THE
NATIONAL PARK SERVICE
NATIONAL CAPITOL REGION
ROCK CREEK PARK
WASHINGTON, D.C.**

In re Applications of	)
	)
Bell Atlantic Mobile, Inc.	)
	)
for Access to National Park Service	)
Property for Siting of Mobile	)
Services Antennas	)

**PRELIMINARY COMMENTS OF THE
OFFICE OF THE PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA**

Pursuant to the Public Notice issued by the National Park Service ("NPS") (63 Fed. Reg.100) (1998), and on behalf of the people of the District of Columbia and the users of the services of Bell Atlantic, District of Columbia Office of the People's Counsel ("OPC"), submits these Preliminary Comments with respect to the above captioned applications of Bell Atlantic Mobile, Inc. (" **Bell Atlantic**" or "**BAM**").

In its Applications, Bell Atlantic has requested approval from the National Park Service ("NPS") to "construct operate and maintain wireless telecommunications sites within Rock Creek Park" at the William Fitzgerald Tennis Center and the Rock Creek Maintenance Facility. The application specifies construction of two (2) towers and equipment buildings for cellular telephone

"cell sites." The proposal calls for the construction of an antenna structures between 78 feet to 100 feet high at the tennis center, and a 100 foot high monopole at the Maintenance Center. The installations will occur in the District of Columbia in Wards 3 and 4.

For the reasons set forth below, OPC submits that Bell Atlantic has failed to provide NPS with sufficient information and details regarding the scope, extent and potential impact of the project. As a result, NPS has been unable to provide adequate and sufficient notice to the public, including D.C. residents in the adjacent communities. Further, Bell Atlantic's failure has rendered NPS unable to develop a full and complete record upon which it may render a decision based upon substantial evidence in the record. OPC submits that NPS should require BA to file additional information in this case. Thereafter, NPS should develop a procedural schedule and procedures to ensure meaningful public participation.. Specifically, OPC submits that NPS should: notify the public what procedures will be used to evaluate the BAM applications and then utilize those procedures to fully develop a record for evaluation of the BAM applications. In support of its position, OPC submits the following:

I. BAM Should Be Directed to Provide Additional Information to Support its Applications

There are many unanswered questions about the procedures which will be applied to the review of the BAM applications. Because of these unanswered questions, and the short period of time between the public notice of the applications and the comment filing date, interested members of the public have been unable to conduct a full and substantive review of the BAM applications. OPC requests that the public be given an adequate and meaningful opportunity to comment on the BAM applications after BAM has filed further information

about the applications to NPS, and after NPS has provided the public with a preliminary evaluation of the applications.

The truncated nature of the notice and comment period effectively impedes the public's ability to fully explore and evaluate the potential impact of the proposal. Nonetheless, even at this early juncture, certain threshold questions arise. Accordingly, OPC submits for NPS' consideration the following questions and observations concerning the applications:

1. Is all construction in beds of existing driveways? See Maintenance Yard Application, Response 7. Does any construction impact previously undisturbed land?
2. What "testing" was done to confirm that existing cell sites outside the park do not provide the needed coverage? See Maintenance Yard Application, Response 13c. BAM should be required to produce for public examination information on the tests and their results.
3. Will additional sites in the park be needed? See Maintenance Yard Application, Response 15.
4. What additional construction will be required if additional carriers choose to use the sites? When are additional carriers expected to begin to use the sites? See Maintenance Yard Application, Response 15.
5. What consideration has been given to the effects on the environment and health of the adjacent population?
6. Who are the principal users or beneficiaries of the sites? See Maintenance Yard Application, Response 16. Will the primary users or beneficiaries be non-

District of Columbia residents commuting through the park?

7. What consideration, if any, has been given to the “safety factor” including increased insurance rates, associated with accidents or near miss accidents that will occur when drivers dial telephone numbers or are engaged in telephone conversations, barreling down Rock Creek Park and maneuvering through D.C. street in wards 3 and 4.

8. BAM makes numerous conclusory statements about the lack of adverse environmental, health or aesthetic impacts without providing any documentation or studies to support those conclusions. Specifically, BAM should be directed to provide documentary support for its assertions in Response 17 of the Maintenance Yard Application that: (a) the impact on the surface of the land will be limited, (b) soil stability will be preserved, c) impact on vegetation will be minimal, if at all, and restoration and mitigation measures will be addressed by the applicant where feasible and practical.

9. In the Maintenance Yard Application Response 17, BAM fails to make any statements concerning the potential visual impacts of the application. The proposed tower will be 100 feet high, and the failure of the application to discuss the visual impact on District residents living adjacent to the park and on other park users is a serious deficiency in the application.¹

10. BAM does not mention the radio frequency (“RF”) emissions which will be transmitted by the cell sites. What are the potential health impacts of the RF

¹OPC has cited only the Maintenance Yard Site application above, however, the comments, in general, are also applicable to the Fitzgerald Tennis Center Site application.

emissions from the cell sites? BAM should provide documentation to support any response to this question.

II. NPS Should Adopt Procedures for Review of the BAM Applications Which Will Provide for Full Analysis and Public Comment on the Applications

On June 26, 1998, OPC sent a letter to NPS explaining that a number of civic organizations and community groups have approached OPC regarding the process for review of the BAM applications. OPC explained that, although OPC has reviewed the Director's Order #53: Wireless Communications, OPC has been unable to glean important information about the procedures which will be used to evaluate the BAM applications.

OPC has been orally advised by NPS that a public hearing will be held to review the BAM application. OPC stated in its letter that no information has been provided concerning the planned public hearing, and that the following unanswered questions impede D.C. citizens' opportunity to respond to the BAM applications:

1. What will be the date of the public hearing?
2. How much time in advance will the public be notified of the public hearing?
3. How will the public be notified of the public hearing?
4. Will there be an alternate date?
5. Will there be an education forum or seminar in advance to educate the public regarding the issues involved?
6. Where will the hearing(s) be held?

7. Was the public notified of the extension of time from May 26 to July 1 to file comments?
8. If no notice of the extension was provided, will additional time be allowed for parties to file comments?
9. Will parties be provided time to present expert evaluations of Bell Atlantic Mobile's proposals?
10. What type of hearings will be held?
 - a. Will the proceedings be formal or informal?
 - b. Will parties be allowed to cross-examine Bell Atlantic Mobile's witnesses?
 - c. Will parties be allowed to present their own expert witnesses?
 - d. Will parties be allowed to file briefs and/or proposed findings of fact and conclusions of law?
11. When will the formal record close?
12. What is the date by which all testimony and transcripts from public hearings must be received by your office for consideration before both your initial determination and final decision?
13. Is the date by which all public hearings must be held different from the date by which a community brief must be submitted for your consideration?
14. Other than the 30-day comment period and 60-day initial evaluation, what are the other relevant dates and deadlines involved?
15. What is the date by which the NEPA and NHPA studies and evaluation of other applicable laws and regulations will be completed?

16. Require BAM to make copies of the Applications available in the D.C. Public Libraries.

17. The Order states that the Superintendent, together with the applicant(s), will develop an estimated time-frame for when the final decision will be made on the application. How will residents of the neighborhood in which these towers are proposed be included in the development of the time-frame for the final decision?

18. The organizations and community leaders that have contacted OPC want to know, in your view, what is the application of the Administrative Procedure Act, 5 U.S.C. Sec. 551, et. seq., to your review of the BAM applications. In other words, does the Director's Order incorporate the requirements of the Administrative Procedure Act?

NPS should consider the issues raised above and establish procedures which will afford the public an opportunity to fully review, analyze and comment upon the BAM applications.²

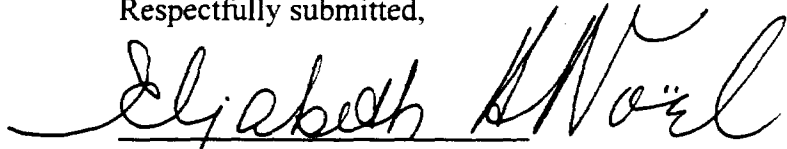
III. Conclusion

OPC has demonstrated that NPS should establish procedures for review of the applications which will allow additional public input and the opportunity to consider the questions raised by the applications. The NPS procedures should, at a minimum, provide an opportunity for the public to hear BAM's description and justification for its applications, review all of the underlying documentation for the applications, question BAM's representatives concerning the applications,

²Counsel for OPC has been orally advised by NPS that additional opportunities will be provided for substantive comment. OPC submits that such opportunities should be specifically identified in the procedures adopted by NPS.

review the NPS preliminary assessment of the applications, present expert analysis of the BAM applications and NPS preliminary assessment, and to offer proposals with respect to ultimate disposition of the applications. Absent such procedures, the NPS will not have an adequate record and will not be able to establish a reasonable basis for grant of the applications.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth A. Noel", written over a horizontal line.

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July 2, 1998