



## *SOLUTION OF THE NEW JERSEY PINELANDS COMMISSION*

NO. PC4-98- 72

**TITLE:** Issuing an Order to Approve the Comprehensive Plan for Wireless Communications Facilities in the Pinelands

Commissioner Ashmun moves and Commissioner Kowalski seconds the motion that was then amended by motion of Commissioner Lee and seconded by Commissioner A to read as follows:

**WHEREAS**, the Pinelands Commission adopted amendments to the Comprehensive Management Plan in 1995 to permit local communications facilities to exceed the 35 foot height limitation set forth in N.J.A.C. 7:50-5.4, provided that a comprehensive plan is first prepared and approved by the Pinelands Commission; and

**WHEREAS**, Bell Atlantic Mobile, Comcast/Cellular One, and Nextel Communications, Inc. (hereinafter referred to as the Companies) submitted a cellular facilities plan in 1997 which the Executive Director found to be deficient; and

**WHEREAS**, the Companies requested that the Commission defer action on the 1997 plan while the Companies worked to cure the deficiencies and the Executive Director approved several extensions of the Commission's review period for that plan; and

**WHEREAS**, the Companies then submitted a revised plan titled "Comprehensive Plan for Wireless Communications Facilities in the Pinelands" ( hereinafter referred to as the Plan) which the Executive Director deemed complete for purposes of review on June 2, 1998; and

**WHEREAS**, the Plan was reviewed by the public from June 12, 1998 through July 31, 1998, during which a public hearing was duly noticed and held; and

**WHEREAS**, the Commission's technical consultants reviewed the Plan and submitted a report of their findings to the Commission; and

**WHEREAS**, the Executive Director has reviewed the Plan and the Commission's technical consultants report; and

**WHEREAS**, the Executive Director has considered the oral and written comments received about the Plan; and

**WHEREAS**, the Executive Director has submitted an August 21, 1998 report of his findings to the Commission ; and

**WHEREAS**, the Executive Director has found that the Plan is consistent with N.J.A.C. 7:50-5.4(c)6, the standard which requires that a plan identify approximate locations, if the recommended procedure described in Section II.b.3 of his report is followed when final facility siting decisions are made; and

**WHEREAS**, the Executive Director has found that the Plan is consistent with the other standards of N.J.A.C. 7:50-5.4; and

**WHEREAS**, the Commission, based on advice of the Attorney General's office, does not concur with the Executive Director's report discussion entitled "plan amendments" on pages 19, 20 and 21 of the report with regard to the company's rights in Regional Growth Areas and Pinelands Towns; and

**WHEREAS**, the Commission has reviewed the Plan, the Executive Director's report, the Commission technical consultants' report and the other appendices to the Executive Director's report; and

**WHEREAS**, the Commission has duly considered all public comment on the Plan;

**WHEREAS**, the Commission finds that the Plan is consistent with the standards of N.J.A.C. 7:50-5.4 insofar as those standards apply to the preparation and approval of a comprehensive plan for local communications facilities; and

**WHEREAS**, the Commission expressly recognizes that approval of this Plan establishes a framework for siting facilities but does not serve to approve any specific development application to construct a communications facility and the Commission further recognizes that some of the pending development applications may have to be modified to be consistent with this Plan and to meet the site specific development requirements of N.J.A.C. 7:50-5.4; and

**WHEREAS**, the Commission also recognizes that this Plan may be amended pursuant to N.J.A.C. 7:50-5.4, that the Commission's approval of this Plan in no way endorses the Companies' discussion of their rights following plan approval and that the Executive Director shall advise the Commission of the need for amendments as specific conditions arise consistent with the advice of the Attorney General's office; and

**WHEREAS**, the Commission accepts the recommendation of the Executive Director to approve the Plan; and

**WHEREAS**, the Commission concludes that the recommended procedures contained in Section II.b.3. should be modified to read as follows:

1. For each site described in the Plan as further defined using the geographic coordinates prepared by the Commission staff, there will be a general presumption that a facility's final location will be within the area consistent with the service need for the facility and in conformity with other appropriate technical considerations, but in no case will that area extend beyond a five-mile radius. These locations are also subject to the specific siting concerns addressed in the Executive Director's Report.
2. Within that search area, consideration will first be given to locating the needed antenna on an existing, suitable structure within any management area if that structure does not require a change in mass or height that significantly alters its appearance.
3. Failing that, the use of other existing structures that may require a significant change in mass or height (if appropriate in view of the CMP's standards, including those related to visual impacts) or sites for a new structure within the search area will be evaluated. Only those structures or sites which meet the requirements of N.J.A.C. 7:50-5.4(c)4. and other applicable CMP standards will be selected. If that search area crosses the boundaries of the Pinelands Area or its management areas, the company will site the facility in accordance with the following list which identifies the areas from least to most restrictive in the following order of preference:
  - a. Outside the Pinelands;
  - b. Pinelands Regional Growth Areas, Pinelands Towns and the developed portions of Military and Federal Installation Areas;
  - c. Pinelands Rural Development Areas, Agricultural Production Areas, undeveloped portions of Military and Federal Installation Areas and Pinelands Villages other than those expressly identified in N.J.A.C. 7:50-5.4(c)6; and
  - d. Pinelands Preservation Area District, Special Agricultural Production Areas, Forest Areas and the Pinelands Villages expressly identified in N.J.A.C. 7:50-5.4(c)6, provided that the resulting site does not result in an increase in the number of new towers identified in the Plan for this management area group.
4. The company's feasibility assessment will need to include confirmation from other parties to this Plan who are slated to share the facility that the selected site meets their needs.
5. If no feasible structures or sites are found, the company should reexamine the surrounding facility network and propose an amendment to this Plan which conforms to CMP standards. Of course, the company retains its right to seek a waiver of strict compliance from the standards of the CMP, although the Executive Director notes that the tests will be difficult to meet.

**NOW, THEREFORE, BE IT RESOLVED that:**

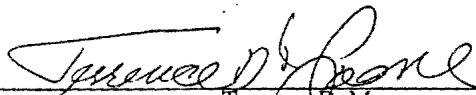
1. An order is hereby issued to approve the Comprehensive Plan for Wireless Communications Facilities in the Pinelands, dated March 12, 1998 and revised through June 2, 1998.
2. The Commission affirms the procedure set forth in Section II. b. 3. of the Executive Director's report as modified herein. This modified procedure will be followed to apply this Plan's general siting proposals to specific development applications in a manner consistent with Pinelands Comprehensive Management Plan requirements. The Commission does not concur with the report's discussion of the company's rights in Regional Growth Areas and Pinelands Towns entitled "plan amendments" on pages 19, 20 and 21 of the report.

**Record of Commission Votes**

	AYE	NAY	NP	ABS		AYE	NAY	NP	ABS		AYE	NAY	NP	ABS
Ashmun		✓			Galletta			✓		Ontko		✓		
Avery	✓				Kowalski	✓				Pritchard	✓			
Brown	✓				Lee	✓				Tomasello	✓			
Darlington	✓				McIntosh	✓								
Ficcaglia			✓		Mounier	✓				Kelleher	✓			

Adopted at a meeting of the Pinelands Commission

Date: September 11, 1998

  
 Terrence D. Moore  
 Executive Director

  
 Daniel L. Kelleher  
 Chairman