

MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL COMMUNICATIONS COMMISSION,
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,
AND CHARLOTTESVILLE-UNIVERSITY OF VIRGINIA-ALBEMARLE
COUNTY EMERGENCY COMMUNICATIONS CENTER
REGARDING THE CONSTRUCTION OF A COMMUNICATIONS
TOWER IN ALBEMARLE COUNTY, VIRGINIA

WHEREAS, the Charlottesville-University of Virginia-Albemarle County Emergency Communications Center ("ECC") proposes to construct a 105-foot tower on Peter's Mountain in northeastern Albemarle County, Virginia (with Coordinates of N 38° 07' 22.3" and W 78° 17' 24.6"); and

WHEREAS, ECC is a licensee of the Federal Communications Commission ("FCC") and intends to use the tower in connection with the provision of its licensed service as part of a regional 800 MHz public safety radio communications system designed to serve the region and its population; and

WHEREAS, the FCC has determined that the construction of the proposed tower is a federal undertaking; and

WHEREAS, ECC, pursuant to delegation from the FCC, initiated the National Historic Preservation Act ("NHPA") Section 106 review for the site as required by the FCC rules, 47 C.F.R. §1.1307(a)(4); and

WHEREAS, ECC has consulted with the Virginia State Historic Preservation Officer ("Virginia SHPO") pursuant to 36 C.F.R. Part 800, regulations implementing Section 106 of the NHPA, and has been invited to participate in this Memorandum of Agreement; and

WHEREAS, the FCC and the Virginia SHPO have determined that the tower construction would have an adverse effect on the Southwest Mountains Historic District, which is listed in the National Register of Historic Places ("NRHP") and which encompasses approximately 31,975 acres of northeastern Albemarle County, including 874 contributing buildings, 73 contributing sites, 30 contributing structures, and 1 contributing object for a total of 978 resources within the District; and

WHEREAS, the FCC and the Virginia SHPO have determined that the above-referenced historic District and the resources contained therein are the only sites listed or eligible for listing in the NRHP within the Area of Potential Effects ("APE") that would be affected by the proposed tower construction; and

WHEREAS, ECC, consistent with the Commission's requirements for environmental review, has considered and evaluated a number of alternative sites for locating the proposed tower and has concluded that all of the sites considered either are unavailable for ECC's use, are unacceptable to the community, or are unsatisfactory from a technical radio frequency perspective for the coverage needs of the communications system supported by the antennas to be located on the facility; and

WHEREAS, members of the general public and other interested parties were afforded an opportunity to participate in and comment on this proceeding as specified in Stipulation II., below; and

WHEREAS, local government officials of the County of Albemarle approve construction of the tower at the proposed location; and

WHEREAS, the FCC has consulted with the Virginia SHPO and other consulting parties to ensure that historic properties affected by the construction of the tower are taken into account; and

WHEREAS, the Advisory Council on Historic Preservation ("Advisory Council") has declined to participate in the negotiation of this Memorandum of Agreement; and

WHEREAS, the Piedmont Environmental Council ("PEC"), and Peggy Augustus, Gabriele N. Heertje and Manfred Nettek (collectively, "Residents") have participated in the negotiation of this Memorandum of Agreement and have been offered the opportunity to sign this Memorandum of Agreement as concurring parties;

NOW, THEREFORE, the FCC, the Virginia SHPO and ECC agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties, and that these measures shall constitute full, complete and adequate mitigation under the NHPA and the implementing regulations of the Advisory Council and the FCC.

STIPULATIONS

The FCC, through coordination with ECC, shall insure that the following are carried out:

I. MITIGATION MEASURES

ECC agrees as follows:

1. Antennas, dishes and all equipment installed at the Peter's Mountain tower facility shall be limited to those that are necessary for establishing the public service radio system as approved in special use permit SP-2001-048. Antennas shall not be collocated at the facility to provide other services.
2. The top of the antenna pole shall not exceed 105 feet above the ground level, or 1,799 feet tall as measured above sea level.
3. Only the 2 proposed whip antennas and required grounding rods shall extend above the top of the antenna pole. In no cases shall those attachments extend more than 20 feet above the top of the antenna pole.
4. The facility shall be designed, constructed and maintained as follows:
 - a. The pole, antennas, microwave dishes and all other equipment attached to it shall be painted a non-reflective, dull brown color that reduces its contrast with the sky;
 - b. Guy wires shall not be permitted;
 - c. All ground equipment, utility building, concrete pads and pole shall be dark brown in color and shall be no larger than the specifications set forth in the Peter's Mountain Site Plan and Elevation approved by the Albemarle County Department of Planning and Community Development; and
 - d. ECC shall notify the SHPO and consulting parties and provide them with the opportunity to comment in the event that ECC proposes to add additional equipment to the tower site beyond that previously approved by the County of Albemarle.

5. No lighting shall be permitted on the site or on the pole, except as follows:
- a. Outdoor lighting shall be limited to periods of maintenance only;
 - b. Each outdoor luminaire shall be fully shielded such that all light emitted is projected below a horizontal plane running through the lowest part of the shield or shielding part of the luminaire. For the purposes of this stipulation, a luminaire is a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and to connect the lamps to the power supply;
 - c. In the event that any government agency requires that the tower be lighted for any reason, then ECC shall, in addition to complying with any conditions required by the Albemarle County Board of Supervisors, notify the FCC, the Virginia SHPO and all consulting parties and provide them a copy of any written notification supplied to ECC by such agency.
6. Prior to beginning construction or installation of the pole or the equipment cabinets, or installation of access for vehicles or utilities, a tree conservation plan, developed by a certified arborist, specifying tree protection methods and procedures, and identifying any existing trees to be removed on the site shall be submitted to the Virginia SHPO for review and approval. The tree conservation plan shall also be made available to all consulting parties for review and comment. All construction or installation associated with the pole and equipment pad, including necessary access for construction or installation, shall be in accordance with this tree conservation plan. Except for the tree removal expressly authorized by the Director of Planning and Community Development for the County of Albemarle, ECC shall not remove existing trees within 200 feet of the pole and equipment pad. Any future tree removal within the 200-foot buffer after installation of the tower and supporting equipment shall require an amendment to special use permit SP-2001-048 and shall be subject to review and approval by the Virginia SHPO. Amendments to special use permit SP-2001-048 involving future tree removal within the 200-foot buffer after installation of the tower and supporting equipment shall also be submitted to PEC for review and comment. It is understood that the ECC's obligations regarding the 200-foot buffer apply only to ECC-owned or controlled property on which the tower and supporting equipment will be located, and do not create or impose any additional obligations on ECC with respect to adjacent parcels owned by third parties.
7. Revised site drawings submitted to the County of Albemarle in order to obtain a building permit shall also be submitted to the Virginia SHPO for review and approval. Such revised site drawings shall also be made available to all consulting parties for review. Prior to the commencement of construction of the facility, the Virginia SHPO shall have the right to review and approve the revised plans to ensure that all appropriate conditions of this Memorandum of Agreement have been addressed in the final revisions of the construction plans.
8. A tree-planting plan containing native species, which could include white pine, short leaf southern pine, and others, shall be developed within the 200-foot buffer. The purpose of these plantings shall be to abate the visibility of the tower by surrounding it with screening vegetation. It is expected that these plantings will accomplish the screening effect as soon as possible by selection of rapid growth native species. The tree-planting plan shall be subject to the review and approval of the Virginia SHPO, and shall also be made available to all consulting parties for review and comment.

9. In the event that ECC abandons the tower and associated facilities described herein, ECC shall disassemble the tower and associated facilities within 90 days of such abandonment and notify the Virginia SHPO. Surety or other financial requirements pertaining to removal shall be as required by the County of Albemarle Zoning Administrator.
10. ECC shall advise the Virginia SHPO in writing of the progress of mitigation measures outlined herein at six months and one year after the date the FCC issues a Finding of No Significant Impact or otherwise authorizes construction of the tower.
11. The action letter dated January 17, 2002 from Wayne Cilimberg, Director of Planning for the County of Albemarle, to the ECC is hereby incorporated into, and thereby made a part of, this Memorandum of Agreement ("MOA").
12. ECC affirms that it will have a nonexclusive right-of-way and easement over the existing AT&T road leading to the ECC property, and thus, will not construct any new access roads in connection with the Peter's Mountain tower project except for minor spurs or access points from the AT&T road to the tower site for temporary construction purposes.

II. PUBLIC PARTICIPATION

The public and interested parties have been notified of the Undertaking, and have had the opportunity to comment as follows:

- An informal public informational meeting on the Undertaking was held on April 16, 2001 at Grace Episcopal Church in Albemarle County. The Albemarle County Board of Supervisors and Planning Commission held public meetings on January 9, 2002, December 18, 2001, November 27, 2001 and November 15, 2001 to discuss the Undertaking and to consider the application for a special use permit authorizing construction of the tower on Peter's Mt. In addition, two members of the Board of Supervisors met with County and ECC staff, and representatives of the Piedmont Environmental Council, on November 27, 2001 to discuss the Undertaking.
- Public Notices were published in *The Daily Progress* newspaper in November and December 2001 providing public notice of the Undertaking and public meetings and inviting interested parties to comment on the Undertaking.

III. POST-REVIEW DISCOVERIES

1. In the event that previously unidentified archaeological resources are discovered during construction, all construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. ECC shall then notify the Virginia SHPO, the FCC and any potentially affected Indian tribes within 2 working days of the discovery. ECC and the Virginia SHPO, or an archaeologist approved by them, shall promptly inspect the work site and determine the area and the nature of the affected archeological property. Construction work may then continue in the project area outside the affected area.
2. ECC shall then notify the Virginia SHPO and any potentially affected Indian tribes of its assessment of National Register eligibility of the property and proposed actions to resolve any adverse effects. The Virginia SHPO shall respond within 2 working days of the notification.

3. If the resource is determined to meet the National Register Criteria, ECC shall consult with the Virginia SHPO and any potentially affected Indian tribes to ensure compliance with all applicable regulations. Work in the affected area shall not proceed until appropriate data recovery or other recommended mitigation procedures are developed and implemented or the determination is made that the located resources are not eligible for inclusion on the National Register.

IV. MITIGATION DISPUTES

If any objection or dispute by any party should arise within the time frame provided by this MOA to any plans, specifications or actions provided for review pursuant to this Memorandum of Agreement, ECC will first consult further with the objecting party to seek resolution. If ECC determines that the dispute cannot be resolved, ECC shall forward all documentation relevant to the dispute to the Virginia SHPO, including ECC's proposed resolution of the dispute, if any. Within 30 calendar days after receipt of all pertinent documentation, the Virginia SHPO will either:

- A. Advise ECC that it concurs with ECC's resolution of the dispute; or
- B. Provide ECC with recommendations, which ECC shall take into account in reaching a final decision regarding the dispute.

Any recommendation or comment provided by the Virginia SHPO will be understood to pertain only to the subject of the dispute, and ECC's responsibility to fulfill all actions that are not subject of the dispute will remain unchanged.

V. RESOLUTION OF OBJECTIONS BY VIRGINIA SHPO

Should the Virginia SHPO, after completion of the procedures set forth in Section III above, object within thirty ("30") days to any plans provided for review pursuant to this Memorandum of Agreement, the FCC shall consult with the Virginia SHPO to resolve the objection. If the FCC determines that the objection cannot be resolved, the FCC shall request further comments or recommendations of the Advisory Council concerning the dispute pursuant to 36 C.F.R. Part 800. Any Advisory Council comment provided in response to such a request will be taken into account by the FCC in accordance with 36 C.F.R. Part 800 with reference only to the subject of the dispute. The FCC's responsibility to carry out all actions under this Memorandum of Agreement that are not the subject of the dispute will remain unchanged.

VI. AMENDMENTS

If any of the signatories to this MOA believe that the terms of the MOA cannot be adhered to, or that any amendment to the terms of this MOA must be made, that signatory shall immediately consult with the other signatories to develop amendments to this MOA. The process of amending this MOA shall be the same as that exercised in creating the original MOA. If an amendment cannot be agreed upon, the dispute resolution process set forth in Section IV above will be followed.

VII. EXPIRATION OF AGREEMENT

This MOA shall expire if its terms are not carried out within two (2) years from the date the FCC issues a Finding of No Significant Impact or otherwise authorizes construction of the tower, unless the FCC, the Virginia SHPO and ECC agree in writing to an extension for carrying out its terms.

VIII. ENFORCEMENT

Failure to carry out the terms of this Memorandum of Agreement will require that the FCC again request the comments of the Advisory Council, in accordance with 36 C.F.R. Part 800. If the terms of this Memorandum of Agreement are not implemented, the FCC shall provide the Advisory Council with the opportunity to comment on the effects and mitigation alternatives.

IX. OTHER REQUIREMENTS

ECC will file with the FCC an application and environmental assessment within fifteen (15) days of the effective date of this Memorandum of Agreement. ECC will not initiate construction of the tower until the FCC has approved the environmental assessment.

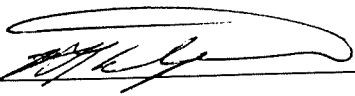
Execution of this Memorandum of Agreement and implementation of its terms evidence that the FCC has afforded the Advisory Council a reasonable opportunity to comment on the proposed ECC telecommunications tower and that the FCC has taken into account the effects of this undertaking on historic properties. This Memorandum of Agreement shall be effective upon notice from the FCC that all parties have agreed to and signed this Memorandum of Agreement.

FEDERAL COMMUNICATIONS COMMISSION

By: Jeffrey S. Steinberg Date: 9/18/02

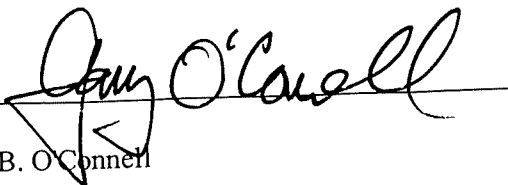
Mr. Jeffrey S. Steinberg
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

By:  Date: 10/2/02

Kathleen Kilpatrick
State Historic Preservation Officer

CHARLOTTESVILLE-UNIVERSITY OF VIRGINIA-ALBEMARLE COUNTY EMERGENCY
COMMUNICATIONS CENTER

By: 
Gary B. O'Connell
Chairman

Date: 10/18/02

CONCURRING PARTIES:

PIEDMONT ENVIRONMENTAL COUNCIL

By: _____

Date: _____

Christopher G. Miller
President

By: _____

Date: _____

PEGGY AUGUSTUS
RESIDENT

By: _____ Date: _____

GABRIELE N. HEERTJE
RESIDENT

By: _____

Date: _____

MANFRED NETTEK
RESIDENT