



October 17, 2002

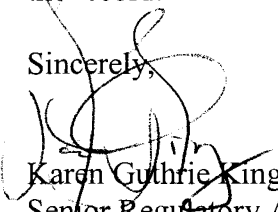
Zoning Commission Office
Alberto P. Bastida, Secretary
441 4th St. NW
Suite 210
Washington, DC 20001

Re: Presentation Material – Case 01-02 Text Amendment- Regulation of
Antennas, Antenna Towers, and Monopoles.

Dear Secretary Bastida:

AT&T Wireless, Cingular Communications, Nextel Communications, Sprint
Communications, T-Mobile Communications, and Verizon Wireless respectfully request
that the attached memorandum to the Zoning Commission be provided to the Zoning
Commissioners prior to today's hearing and that a copy of the document be entered into
the record.

Sincerely,


Karen Guthrie King
Senior Regulatory Advisor

MEMORANDUM

TO: Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, NW
Suite 210 South
Washington, DC 20001

FROM: AT&T Wireless, Cingular Communications, Nextel, Sprint Wireless, T-Mobile, and Verizon Wireless

CC: D.C. Zoning Commission

DATE: October 17, 2002

SUBJECT: Zoning Commission Case No. 01-02/Text Amendment—Regulation of Antennas, Antenna Towers and Monopoles

Background

At the June 6, 2002, meeting of the Zoning Commission, the Office of Planning (“OP”) presented to the D.C. Zoning Commission its Preliminary Report and the Proposed Text Amendments regarding the District’s Municipal Ordinance governing antennas, antenna towers and monopoles. This memorandum sets forth the significant concerns of the wireless industry (AT&T Wireless, Cingular Communications, Nextel, Sprint Wireless, T-Mobile, and Verizon Wireless, collectively the “providers”) stemming from the Office of Planning’s Report and Proposed Text Amendments.

As providers of wireless communications services, the wireless industry must be responsive to the expanding coverage needs of District residents, businesses, emergency personnel, and visitors by providing them with robust and ubiquitous wireless coverage from one end of the District to the other. At the same time, the wireless industry also appreciates the unique aesthetic and historic attributes of the District of Columbia and is mindful of the need to protect the visual integrity of, and minimize the impact of wireless facilities on, the District’s neighborhoods.

In recognition of these concerns, the wireless industry has sought to work cooperatively with the Office of Planning’s Antenna Regulations Review Group by providing input and submitting proposals that allow for industry flexibility in the provision of services while also addressing aesthetic and other concerns. Despite industry’s active participation in the Review Group, the resulting recommendations from the Office of Planning do not reflect the providers’ substantive input on wireless technology and business practices, nor do they contemplate the changing and expanding nature of wireless services.

The OP’s proposals are unnecessarily burdensome, unreasonably restrictive, and could negatively impact the efforts of the wireless providers to expand the coverage and

quality of wireless service to District residents, businesses, visitors and emergency personnel. Specifically, the regulations would needlessly restrict the ability of wireless providers to “co-locate” wireless facilities on existing structures, to utilize “stealth” techniques to minimize the visual impact of facilities, and to adequately deploy and upgrade facilities in response to consumer demand. Moreover, many of the provisions are of questionable enforceability given the provisions of the federal Telecommunications Act of 1996.

Simply put, many of the proposals set forth in the OP’s Report and Proposed Text Amendments are unnecessary and misdirected; the existing regulations governing the siting of wireless facilities (particularly antennas, about which there has been precious little controversy) are functioning extremely well to protect the District’s historic areas, federal property, and community aesthetic considerations.

Wireless Usage in the District is Exploding

Despite its potentially dilatory effect on wireless service in the District, the OP Report to the Zoning Commission specifically states that “the purpose of the regulations is to... accommodate the growing demand for telecommunications facilities and antennas.” Accordingly, in crafting the zoning policy that will govern wireless facility siting in the District for the foreseeable future, the Zoning Commission should consider the changing nature of wireless service and applications.

Currently, over 66% of the District’s residents are wireless subscribers,¹ ranking the District of Columbia as one of the highest wireless penetration rates in the nation. Nationally, over 128 million Americans subscribe to wireless service,² and a new subscriber is added every two seconds.³ By 2007, 80 percent of U.S. households will use wireless phones.⁴ Among current wireless subscribers, the average U.S. household has 1.8 wireless telephones.⁵ The District’s wireless industry is currently struggling to provide the system capacity to keep up with the increasing demand for its services.

Not only are more people subscribing to wireless service, existing users are increasing their wireless minutes of use because the nature of wireless service is evolving, as new service plans and applications allow customers use their phones in new ways. The average monthly minutes of use per subscriber has tripled in the past three years from 128 minutes in 1998 to 385 in 2001.⁶

More people are using their wireless phones at home to save local or long distance costs. The Yankee Group, a market research firm that tracks the wireless communications industry, estimates that 41% of all residential-based phone minutes will be spent on wireless phones by 2005, up from 11% in 2000.⁷ In fact, 5% of Americans have cancelled their home phone service altogether in favor of their wireless phones⁸ and 18% of wireless users regard their wireless phones as their primary phone.⁹

In addition to consumer and business applications, wireless communications play an integral role in reporting accidents, fires, and other emergencies. In 2001, there were over 57 million wireless emergency calls made to 911 operators.¹⁰ 50% of 911 calls are now wireless. If a wireless system is at capacity, the 911 caller may get a busy signal, or

worse, have his call dropped. Wireless antennas are the lifeline of a responsive 911 service, as has recently been demonstrated in response to September 11th and the recent area sniper attacks.¹¹

New services such as third generation wireless (3G) as well as new wireless data applications, such as wireless LAN and broadband wireless Internet access, will only increase the providers' need to expand their networks to keep up with rising consumer demand. Wireless Internet use is growing dramatically, quadrupling from 2.5 to 10 million subscribers in a single year between 2000 and 2001.

In 2000, the wireless industry spent over \$18 billion to upgrade equipment to meet the growing demand for wireless service.¹² The upgrade of wireless systems continues as demand outstrips the capacity of the networks thus requiring additional antennas. While very few wireless antenna towers, if any, will be built in the District over the next five years, carriers will need to expand their antenna sites.

Given these trends in the provision of wireless service, the "Purpose" section of the Office of Planning's proposed text amendment should reflect the dynamics of the changing wireless industry. This section of the amendments explains that the rationale for the District's regulation of antenna towers and monopoles stems from their possible adverse effect on the "health, welfare, or safety of the population." Moreover, the provisions state that such structures have tremendous visual impact which may "detract from the streetscapes, landscape, skyline, scenic beauty or aesthetic interests of" the District as the Nation's capital.

Despite the OP's recognition in its report that one of the stated goals of the regulations is to "accommodate the growing demand for telecommunications facilities and antennas," the proposed regulations are completely silent on the issue of consumer demand. The providers respectfully submit that the language of the text amendment itself should recognize the importance of robust wireless coverage to District wireless consumers who seek expanded coverage (including coverage in their homes) for an increasingly diverse range of wireless services. Accordingly, this section of the text amendments should include additional "purpose" provisions that address the expanding nature of consumer and business demand for wireless service throughout the District.¹³

The regulations will unreasonably restrict co-location of wireless facilities on existing structures and the utilization of "stealth" techniques to minimize the visual impact of facilities.

Due to the topography and development of the District, wireless carriers provide wireless coverage typically by co-locating on buildings and other existing structures rather than erecting new wireless antenna towers or monopoles. These co-location opportunities not only reduce the visual impact of wireless facilities and lessen the need to add additional towers in the District, they also provide a revenue source for private and government structure owners.

Co-location has been embraced by communities nationwide as a way to facilitate wireless coverage with minimal impact on surrounding communities. In fact, most

communities offer an incentive to the applicant to site on such structures through a by-right approval process and expedited zoning reviews. The regulations proposed by the Office of Planning stand in sharp contrast to this national trend by greatly restricting the ability of wireless operators to “co-locate” wireless facilities on existing structures such as ball field light stanchions at schools and parks, utility poles and structures, and buildings.

Location of wireless antennas on existing utility poles provides carriers with additional siting opportunities that take advantage of existing structures. The Office of Planning’s text amendments originally contained a provision allowing carriers to collocate on existing utility poles and structures. Locating microcells on small utility poles (as well as running monopoles up the middle of larger utility distribution structures) may become an increasingly attractive option for carriers with the advent of third generation (“3G”) services. The Zoning Commission should allow collocation on utility structures as a matter of right to encourage providers to take advantage of existing structures.

Stealthing allows the wireless industry increased flexibility to provide District residents with the coverage they desire, while simultaneously addressing aesthetic concerns. Consequently, stealthing should be permitted as a matter of right, so long as the structure complies with certain requirements, including height, width and set-back requirements. Any proposed stealth structure that does not comply with the minimum requirements would be required to seek special exception approval from the Board of Zoning Adjustment.

The OP’s recent proposed limitation on stealth structures is confusing in its application and, by seemingly limiting the number of stealth applications in the District, effectively eviscerates the incentive (matter of right treatment rather than special exception) to providers to employ stealth techniques. Moreover, the definition of stealth structures should include stadium lighting arrays; otherwise, the proposal unnecessarily eliminates an entire category of effective stealthing options for carriers.

Additionally, the “Purpose” section of the proposed text amendments should be amended to include additional subsections that encourage co-location and stealthing to minimize the visual impact of wireless facilities.¹⁴

The regulations will unreasonably restrict wireless providers’ ability to adequately deploy and upgrade facilities in response to consumer demand.

Although not reflected in the proposed text amendments offered by the Office of Planning, the Antenna Committee engaged in numerous discussions on the subject of tower replacement.

The providers assert that the text amendments should encourage carriers to replace existing towers and monopoles by allowing replacement as a matter of right, so long as the structure design and size is not substantially altered or increased. The Office of Planning maintained throughout the Antenna Committee process that, because District citizens will want a public hearing for any new monopole or tower construction—

including replacement towers—such replacement structures should be required to go through the special exception process.

This is a critical issue for the industry since, under the text as currently written, a replacement tower would be treated in all respects as a new tower and its application could be rejected. Tower replacement is also a safety issue for the District—carriers should be able to replace aging or unstable towers absent the specter of denial through the special exception process. By not including a provision that allows carriers to replace towers as a matter of right, the District would be creating a disincentive to replace towers due to safety concerns. Accordingly, replacement of existing towers should be allowed as a matter of right.

The provisions of the proposed text amendments that reference RF emissions are of questionable enforceability given the provisions of the federal Telecommunications Act of 1996.

Despite the Office of Planning's acknowledgement in its hearing report that "local municipalities cannot set RF standards in excess of those established by the FCC," many provisions of the proposed text amendment amount to thinly-veiled attempts to regulate antennas, towers and monopoles based on the health effects of RF emissions. In fact, the Office of Planning's text amendments include a variety of requirements and restrictions stemming from RF emission concerns, including certification of FCC Compliance (Section 2602), antennas on a roof that has outdoor recreation space (Section 2605.1(f)), and antennas directed into adjacent building windows (Section 2606.1(f)).

RF health and safety concerns permeate the Office of Planning's proposed text amendment, particularly in regard to carrier certification. As a practical matter, inherent incentives exist for carriers to maintain RF emissions below FCC-adopted guidelines because they face disciplinary action by the FCC and can even lose their licenses if they operate at greater power than authorized or if they are found responsible for and fail to correct radio frequency interference. Moreover, much of the RF emissions testing of a site is done through computer modeling rather than actual field testing because field testing would require carriers to fully install antennas prior to submitting the application. A more workable solution would involve allowing carriers to certify compliance with federal RF emissions requirements by filing the FCC compliance form.

The District is preempted from enacting the onerous reporting requirements proposed by the Office of Planning, as currently structured, because they require a greater degree of specificity than that required by the FCC. As a result, the wireless industry proposes more balanced and practical certification requirements that address the Office of Planning's concerns relating to the filing of RF certification information.

Regarding antennas placed on rooftops with outdoor recreation space, the text amendments should be re-drafted to provide that antenna placement in outdoor recreational spaces should be "safe and consistent with applicable District and federal regulations." The District is preempted from setting standards based on RF concerns if such emissions are certified to be within federal guidelines.

In regards to the proposed regulation barring the placement of antennas that are “directed into windows” of neighboring buildings, the District is federally preempted from such a requirement by Section 704 of the Telecommunications Act. Moreover, as a practical matter, such a requirement is unnecessary since rooftop antennas are generally arranged to establish line of sight and are therefore not pointed into neighboring windows.

The providers submit that, in direct contravention of the express preemption language of Section 704 of the Telecommunications Act, the above provisions seek to regulate wireless antennas based on RF emissions health concerns and should be rejected by the Zoning Commission.

The proposed text amendments’ prohibition of towers and monopoles in residential and light commercial zones is misdirected and overly broad.

The Office of Planning’s proposed text amendments have, in large part, been developed in response to the controversial Tenleytown *television broadcast* tower on Wisconsin Avenue. By focusing on broadcast towers and by defining “antenna tower” to include both broadcast and wireless towers, the amendments ignore fundamental distinctions between broadcast and wireless facilities. Television broadcast facilities generally require large support structures that can be upwards of 700 feet. Non-broadcast (i.e. cellular/PCS) facilities typically collocate on existing structures at heights between 80 and 130 feet.

These differences warrant different treatment for regulatory review and approval, as recognized in the District’s current zoning ordinance (Sections 211 and 212). This existing distinction should be preserved to recognize the difference in scope, scale, and regulatory treatment between broadcast towers and wireless structures. Accordingly, the “definition” section should be amended so that the definition of “Antenna tower” distinguishes between broadcast and low power “narrowcast” wireless communications facilities.

The Office of Planning’s proposal seeks to prohibit the siting of wireless towers and monopoles in single-family residential and C-1 local commercial zones. Toward the goal of balancing aesthetic and service considerations, the wireless industry repeatedly proposed to the Antenna Committee that the text amendments should not contain an outright prohibition against siting wireless towers and monopoles in residential and light commercial zones. Since wireless usage in the District is evolving, the revised text amendments should allow for, rather than foreclose, a degree of siting flexibility.

The industry explained that such a flexible mechanism—special exception review by the Board of Zoning Adjustment—already exists to approve tower and monopole siting requests. The existing process has worked well. The special exception review process provides a public forum by which the District may address aesthetic, coverage, and other concerns by District citizens and the wireless industry. Consequently, it should be preserved for adjudicating extraordinary siting requests. Throughout the Antenna Committee process, the Office of Planning offered no evidence of how the current special

exception procedure is failing. The providers are forced to wonder: “If it ain’t broken, why must it be fixed?”

An outright prohibition, absent the continuation of the BZA review procedure, could result in many residential areas of the District going without coverage or having to make do with unreliable wireless service. By absolutely banning certain structures that may be necessary to the delivery of wireless services in some areas, the Office of Planning’s proposal might constitute an unlawful prohibition of service in violation of Section 332(c)(7)(B)(II) of Telecommunications Act.

The Zoning Commission should reject the Office of Planning’s proposed text amendment prohibiting the siting of towers and monopoles in residential, mixed-use and light commercial zones in favor of the special exception review process at the BZA for such requests. Allow the carriers the opportunity to make their case in what is, after all, only an effort to provide a service that the public clearly wants.

Regarding tower and monopole siting in other commercial zones, the Office of Planning’s proposed text amendment establishes a special exception process for the location of towers and monopoles in commercial (C-2 through C-4) zones. Under current District regulations, towers and monopoles are allowed in commercial zones by matter of right. The Office of Planning has offered no evidence to justify changing this policy, other than its continuing assertions that towers are “fundamentally incompatible” with the intended use of these commercial zones and thus, towers must go through the special exceptions process. The providers submit that this additional requirement creates unnecessary regulatory burdens for carriers with limited tower and monopole location options, particularly in light of the Office of Planning’s proposed ban on siting in residential and light commercial zones.

The Office of Planning has asserted that carriers seeking to avoid the special exception process should take advantage of the draft text amendments’ incentive to locate towers in industrial zones. However, the District’s limited industrial zone space does not provide adequate coverage opportunities. Moreover, the regulation will increase, rather than decrease, the number of special exception proceedings (in direct contrast to the Zoning Commission’s stated goal to decrease special exception proceedings as a result of this process).

Section 2611.3 of the proposed text amendments should be amended to eliminate special exception requirement for siting in C-2, C-3 and C-4 zones.

Conclusion

As demonstrated above, these proposals inhibiting wireless carriers’ ability to provide adequate coverage and capacity and could have a lasting detrimental impact on the quality of wireless service available to the District’s residents, businesses, visitors, and emergency service personnel.

As stated in the current 11 DCMR §2520.1(c), “The principal types of antennas, antenna towers, and monopoles regulated are those that, because of their shape and relatively large mass, potentially have the greatest visual impact and include, y example,

large satellite earth station antennas, certain microwave terrestrial antennas, monopoles and antenna towers.” The wireless providers remain committed to working with the Office of Planning and the Zoning Commission to adopt and implement reasonable and practical wireless antenna siting regulations consistent with the preceding statement. In this instance, however, the Office of Planning proposes regulations that would regulate virtually any and every antenna installation without regard to its shape, mass or potential for visual impact and essentially ignores the technical and physical differences between wireless telecommunications service and public broadcasting facilities.

The wireless providers urge a less strident and more balanced approach that recognizes the need for a reliable and ubiquitous wireless telephone network equal to what one expects when picking up the receiver for their landline phone. We look forward to appearing before the Commission on this issue.

¹ “Nearly 2/3 of U.S. Adults Now Own a Wireless Phone,” RCR Wireless, March 25, 2002. The article points out that the District is among the top fifteen cities for wireless phone market penetration.

² FCC’s Seventh Annual Report on CMRS Services, July 3, 2002.

³ CTIA Consumer Frequently Asked Questions. <http://www.wow-com.com>

⁴ Id.

⁵ “Wireless Continues to Displace Traditional Telephone Service,” Business Wire, June 10, 2002.

⁶ FCC’s Seventh Annual Report on CMRS Services, July 3, 2002.

⁷ “People Dropping Landline Phones for Wireless,” USA Today, August 14, 2001.

⁸ Id.

⁹ FCC’s Seventh Annual Report on CMRS Services, July 3, 2002.

¹⁰ “Wireless Calls Prompt SOS,” The Philadelphia Inquirer, June 23, 2002, p. E01.

¹¹ “Wireless Communications in the Aftermath of September 11, 2001 Terror Attacks,” Computer Dealer News, October 19, 2001, p.24; “Cell Phones Were a Godsend at Crucial Moments,” Sun-Sentinel, Sept. 14, 2001, p.12A.

¹² “Pressure Grows for Wireless Dead Spot Data,” CNET News, August 21, 2001.

¹³ Consequently, Section 2600 of the proposed regulations should be amended to include the following additional subsection:

The zoning regulations therefore seek to balance the safety and welfare of district residents with the increasing and evolving use of wireless communication services by district citizens seeking ubiquitous and robust wireless coverage throughout the district.

¹⁴ Consequently, Section 2600 of the proposed regulations should be amended to include the following additional subsection recognizing the importance of co-location and stealthing:

The zoning regulations also seek to address the safety and welfare of district residents, while simultaneously reducing administrative burdens on district agencies, by encouraging carriers, through expedited consideration, to co-locate on existing structures and to utilize stealthing technologies.