Bill as Introduced

S

SB 132- AS INTRODUCED

1999 SESSION

99-0631
03/01

SENATE BILL ***132***

AN ACT requiring the removal of the telecommunications tower on Mount Kearsarge.

SPONSORS: Sen. Trombly, Dist 7; Sen. Below, Dist 5

COMMITTEE: Environment

ANALYSIS

This bill requires that the department of resources and economic development cause the removal of the telecommunications tower and related installations and buildings on Mount Kearsarge.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

99-0631
03/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT requiring the removal of the telecommunications tower on Mount Kearsarge.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The General Court finds that:

I. The state of New Hampshire, through the department of resources and economic development, caused to be constructed in October 1997 a 180-foot telecommunications tower at the summit of Mount Kearsarge in Rollins state park in the town of Warner.

II. The department of safety and the department of resources and economic development have asserted that the tower was constructed primarily to improve state police communications. Despite these assertions:

(a) There is substantial commercial use of and interest in the tower, as evidenced by the fact that construction costs were wholly borne by United States Cellular Corporation, who upon completion donated the tower to the state of New Hampshire in return for the right to lease real estate in Rollins state park for placement of a building, and the right to lease antenna sites on the tower;

(b) The state has allocated a significant proportion of the antenna sites on this tower to other commercial users; and

(c) None of the money appropriated by the general court in 1993 for the replacement of the state police radio system, 1993, 359:1, XI, A, was spent to construct this tower.

III. It is unlikely that a tower of this scale, and located this obtrusively, is necessary to satisfy the requirements for improved public safety communications alone, separate from the requirement of commercial users.

IV. The department of resources and economic development is violating its public trust in managing this state park land for profit by leasing it for commercial uses at the expense of the public uses to which it is dedicated.

V. The tower stands on land administered by the department of resources and economic development as a state park, and RSA 216-A:2 directs the department to ensure that the natural, historical, and recreational values of state parks be preserved. Furthermore, the department has designated the mountaintop as a scenic area, which by the department's own definition is a management area in which aesthetic considerations come first.

VI. The particular tract within Rollins state park on which the tower, its attendant buildings, and other commercial antennas all stand was given to the state of New Hampshire by the Society for the Protection of New Hampshire Forests by deed dated July 7, 1949, which states: "This

conveyance is made upon the express condition that the state will maintain said tract as a forestry and recreation reservation for public use and benefit, and as a perpetual memorial to Frank West Rollins, the founder of the Society and former governor of the state," which condition of the deed if not adhered to may render the deed null and void.

VII. The tower and its attendant buildings, regardless of whether they are understood to be commercial installations or installations necessary to improve governmental agency communications, are irreconcilably in conflict with the stated scenic, natural, and recreational purposes to which state-owned reservations are dedicated, with the primacy of aesthetic considerations in the department of resources and economic development's management objectives, and with the condition of the Forest Society's deed, in the following ways:

(a) The tower causes visual blight in that the rare and exemplary natural beauty of Mt. Kearsarge, whether sought from a distance or from the summit itself, has been seriously diminished by the sheer size of the tower.

(b) The tower causes excessive and objectionable noise pollution; when the wind blows, the tower can generate a loud roar which can become the dominant sound on the mountain, and when the air is calm, the dominant sounds at the summit are electrical and mechanical noises from transformers and cooling equipment.

(c) The tower and related structures preempt physical and recreational space by occupying a considerable area on the small summit, and their obnoxious qualities preclude recreational enjoyment of a much larger area.

(d) The tower causes threats to public health and safety from falling ice, the lack of preventive measures to deny access to the tower, and possible risks from radiation emitting from antennas.

VIII. The department of resources and economic development failed to give due and timely notice of its intentions regarding the tower to the governing bodies of the towns that would be affected by the presence of the tower, such as is now required by RSA 674:54, and did not conduct any local public hearing on the proposed tower before causing it to be constructed.

IX. The department of resources and economic development did, with purposeful intent, "avoid a general public notice and abutter notification" concerning this change in use of public land (according to the memo of James H. Carter, Administrator, Division of Forests and Lands to Robb R. Thomson, Commissioner, Department of Resources and Economic Development, March 19, 1997).

X. The appeal of the selectmen of the towns affected by the tower requesting local public hearings regarding the issue of the tower has been denied.

XI. At their March 1998 town meetings, the towns of Andover, Danbury, New London, Sutton, Warner, and Wilmot resoundingly passed warrant articles expressing outrage at the construction of the 180-foot tower and the lack of due process.

XII. The towns of Warner and Wilmot passed a subsequent article to petition the state for the removal of the tower, which petitions have been denied, leaving the citizens of those towns with no other recourse except through the courts or the general court.

XIII. In order to rectify the state's breach of its public trust by failing to conform to the laws governing the use of public lands and by failing to properly notify affected towns or to conduct public hearings, the general court now resolves to require the removal of the 180-foot tower and all commercial installations on the summit of Mount Kearsarge.

2 Telecommunications Tower on Mount Kearsarge; Removal by Department of Resources and Economic Development Required. The department of resources and economic development shall arrange for and cause the removal of the 180-foot telecommunications tower on Mount Kearsarge in Merrimack County and all related commercial communication installations and their attendant buildings on the mountain, and restore the mountain top to its preexisting natural state as nearly as is practicable by December 31, 2000. Any replacement tower built for legally permissible purposes shall be subject to a public review process pursuant to RSA 674:54.

3 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Environment
April 7, 1999
1999-0776s
03/09

Committed not accept report

IF this amendment is adopted by the Committee, please deliver to the House Clerk (Room 317) or Senate Clerk (Senate Chamber), the 2 originals and 2 copies.

Amendment to SB 132

Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The General Court finds that:

I. The state of New Hampshire, through the department of resources and economic development, caused to be constructed in October 1997 a 180-foot telecommunications tower at the summit of Mount Kearsarge in Rollins state park in the town of Warner.

II. The department of safety and the department of resources and economic development have asserted that the tower was constructed primarily to improve state police communications. Despite these assertions:

(a) There is substantial commercial use of and interest in the tower, as evidenced by the fact that construction costs were wholly borne by United States Cellular Corporation, who upon completion donated the tower to the state of New Hampshire in return for the right to lease real estate in Rollins state park for placement of a building, and the right to lease antenna sites on the tower;

(b) The state has allocated a significant proportion of the antenna sites on this tower to other commercial users; and

(c) None of the money appropriated by the general court in 1993 for the replacement of the state police radio system, 1993, 359:1, XI, A, was spent to construct this tower.

III. While the use of mountain tops for public health and safety telecommunications is a valid public purpose, it is unlikely that a tower of this scale, and located this obtrusively, is necessary to satisfy the requirements for improved public safety communications alone, separate from the requirement of commercial users.

IV. The tower stands on land administered by the department of resources and economic development as a state park, and RSA 216-A:2 directs the department to ensure that the natural, historical, and recreational values of state parks be preserved. Furthermore, the department has designated the mountain top as a scenic area, which by the department's own definition is a management area in which aesthetic considerations come first.

V. The particular tract within Rollins state park on which the tower, its attendant buildings, and other commercial antennas all stand was given to the state of New Hampshire by the Society for the Protection of New Hampshire Forests by deed dated July 7, 1949, which states: "This conveyance is made upon the express condition that the state will maintain said tract as a forestry

and recreation reservation for public use and benefit, and as a perpetual memorial to Frank West Rollins, the founder of the Society and former governor of the state," which condition of the deed if not adhered to may render the deed null and void.

VI. The department of resources and economic development failed to give due and timely notice of its intentions regarding the tower to the governing bodies of the towns that would be affected by the presence of the tower, such as is now required by RSA 674:54, and did not conduct any local public hearing on the proposed tower before causing it to be constructed.

VII. The department of resources and economic development did, with purposeful intent, "avoid a general public notice and abutter notification" concerning this change in use of public land (according to the memo of James H. Carter, Administrator, Division of Forests and Lands to Robb R. Thomson, Commissioner, Department of Resources and Economic Development, March 19, 1997).

VIII. The appeal of the selectmen of the towns affected by the tower requesting local public hearings regarding the issue of the tower has been denied.

IX. At their March 1998 town meetings, the towns of Andover, Danbury, New London, Sutton, Warner, and Wilmot resoundingly passed warrant articles expressing outrage at the construction of the 180-foot tower and the lack of due process.

X. The towns of Warner and Wilmot passed a subsequent article to petition the state for the removal of the tower, which petitions have been denied, leaving the citizens of those towns with no other recourse except through the courts or the general court.

XI. In order to rectify the state's breach of its public trust by failing to conform to the laws governing the use of public lands and by failing to properly notify affected towns or to conduct public hearings, the general court now resolves to require the removal of the 180-foot tower and its attendant buildings from their current location on the summit of Mount Kearsarge.

2 Telecommunications Tower on Mount Kearsarge; Removal by Department of Resources and Economic Development Required.

I. The department of resources and economic development shall arrange for and cause the removal of the 180-foot telecommunications tower and all related commercial communication installations and their attendant buildings from their current location on Mount Kearsarge in Merrimack County, and restore the mountain top to its preexisting natural state as nearly as is practicable by December 31, 2000.

II. The department of resources and economic development may relocate the tower and related installations and attendant buildings to another state-owned tract on Mount Kearsarge that is not encumbered by the "Rollins" deed restriction. Such relocation shall constitute a substantial change in use of the property, and shall therefore be subject to the notice and hearing requirements of RSA 674:54. Any communications structure constructed on Mount Kearsarge or relocated

pursuant to this paragraph shall be no larger than is necessary for the public health and safety communications needs of the current users of the existing tower.

III. The cost of removing the tower and related installations and attendant buildings shall be paid from the operating budget of the department of resources and economic development.

3 Documents Relating to Mount Kearsarge Tower; Disclosure to Public. Notwithstanding any provision of RSA 91-A to the contrary, the department of resources and economic development and the department of safety shall make available for public inspection all documents relating to the location and engineering of the communications tower currently located on Mount Kearsarge, as requested by the attorney general.

4 United States Cellular Corporation; Liability Limited. United States Cellular Corporation shall not be liable for any damages arising out of its contract with the state of New Hampshire that are caused, either directly or indirectly, by the removal or relocation of the communications tower currently located on Mount Kearsarge by the department of resources and economic development.

5 Committee Established; State Police Radio System Study.

I. There is established a committee to study the state police radio system.

II.(a) The members of the committee shall be as follows:

(1) Three members of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall study the implementation of the state police radio system, including the role of towers constructed on mountain tops and whether the state should adopt a comprehensive policy regarding the use of mountain tops for telecommunications purposes.

IV. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

V. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 1999.

6 Effective Date. This act shall take effect 60 days after its passage.

1999-0776s

AMENDED ANALYSIS

This bill requires that the department of resources and economic development cause the removal of the telecommunications tower and related installations and buildings on Mount Kearsarge.

This bill also establishes a committee to study the implementation of the state police radio system, and requires the departments of resources and economic development and safety to make available documents relating to the tower on Mount Kearsarge.

Environment
April 7, 1999
1999-0776s
03/09

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Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The General Court finds that:

I. The state of New Hampshire, through the department of resources and economic development, caused to be constructed in October 1997 a 180-foot telecommunications tower at the summit of Mount Kearsarge in Rollins state park in the town of Warner.

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V. The particular tract within Rollins state park on which the tower, its attendant buildings, and other commercial antennas all stand was given to the state of New Hampshire by the Society for the Protection of New Hampshire Forests by deed dated July 7, 1949, which states: "This conveyance is made upon the express condition that the state will maintain said tract as a forestry

and recreation reservation for public use and benefit, and as a perpetual memorial to Frank West Rollins, the founder of the Society and former governor of the state," which condition of the deed if not adhered to may render the deed null and void.

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VIII. The appeal of the selectmen of the towns affected by the tower requesting local public hearings regarding the issue of the tower has been denied.

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XI. In order to rectify the state's breach of its public trust by failing to conform to the laws governing the use of public lands and by failing to properly notify affected towns or to conduct public hearings, the general court now resolves to require the removal of the 180-foot tower and its attendant buildings from their current location on the summit of Mount Kearsarge.

2 Telecommunications Tower on Mount Kearsarge; Removal by Department of Resources and Economic Development Required.

I. The department of resources and economic development shall arrange for and cause the removal of the 180-foot telecommunications tower and all related commercial communication installations and their attendant buildings from their current location on Mount Kearsarge in Merrimack County, and restore the mountain top to its preexisting natural state as nearly as is practicable by December 31, 2000.

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pursuant to this paragraph shall be no larger than is necessary for the public health and safety communications needs of the current users of the existing tower.

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1999-0776s

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Environment
April 7, 1999
1999-0776s
03/09

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2 Telecommunications Tower on Mount Kearsarge; Removal by Department of Resources and Economic Development Required.

I. The department of resources and economic development shall arrange for and cause the removal of the 180-foot telecommunications tower and all related commercial communication installations and their attendant buildings from their current location on Mount Kearsarge in Merrimack County, and restore the mountain top to its preexisting natural state as nearly as is practicable by December 31, 2000.

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pursuant to this paragraph shall be no larger than is necessary for the public health and safety communications needs of the current users of the existing tower.

III. The cost of removing the tower and related installations and attendant buildings shall be paid from the operating budget of the department of resources and economic development.

3 Documents Relating to Mount Kearsarge Tower; Disclosure to Public. Notwithstanding any provision of RSA 91-A to the contrary, the department of resources and economic development and the department of safety shall make available for public inspection all documents relating to the location and engineering of the communications tower currently located on Mount Kearsarge, as requested by the attorney general.

4 United States Cellular Corporation; Liability Limited. United States Cellular Corporation shall not be liable for any damages arising out of its contract with the state of New Hampshire that are caused, either directly or indirectly, by the removal or relocation of the communications tower currently located on Mount Kearsarge by the department of resources and economic development.

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II.(a) The members of the committee shall be as follows:

(1) Three members of the senate, appointed by the president of the senate.

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(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

III. The committee shall study the implementation of the state police radio system, including the role of towers constructed on mountain tops and whether the state should adopt a comprehensive policy regarding the use of mountain tops for telecommunications purposes.

IV. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

V. The committee shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 1999.

6 Effective Date. This act shall take effect 60 days after its passage.

1999-0776s

AMENDED ANALYSIS

This bill requires that the department of resources and economic development cause the removal of the telecommunications tower and related installations and buildings on Mount Kearsarge.

This bill also establishes a committee to study the implementation of the state police radio system, and requires the departments of resources and economic development and safety to make available documents relating to the tower on Mount Kearsarge.

Environment
January 21, 2000
2000-3159s
08/01

Amendment to SB 132

Amend section 1 of the bill by inserting after paragraph XIII the following new paragraph:

XIV. The department of resources and economic development should consider a collaborative process, involving affected stakeholders, including, in particular, residents of surrounding communities who view the summit, hikers who visit the summit, and concerned citizen groups, to develop any alternative plan to accommodate desired public safety telecommunication facilities. The department should consider the development of a long term summit facilities plan that may include a replacement fire tower that integrates any necessary telecommunication functions in a more architecturally and aesthetically pleasing manner.

Amend the bill by replacing section 2 with the following:

2 Telecommunications Tower on Mount Kearsarge; Removal by Department of Resources and Economic Development Required. The department of resources and economic development shall arrange for and cause the removal of the 180-foot telecommunications tower on Mount Kearsarge in Merrimack County and all related commercial communication installations and their attendant buildings on the mountain, and restore the mountain top to its preexisting natural state as nearly as is practicable by December 31, 2002. Any replacement tower built for legally permissible purposes shall be subject to a public review process pursuant to RSA 674:54.

Committee Minutes

Date: March 4, 1999
Time: 3:30 PM
Room: LOB 306-308

The Senate Committee on Environment held a hearing on the following:

SB 132

Members of Committee present:

Senator Russman
Senator Cohen
Senator Below
Senator D'Allesandro
Senator Johnson
Senator Krueger
Senator Pignatelli
Senator Wheeler

The Chair, Senator Richard Russman, opened the hearing.

Senator Richard L. Russman, D. 19: I will now open the hearing on ***SB132,*** requiring the removal of the telecommunications tower on Mount Kearsarge. The prime sponsor being Senator Trombly, with another Senator Clifton Below being a co-sponsor.

Now obviously there are a lot of people here today. That is good to see. At the same time, that is obviously problematic. It means that I am going to have to limit everyone to about three minutes apiece other wise we will never get out of here tonight. The other thing I would ask you to do is not.... if somebody has already said something, don't get up and say the same thing. There is a box here you can check off if you wish to speak. If the box is not checked off I assume you do not wish to speak. At the same time if you feel compelled to speak, we will certainly recognize you for some brief remarks.

(Senator Russman continued)

So having said that, we will see how it goes and we will alter that if necessary. I will now recognize Senator Rick Trombly.

Senator Rick A. Trombly, D. 7: Mr. Chairman and members of the committee, it is long established that in New Hampshire we are proud of our representative form of government, that allows people to address their legislators at a very local level. I think we expect the same type of treatment from the people that are hired to enforce the laws and regulations that the legislature passes. Unfortunately, that was a trust that was breached in 1997 when a tower was sighted on Mt. Kearsarge.

I will be brief Mr. Chairman, members of the committee for the plain and simple reason that there are people who have been involved in this fight, in this argument, this discussion who have much greater historical knowledge and detail of the trespasses committed against the people who live in view of Mt. Kearsarge. Suffice it to say that I am State Senator representing one of the towns, the town of Warner, where the impact of this tower on Mt. Kearsarge has been most keenly felt. It has taken away the trust that many of the people in Warner feel that they had placed in their government. I request that you do just a couple of things.

Listen carefully to the people who are most affected by the placement of the tower on Mt. Kearsarge. I know you will hear a lot of testimony about a lot of needs for this tower. However, I ask you to listen to possible solutions to the taking down of this tower.

SB 132 redresses a wrong. Our constitution guarantees the people of this state the ability to redress their government to take care of wrongs. The tower on Mt. Kearsarge should not have gone up. It should not have gone up. Because it should not have gone up but did anyway, is not a valid reason to leave it where it is.
(Senator Trombly continued)

This legislature should listen to the people, hear what they have to say. I'm certain you will be as persuaded by their arguments and their logic as to why the tower must come down. Then I hope you will report this bill ought to pass, so that the full senate can pass this bill and send it on to the house. With that Mr. Chairman I would yield to any questions that the senate committee may have and in the interest of time allow the citizens of the Kearsarge area to voice their opinions to the committee.

Senator Richard L. Russman, D. 19: Questions? Senator Cohen.

Senator Burton J. Cohen, D. 24: Brief question. As one who believes very strongly that the people most affected by decisions ought to have some involvement in making those decisions. I ask with the sighting of this tower, did the people of the communities most affected have any say?

Senator Rick A. Trombly, D. 7: They were ignored Senator Cohen. They were ignored. Their pleas went unheeded through their town meeting. They asked that the tower not go up. They asked that it be taken down. They were plain and simply ignored.

Senator Richard L. Russman, D. 19: Further questions for the Senator? Thank you very much for your testimony.

Senator Rick A. Trombly, D. 7: Mr. Chairman I have to moderate the Merrimack Valley School District meeting tonight and I request that I may be allowed to leave, so that I may go and attend to my duties there.

Senator Richard L. Russman, D. 19: You are going to leave all this for us? (laughter)

Senator Rick A. Trombly, D. 7: Unless Mr. Chairman you vote to pass my bill now. Then you won't have to hear anyone but me. (more laughter)

Senator Richard L. Russman, D. 19: Ok. Thank you very much Senator Trombly. Senator Below.

Senator Clifton Below, D. 5: Thank you Mr. Chairman. I represent Senate District 5, including the towns of Andover, Danbury, New London, Sutton and Wilmot. They have all sent me articles expressing outrage at the construction of the tower and the lack of due process. I just want to make two points.

First when the tower went up in October 1997, it came as a complete surprise to most of the residents of these towns. You will hear evidence of the fact that through the Department of Resources and Economic Development, there was a deliberate decision to avoid a general public notice and abutter notification. As we know our state government originates from the people and it is accountable to the people. What happened is the tower went up in a way that seriously breached the public trust. It violated the trust of public lands. The responsibility of managing them in coordination with the involvement and knowledge of the local residents of the surrounding communities. In simple terms the bill concludes with a requirement to remove the tower in essence as penance or correction for breech of the public trust.

My second point is I don't think anybody here, would deny the fact that there is a legitimate public safety need. That was part of the reason for the tower in the first place. Certainly the highest quality communications for the state police and other law enforcement agencies are of critical public importance. The bill is written so that the tower be removed by December 31, 2000. That is 22 months from now to begin the process of looking at alternative means of satisfying the public safety communication needs before the tower goes down. Those are my two points. Thank you.

Senator Richard L. Russman, D. 19: Questions for Senator Below? Thank you for your testimony. Senator Fernald.

Senator Mark Fernald, D. 11: Thank you Mr. Chairman and members of the committee. I want to speak in favor of this bill. I will be brief so I do not repeat what others have said.

I notice that the State Police are here in force. They are going to speak to the safety issues and the communication within their department. It is clear that the public requires that they have the communications that they need. But we should not be swayed by the argument that I suspect will be made that this particular tower is essential, in all of its 180 feet for that purpose. It is clearly a tower that has commercial purposes as well as public communication purposes.

I think it is a real blight upon the state government reputation that a commercial use of public property has been slipped through under the name of public safety. A real mistake has been made. The reason why I am speaking even though this is not my district is that I have a mountaintop in my district that has the same problem. Which is Mt. Monadnock. Which is a state park and has a tower on it. At this point it has no communication stuff on it. The tower was put up later, and it is subject to litigation as is this tower. And...

Senator Richard L. Russman, D. 19: Are you going to suggest an amendment?

Senator Mark Fernald, D. 11: I am going to ask that the committee not to vote today on this bill so that I may offer an amendment to have the Mt. Monadnock tower addressed as well.

Again there is a question of deed restrictions. As I understand it there's a question as to whether or not the state has title to the summit where they tower was placed.
(Senator Fernald continued)

I do want to say that I recognize the need for public safety. Even though my environmental friends won't like to hear this, there may have to be some compromise between wide-open spaces with

nothing in them, and the need for public safety. We may have to have some antennas on some mountaintops. But I firmly believe that a 180-foot tower is not needed for public safety. These two towers should be removed. Not only are they the wrong solution to the problem, but they are a violation of deed restrictions.

Senator Richard L. Russman, D. 19: Questions for Senator Fernald? Senator Cohen.

Senator Burton J. Cohen, D. 24: Do you think that it is possible that if the State Police and others with legitimate needs for communication towers where to work with the local community, that an acceptable compromise sight could be found?

Senator Mark Fernald, D. 11: I think that there are a lot of ways to compromise this. Again in my district in the town of Dublin, they had a cellular tower company that came in wanting to put up a tower. I don't remember the exact height but it was over a 100 feet. The town said no. The cellular company appealed under the federal law saying you can't zone out all towers. They were headed to court and then cooler heads prevailed saying "can we find a compromise".

What they did was they put up a smaller tower, which is camouflaged to look like a tree. It is on top of Beech Hill, north of Dublin Lake. I know the tower is there, I have yet to pick it out. I drive by it and I don't see it. If it where a big steal ugly thing, it would be easy to see. But it is camouflaged. The people of Dublin are very proud of themselves that they where able to work this out. It was a wonderful solution.

(Senator Fernald continued)

That kind of thinking make work here. I understand that this tower issue is not just these two towers. There are other towers that are equally a problem. I think it is to bad that the state bullied ahead on this without thinking it through.

Senator Richard L. Russman, D. 19: Further questions for Senator Fernald? Thank you very much for your testimony. The chair will recognize John Stevens. We will get out right off the bat as to...

John Stevens: Mr. Chair my name is John Stevens Assistant Commissioner for the Department of Safety. May I ask if Executive Major Fred Booth come up here and assist me as well?

Senator Richard L. Russman, D. 19: Sure. Do you need these other fellows here at the moment?

Major Fred Booth: If the chair would prefer we could dismiss them.

Senator Richard L. Russman, D. 19: Yes. I am feeling pretty secure (laughter). Thank you very much. We appreciate you coming. The record will note that there where a large number of State Troopers here in opposition to ***SB132.***

John Stevens: Thank you Mr. Chairman, members of this distinguished committee. My name is John Stevens and I am the Assistant Commissioner for the Department of Safety. I appear here today with Executive Major Fred Booth, on behalf of Commissioner Flynn and the entire Department of Safety in opposition to ***SB132.***

I think the main reason that I would like communicate our opposition is the public safety reason. I refer to a statement by Commissioner Rob Thompson, in a letter that he wrote back in 1997, in regard to the management of the towers.
(John Stevens continued)

In one of his statements he said that we need to recognize the historic use of the mountain top facilities. The public safety and the public and private partnership that the state has traditionally encouraged.

I am here just to talk about the public safety purpose very briefly. As I rely on Major Fred Booth, in the technical aspects and the Commissioner does as well, I'm sure that he can answer any of those questions. The bottom line here though is that we have looked at the evidence here; this is the only location in Merrimack County that could ensure complete adequate communications for our law enforcement.

It is the only place that would allow all law enforcement officers on a portable radio communication mechanism to talk with each other. Or that would allow being able to identify a need for service or help to assist citizens, or even to assist other officers.

I just would like to site to you a couple of examples why we feel very strongly that we need to make sure that this tower is used for public safety purpose and stays. Merrimack County should have the same coverage as other counties. The state police should be able to just touch their portable radio. A 5-watt radio to tell someone that they need help. That's what this tower does. We have tested it. The 45-foot tower that was there originally, that still is there does not provide that type of communication.

We've tested it. We came here yesterday and today; we are prepared to even show you. They will not be able to use a portable 5-watt. The legislature gave us 7 million dollars back in 1993, to enhance the state police and the entire local law enforcement communications system throughout the state. So we wouldn't have problems in the future that we have had in the past.

(John Stevens continued)

We had a state trooper in 1978, Dick Champy that was killed. He was assaulted outside his vehicle. If he had had a portable 5-watt radio he could have just pushed a button. He might have been able to get assistance in very quick time. He may not have died. That is one of the issues.

Trooper Phillips, one of the troopers that was killed in the Carl Drager shooting, was as you all probably know and are aware, was alive during a certain period of time where he could have notified another trooper. If he had been able to notify other troopers in the area, they might have been able to save at least one other life.

Public safety is a very important issue to the state police and to all local law enforcement. As you can see they are here enforce today. When you look at the technical reasons and aspects of why we want this tower in place, I think that the evidence is compelling. I say again Merrimack County can have full coverage. This is the only area where we can ensure that full coverage. It is very very vitally important.

If you have any questions, I would like to ask Fred Booth to answer those questions for you on the technical or the radio communications aspects. He is the Executive Major in charge of the operations and support services. He is charged by the commissioner to ensure that the $7,000,000.00 that you people appropriated us is spent wisely, and is spent to ensure the best public safety possible for all law enforcement and the public. Thank you.

Senator Richard L. Russman, D. 19: Questions? Senator Cohen.

Senator Burton J. Cohen, D. 24: I don't really think the issue here is public safety. I think the issue here is were people notified? Did the state do the right thing by jamming it down the throats of the local people?
(Senator Cohen continued)

You said that this is the one sight that could do for all of Merrimack County. What about... we are all interested in protecting public safety. Nobody wants to see these officers die. We are all concerned. Couldn't there have been another way? Is it not possible to have smaller decentralized towers, spread out so there could be the same level of communication without having to

have one central place for the entire thing? Could that not work? This is a technical question that I do not know the answer to.

John Stevens: It is technical and I would ask Executive Major Booth to help me out on that question. But from what I have been gathering, the height distance of this tower is necessary.

Fred Booth: To answer your question Senator, obviously anything is possible. I would be remiss if I sat here today and said that what you proposed could not be done. It could be done. The problem is that it could not be done with the amount of money the general court appropriated to build the state wide radio system.

7.5 million dollars that was appropriated to the Department of Safety in 1993 to build this radio system has been a very tightly budgeted project. It has been very carefully designed. I began working on this project in 1984 and have been with it ever since to bring it to the point where it is today.

If the state where to elect to take down Kearsarge and require the Department of Safety to build additional sights to compliment that, I'll tell you it is going to cost millions of dollars to do that. It is also going to require several years. To give you an example, to put these towers up we have spent a good amount of our time building sights that are already established within the project. Kearsarge is an example of that. There are others around the state. It has taken us since 1993 to now to become operational. This is the first year

(Executive Major Booth continued)

that... actually I should say that 1998 is the first year that we became operational with only 2/3rds of the system. We still have 1/3rd of that to go in the northern part of the state.

If we were to start over and build additional towers, we would be looking at many years to do sight acquisition, leases, building of shelters, building of perhaps roads, power lines and all the other associated equipment that goes along with building these towers.

Senator Richard L. Russman, D. 19: Further questions? Senator Krueger.

Senator Patricia Krueger, D. 16: Thank you very much Mr. Chairman. In some of the literature that we received, there is a reference to how the state police would be better served by satellite based communication. Is that an option that you have ever considered? I also do not know what a 5-watt radio is, so perhaps you could help by explaining that a little more to me.

Fred Booth: Sure, I would love to explain that to you. To answer your question, yes we did look at several types of communications. Going back to... I want to say 1986, 88, something like that. I may be a little bit off in my time frame. When Governor Sununu was at the helm. He had brought up the issue of the state using satellite communications for our transmissions and our work. We looked into that. What we found out is that a satellite is not feasible for us to use.

Number one it is very costly. Number two it didn't provide the type of coverage that you need in order to facilitate two way communications. To give you an example of that, if you look at satellite dishes that you use for your TV. They have to be in an unobstructed area within your yard so that it has a position into the southern atmosphere, in order to receive that signal. You can't have trees in the way.
(Executive Major Booth continued)

Obviously we can't control where instances will happen within the state. The happen inside buildings, they happen under bridges, they happen in highly foliated areas. The fact is that the technology of today doesn't allow for satellite communications to provide the coverage.

The second issue you raised Senator in regards to the 5-watt portable radio. One of the major problems that our personnel have experienced over the years is the fact that they do not have

radio communications once they step outside of their vehicle. The vehicle is equipped with a 110-watt mobile radio with an antenna that is mounted on the roof. That radio puts out enough of a transmission signal so that it can reach the receiving facility. That radio probably weighs in the vacinity of about 35-40 pounds. It is mounted in the trunk and is powered by the electrical system of the vehicle.

The radios that the troopers use outside the vehicles are this type of radio (looks like a walky-talky). It is a 5-watt portable. 5-watts is a lot different then a 110-watt in putting out the amount of power to reach a particular site. With the 5-watt portable what we are trying to do is achieve a public safety standard. It is called a 95% public safety communications coverage. This means that 95% of the landmass would be covered with portable radio communications.

The reason it is a public safety standard, is simply because it is a lifeline for that emergency worker, that trooper, or local police officer, or sheriff. The ability for that person to get home safely at night is strictly in their hands without that radio. They have to make a total judgement call once they get out of that vehicle to insure that they protect themselves so that they get back safely.

With this in their hand (holding 5-watt portable radio), and the ability to reach a tower, they're then able to call for assistance to help them should they get into some kind of situation that
(Executive Major Booth continued)

is obviously above and beyond their control. It is also to the publics' advantage for them to have a portable in their hand. When they are involved with accident victims were they are trying to encourage them to hang on until help gets there, they can't be running back 500 – 1000 ft calling from the car radio, leaving the victims. That is not our desire. Our desire is to be able to have communications at the scene. That 5-watt portable provides that.

One of the comments that I heard here today is that we could do it with a 40-foot tower. The fact is that without a whole group of complementary towers supporting the one at Kearsarge the state police need the 180 feet. This particular radio here is a 5-watt portable that is on our old low ban system. It has an antenna mounted at 45 feet on the fire tower. If you would like I can demonstrate this portable will not reach our communications center.

This radio is the same thing. It is a 5-watt portable radio. It is a radio that would transmit back to the 180-foot tower with the antenna mounted at that level. This will come in clear as a bell. If the committee would like I would be glad to demonstrate. What you are trying to do in theory, is take this little small antenna (the one on the 5-watt radio) that is on the average 5 feet above the street height and try to reach a mountain top that is many miles away.

When you have obstructions such as buildings, trees and other things that are in the way, that signal is not going to get there. By having the height available, this permits that to happen.

Senator Richard L. Russman, D. 19: Further questions? Senator Krueger.

Senator Patricia Krueger, D. 16: Just a follow up question. Does US Cellular pay anyone for the use of this tower? If so who?

Fred Booth: I would like to defer that question to the Department of Economic Development.

Senator Richard L. Russman, D. 19: I know I told you I was going to limit people. But obviously some of these preliminary speakers are setting the groundwork so we have a sense of what we are talking about. Some of us don't know a lot about it. That is one of the reasons I am giving them time, because they are obviously part of the controversy. Further questions. Senator Johnson.

Senator Carl R. Johnson, D. 3: I was referring to the same article that Senator Krueger was that is in this pamphlet, so I will defer until later.

Senator Richard L. Russman, D. 19: Any other questions? Senator Cohen.

Senator Burton J. Cohen, D. 24: A technical question. I don't know how similar these are or not to but cellular telephones that a lot of people have in their cars these days.... I wasn't sure if there is a great similarity, which there may not be.... ***Tape Change....***

Start side two of tape #1.

Fred Booth:... that is an excellent question Senator. I am glad you asked that. The Department of Safety looked into that technology in the late 1980's, which was 800mgh's, which is similar to what the cellular telephone industry runs today for their cellular towers.

(Executive Major Booth continued)

The difference is that the higher you get the frequency the less propagation you get. In other words the less that signal is able to penetrate through buildings and hills and so forth.

Typically a cellular tower... and I'll leave it to the cellular people to answer that... but typically a cellular tower only services about a 3 or 4 mile radius. Then the next tower picks up. The technology is such that as you drive down the highway using your telephone, what is happening is that the communications signal is being passed from one tower to the next tower.

Conceivably you could carry on a conversation from here to Washington DC, and never lose a tower. That signal keeps on being passed forward to the next tower. Again, to do that, you are talking about hundreds of towers. If you where to take a snap shot of the amount of towers the state has put up to support it's communications and that of the cellular industry obviously there would be a big difference. The fact is that the cellular technology does not penetrate as well as the technology that we are using. It requires us to use fewer towers with more height.

Senator Burton J. Cohen, D. 24: If a regular civilian can go from tower to tower why couldn't that apply to the state police as well?

Fred Booth: We could absolutely do it if we probably had a hundred – hundred and fifty million dollars to do it.

Senator Burton J. Cohen, D. 24: You can't use the towers that civilians are using?

Fred Booth: Let me clarify that. Yes we could build on those towers. But I would venture to say off the top of my head that you are looking at fifty to a hundred million dollars to do that.

(Executive Major Booth continued)

That is because it is going to require more transmitting and receiver equipment. It is going to require leases with these companies. We know that leases that are done with a commercial tower can be very very costly.

Senator Richard L. Russman, D. 19: You mean they wouldn't do it in the name of the public good? Anybody else have any further questions? Thank you very much. Now I guess we will recognize the residents of the Kearsarge area to kind of frame the debate here. I will recognize Charlie Niebling.

Charlie Niebling: Thank you Mr. Chairman, members of the committee. My name is Charles Niebling; I am policy director to the Society of the Protection of New Hampshire Forest. I will be fairly brief in deference to everyone who has traveled to be at the hearing today.

I am here in support of ***SB132.*** For disclosure the Forest Society has a lawsuit pending relative to this issue. I want to make clear that we did not initiate this bill, but we do support it. I would urge the committee to resist the temptation to wait to let the courts resolve this issue. Ours is not the only suit pending. Because it is entirely appropriate that the people of the state come to their legislators to seek an episode of redress on the violation of trust that is really at the heart of the issue here.

Let me give you just very quickly some background on the Forest Societies vested interest in Mt. Kearsarge. The early part of our history is characterized by considerable effort to protect many of the major conservatories in the state. The White Mountains, Mt. Kearsarge, Mt. Monadnock. The green sheet that I circulated is a history of land acquisition and protection and subsequent conveyance into public ownership.

(Charles Niebling continued)

Beginning in 1918 with the acquisition of the Frank-West Rollins tracked. The so-called summit tracked. A 521-acre tracked upon which the tower in question is located.

We take our stewardship responsibilities, both on our own lands as well as lands that we have conveyed into public ownership very seriously. It is in that regard that we felt compelled really to challenge the validity of the placement of this tower on the Frank-West Rollins tracked.

Correspondence with the state at the time of the gift of the Frank-West Rollins tracked makes clear the state understood the intent of the deed restrictions that accompanied that transfer. The letter

from the Secretary of the State, on behalf of the Governors counsel was acknowledged that it would be used for forestry and recreational purposes. I would also draw reference to a letter dated March 24, 1949, from W. R. Brown, who was then Chairman of the Forestry and Recreation Commission, which is the predecessor to DRED. It stated that this land would be kept in propertied as a forestry reserve and a park area. That it would be kept up in a manner worthy of the best traditions of your society.

We contend and have done so by suit after attempting for six months to resolve this issue out of court with DRED, that the construction of this tower simply violates the language of the deed. We have an organizational obligation if you will, to up hold the conservation integrity of the lands that we have entrusted to the state of New Hampshire.

We do not oppose and I have testified for the Senate previously on Senator Cohens bill last year, we do not oppose the use of public mountaintops for public safety telecommunications purposes. This is a very difficult situation. I don't envy the committee. You have some pretty difficult issues here staked against one another. I want to make clear that we are

(Charles Niebling continued)

certainly not opposed to the use of Mt. Kearsarge for public telecommunications purposes.

We have a long standing and valued relationship with DRED and other agencies that are utilizing this tower. We have not taken this legal action lightly, but nor do we take support of this bill lightly. It is not the only time that society has resorted to legal means to defend the conservation and integrity of lands that have been entrusted to state ownership.

This legislature has the authority to determine whether the states actions on Mt. Kearsarge violated the legal intent or the spirit of

the public protection of Mt. Kearsarge as a Public Park and reservation.

I would urge you to exercise this authority to passage of SB132. Doing so will hasten the relief sought by our lawsuit. It will save the state considerable legal fees. With that I will conclude my testimony and be pleased to answer any questions.

Senator Richard L. Russman, D. 19: Any questions? Thank you for your testimony.

Charlie Niebling: The other document that I handed out is a copy of our petition.

Senator Richard L. Russman, D. 19: I would recognize Bob Nelson. He will be speaking for Commissioner Bald who could not be here today. Commissioner Bald is the commissioner of DRED.

Robert Nelson: Good afternoon Senator Russman and distinguished Senators of the Environment Committee and assembled citizens. My name is Robert Nelson. I'm the Chief of Forest Protection for the New Hampshire Division of Forest and Lands, which is part of DRED.

I have been requested by Commissioner Bald to read a prepared statement from the Commissioner regarding ***SB132.*** We are in opposition to the bill. If you have any questions, I will try to capture them and relay them to the commissioner.

DRED wishes to be on record as opposed to the enactment of ***SB132,*** requiring the removal of the 180-foot communication tower from Mt. Kearsarge. Kearsarge is one of 16 DRED communications sites designated under our policy on use and management of mountaintops for communications facilities. All

these locations have existing communication equipment installations and have historically provided the backbone of the public health and safety communication system in New Hampshire. A summary of these communications sights and the existing antennas are attached.

A new state police and state wide radio system authorized by the 1993 New Hampshire legislature and designed by Motorola recommended a 180-foot communication tower on Kearsarge. Tower height was determined based on state police radio coverage requirements and antenna space needs of existing sight users that will be relocated to the tower. These included three federal, four state, 2 local or county, 3 quasi-public and private entities as shown on the attached tower lay out.

In April 1997, DRED received a proposal from United State Cellular to construct a 180-foot communication tower on Kearsarge consistent with the state police plans and design criteria.

(Robert Nelson continued)

The department negotiated a lease with US Cellular, allowing tower construction with the condition the tower would become property of the state upon completion and acceptance of construction. The New Hampshire Governor and executive counsel approved this arrangement on July 18, 1997.

In summary under the DRED communication sight policy, public health and safety communications are priority uses of our communications sights. The 180-foot tower on Kearsarge is required to meet communication needs of New Hampshire State Police and the preponderance of use will be by public or quasi-public agencies. Its continued use is critical for adequate public

health and safety communications. Thank you for the opportunity to address this issue.

Senator Richard L. Russman, D. 19: Questions? Go ahead Senator Johnson.

Senator Carl R. Johnson, D. 3: Thank you Mr. Chairman. This pamphlet here on page one. I have a concern regarding the lack of public notification. We have an interoffice Memo to Commissioner Robb Thompson of DRED, it says "If possible, I think we should avoid a general public notice and abutter notification". Do you know that to be true?

Robert Nelson: I do not. I don't know that to be true.

Senator Richard L. Russman, D. 19: I think... the state didn't pay for the tower to be put up. Is that the idea?

Robert Nelson: That is my understanding. The tower was erected by US Cellular. At their expense.

Senator Richard L. Russman, D. 19: So it didn't cost the state anything?

Robert Nelson: That is my understanding.

Senator Richard L. Russman, D. 19: You don't know if that entered into the thought process of whether or not this might be a good place for a tower.

Robert Nelson: I am not familiar with that.

Senator Richard L. Russman, D. 19: What did they do before this tower was there? How did people get together and talk?

Robert Nelson: To the best of my knowledge sir we have 3 antennas that were in existence on top of Mt. Kearsarge. One of which is on top of the fire tower there. I can tell you from the

agency that I represent the Forest Protection Bureau, we were not able to get coverage for our forest rangers out in the field on portables from those sights.

Senator Richard L. Russman, D. 19: Further questions? Thank you very much for your testimony. The Chair will recognize Neil Nevens. Those of you with cameras feel free to move around the room. It is quite all right.

Neil Nivens: Thank you Mr. Chairman, members of the committee. My name is Neil Nevens and I am a resident of Warner. I am pleased to be here to support this bill. I would like to reiterate some points, to highlight a few things and then to move on.

Since October 1997, when US Cellular completed construction of this 180-foot telecommunications tower on Mt. Kearsarge. They have done so without any town or public hearings, planning or sight reviews.

The state of New Hampshire did not provide advance notice nor allow time for citizen's response and participation. In fact the state of New Hampshire and DRED, purposely we contend, excluded public participation in order to give advantage and protect special interests.

(Neil Nivens continued)

Primarily a private telecommunications company. Over the interest of the citizens and the communities surrounding Mt. Kearsarge. I have referenced two items here. I will be more then happy to pass them on to the committee.

One being a memorandum from James Carter, the other is promotional material from Cold Stream Realty Advisors out of Bedford, New Hampshire. Which I think indicates the type of process this has been.

As an example James Carter the administrator for the Division for Forest and Lands of DRED had this to say to Robb Thompson then commissioner of DRED, on March 19, 1997, interoffice memorandum and I quote "We need to decide what political/public involvement will be required for these projects on DRED lands. I think we should avoid a general public notice and abutter notification".

After the construction of the tower, on November 26, 1997, in a letter to the town of Warner to the Board of Selectmen, then Commissioner Robb Thompson had this to say and I quote "the lateness in submitting this notification to the town of Warner was due to a staff oversight". This 180-foot oversight is now on top of Mt. Kearsarge.

Further we feel that private real-estate development companies have taken advantage of their special connections with state officials, as indicated in the promotional materials obtained from Cold Stream Real-estate Advisors. Wherein they boast of their ability to avoid local regulations to help their telecommunications clients to quote "Expand coverage ahead of competition". By using and I quote again "Contacts with state officials to explore erecting towers on state owned mountains". These are just a few examples of what we faced in this process.

Senator Richard L. Russman, D. 19: You have faced... (loud cough drowned out rest of sentence).

Neil Nivens: Indeed it has. I think that is one of the reasons why the towns surrounding Mt. Kearsarge last town meeting session voted overwhelmingly to have the tower removed, expressed their outrage and dismay. Others will speak to that point.

Certainly the trust we have placed in the state to preserve and protect these places of natural beauty has indeed been violated. The trust we place in government to be open and to function in a way that maintains local control has also been violated.

Ultimately this deal goes against the very deed that turned the parkland over to the state. It goes against the law governing the use of these parklands.

This is not about public safety. I think we might ask given the comments from those folks out of DRED as well as the Department of Safety. What indeed is the over lap with the tower on Mt. Sunapee?

I suggest that the committee could request the propagation studies that were conducted. That the state up to this point has been unwilling to release. I think over all that might be helpful.

Really what this is about is the sale of our public resources and mountaintops to companies like US Cellular. I think we have to act now to restore the natural beauty of Mt. Kearsarge. Also, to preserve the process of open government committed to the will of the people. We should expect nothing less.

Senator Richard L. Russman, D. 19: Thanks. Now let me ask a question. What was the name of the document that you have been unable to get?

Neil Nivens: It is the propagation studies that where done when these towers where constructed. Those are studies that we have made request for and the state has been unwilling to present.

Senator Richard L. Russman, D. 19: Are those studies available?

Fred Booth: Those studies are available. We have made them available to John Jones who represented their group and came to look at them. Others have seen them.

They are held in confidence, simply because if those propagation studies where released into the wrong hands, it would reveal all the wholes in our system as to where we do not have coverage. For that reason they are being protected.

Senator Richard L. Russman, D. 19: Ok. Questions for this witness? Senator Johnson.

Senator Carl R. Johnson, D. 3: Was there ever an attempt early on from any group, to motion the court for an injunction or a cease and deceit?

Neil Nivens: No there wasn't. I think when they finally discovered this; the tower was basically in place. So our only remedy was to first of all expose the process, that is why we decided to go through the town meetings, and ultimately lead us to file suit in Merrimack County Superior Court. It is the citizens group Save Our Mountain.

Senator Richard L. Russman, D. 19: It is amazing how well people work under pressure. Thank you very much. The chair now recognizes Bob Scott from Newport.

Bob Scott: Two minutes I promised and two minutes I will give you. Yesterday I testified on a bill about a study committee basically to separate DRED into two separate entities.

I said in the opening at that hearing we do not need an economic zar. What we need are specified managers who will protect the state assets.

DRED is much too large. It is not focusing. It is not looking for accountability to the public. This is a perfect case study to provide you. In 1949 this land was, like so many pieces of land from The Society for the Protection of New Hampshire Forest, given to the

state of New Hampshire. In looking at this entire situation, I have heard the arguments of the people about public safety. I have heard the arguments about the necessity of the tower.

The necessity and usefulness of it are not the question at all. It is the emanate domain process. It is the whole concept of being accountable. It is the whole idea of being a public steward. I look at the situation where under the emanate domain process a resolution is granted, special powers are given, under the special powers there the public interest and public improvement is what is at the forefront of what our concerns are.

Yet in this situation here we don't see that at all. We see a situation that avoided specific regulations. They tried to basically push the public out of having their say in some of the circumstances here. It is very similar to the situation with the Sunapee tower.

The Sunapee tower was the same type of bums rush attempt to just push this thing through. Tell people it was going to do a specific thing, state it was going to be a specific height, and then it ends up being a much taller tower to begin with. Then if we look at the actual retaining value for the state itself there we have $969.00 on a thirty-year contract.
(Bob Scott continued)

Do you think that the cellular companies are going to be raising their rates during the next thirty years? I believe they will be. I believe our return on the investment there of protecting the public assets are quite diminished.

Senator Richard L. Russman, D. 19: Question. Would you say that again? How much money do we get?

Bob Scott: The Mt. Sunapee one is $969.00 per month. It is a thirty-year contract. Again I think the cellular companies are going to be raising their rates a little quicker than that. The other thing that we really need to focus on here is the fact that the

people at DRED are stewards of the public trust. They need to understand.....**Tape change.**

Start of tape 2...

Senator Richard L. Russman, D. 19: Were there any other Representatives or Senators here that have not spoken? Ok. Now the chair will recognize Dan Callaghan next for US Cellular.

The other thing again I would like reiterate is we now know when the land came and that kind of thing. We also know that it is not a matter of public safety. So if you have a story to tell us, then tell the story. If you have specific data or if you are from law enforcement and you have had a particular problem we need to hear that. But not just the same thing over and over.

Dan Callaghan: Good afternoon Mr. Chairman and members of the committee. My name is Daniel Callaghan and I am a lawyer for Divine, Norman and Branch in Manchester. We represent United States Cellular Cooperation. With me at the table is David Klumb from United States Cellular. He will be making the presentation.

David Klumb: Good afternoon. I am David Klumb and I am employed by United States Cellular. I am a resident of Deering, New Hampshire. Before I comment on the specifics of the bill I would like to take this opportunity to provide you with some background regarding US Cellular and Mt. Kearsarge.

We have been in New Hampshire since 1988. US Cellular provides service throughout most of New Hampshire. We do not provide in Rockingham and Strafford Counties. We utilize towers in order to provide wide area coverage for cellular telephone use.

I'm sure you are aware that this service is demanded by consumers and is considered a necessity by business. In 1997 as

you have heard from various state agencies, the state determined that it needed to build a tower on top of Mt. Kearsarge for the states requirements.

United States Cellular believed that its needs and the states needs had the makings for a public/private partnership that would benefit both parties. We had done this previously on Mt. Sunapee. Therefore we approached the state and agreed to construct the tower at no cost to the state in return for space on the tower in addition to cash rent.

To answer some of the previous questions, we constructed the tower, deeded it to the state and we pay $12,000.00 a year rent. At Mt. Sunapee, the original agreement was $1000.00, a month. 50% of which is rebated for the cost of the tower. It is a 10-year contract. Actually it is a 5-year contract with a 5-year renewal.

As a result of this public/private agreement, the state obtained a tower deemed necessary by various state agencies at no cost to the state.

(David Klumb continued)

It is important to point out that this tower is no different then the tower that would have been built if we were not located on it. The height was at the states request not ours. Our company did not and does not need 180-feet of tower. We are located much further down.

If this bill were enacted, it would force the state to break its contract with us by requiring the state to move the tower. We maintain that this proposal if enacted is not appropriate. It would be costly for the state and probably violates state and federal constitutions.

This bill proposes making several findings which will be interpreted to extend beyond simply Mt. Kearsarge and this

telecommunications tower. These findings impose significant limitations upon the power of the state to take actions intended to protect the interest of its citizens. Removal of the tower will also be very costly to the State and will significantly impair essential governmental communications. We believe you should consider these cost before you pass this bill.

Lastly, US Cellular has a contract with the state. The State and Federal Constitutions prohibit the state from taking property rights. Moreover, the Federal Constitution prohibits the State from impairing the rights of contract. In our view if this bill were enacted, it would violate these constitutional prohibitions.

Therefore, we urge you to consider the testimony presented today and analyzed the financial consequences of this bill. We believe that you will conclude that you should not pass it.

Senator Richard L. Russman, D. 19: I think there is something about they can't take the property unless there is just compensation. I think there is something added to that about not taking it.

Daniel Callaghan: Senator Russman, if I might just respond to points that were raised in earlier testimony today. One was by Mr. Scott just preceding us. Mt. Sunapee is not before the committee. US Cellular is on that tower. I don't know what agreement he was talking about, with regard to what telecommunications company. With US Cellular we have a 5-year lease that began July 1, 1995, with one five-year option to renew. The rent is $12,000.00 per year. With adjustments for inflation for every two years.

The second point was I know Senator Fernald some time ago talked about the tower in Dublin. I believe that was our tower. That he doesn't see. He commented favorably about it.

Senator Richard L. Russman, D. 19: It sounds like you wish you had put a tree on top of Kearsarge too I guess.

David Klumb: It would have been just a visible.

Senator Richard L. Russman, D. 19: Senator Johnson.

Senator Carl R. Johnson, D. 3: Did US Cellular research the deed?

David Klumb: We did not. We typically do not do title searches on state properties.

Senator Richard L. Russman, D. 19: Senator Krueger.

Senator Patricia Krueger, D. 16: My first question is was US Cellular aware of the methodology used in not notifying abutters, etc.? Now knowing isn't that of great concern?

David Klumb: We were aware of it at the time.

Senator Patricia Krueger, D. 16: You were.

David Klumb: We had not had a public hearing at Mt. Sunapee and thought it was a very valid forum. We supported what was done with...

Senator Patricia Krueger, D. 16: Why wasn't it done this time?

David Klumb: We were not in control of that process.

Senator Patricia Krueger, D. 16: All right. My second question is with a rent of $12,000.00 a year considering the environmental impact of the tower, exactly how much money do you make off that tower. I have a cellular telephone and I have more trouble going down 89 in that one area. For something that ugly and I still can't talk to anyone. I was just kind of curious.

David Klumb: There are still holes in the system. I am not a liberty to divulge how much revenue we get from and individual tower. But...

Senator Patricia Krueger, D. 16: What would be your guess?

David Klumb: I would guess that we process 2 or 3 thousand calls a day on that tower.

Senator Patricia Krueger, D. 16: That would translate into? How many of my dollars?

David Klumb: What is your average cost of a call?

Senator Patricia Krueger, D. 16: Oh god you do not want to know. Thank you.

Daniel Callaghan: If I could Senator Krueger, with regard to your comment that the state advised us that the rent we are paying based on the fact that we paid for all the construction cost of the tower, plus any market rate that the state is receiving we are not receiving any income from renting the tower.

Senator Richard L. Russman, D. 19: Further questions? Senator Cohen.

Senator Burton J. Cohen, D. 24: I don't know what holes may exist now, but you mentioned that you are much lower on the tower then 180-feet, that you don't need 180-feet. It appears to me that you're rather rapidly achieving pretty expansive coverage throughout the state of New Hampshire. There aren't that many holes. Couldn't that same technology be used for the state police?

David Klumb: We have invested over 50 million dollars in our infrastructure in the state of New Hampshire. The state has invested 7 million dollars trying to do the same coverage, actually more coverage because we do not cover Rockingham and Strafford counties.

They have only invested a little over 10% of what we have invested and we only cover 60% of the state.

Senator Burton J. Cohen, D. 24: Not to quibble, but I think there is a slight word change here. When you say public/private partnership. Don't you really mean state/private partnership? It seems the public was specifically and purposely frozen out. We have memos to indicate that was the intention.

Senator Richard L. Russman, D. 19: I think when you say the state you mean through the state.

Senator Burton J. Cohen, D. 24: Correct.

Senator Richard L. Russman, D. 19: I suspect if you had it all to do over again you would prefer to see it handled somewhat differently.

David Klumb: I won't argue that.

Senator Richard L. Russman, D. 19: I suspected that would be a fair statement. Anything else for these gentlemen? Thank you very much.

Daniel Callaghan: I hope the record was clear as to where we are located on the tower Senator Cohen. Did you want to know that information?

Senator Burton J. Cohen, D. 24: You mentioned that you are further down on the tower.

David Callaghan: We are at 130 feet. The only reason that it is 180-feet is that the state required it.

Senator Patricia Krueger, D. 16: Your indulgence please Mr. Chairman, just one more question. Can you see, if in fact this bill is passed, that you would be able to work in collaboration with the Department of Safety, in a relocation that would satisfy both of you? Or is that just the only...

David Callaghan: I guess I would hesitate to comment on that now because there are legal ramifications if this were to pass as our statement refers to. (See attachment F) There are some sugnifagant issues.

Senator Russman is correct in saying the state can exercise its emanate domain powers and take certain actions. However, the Federal Constitution has a specific prohibition against the State impairing the rights of contract. Irregardless of the reasons, we do have a contract. So I would not want to comment specifically on that.

Senator Patricia Krueger, D. 16: I thought you would just volunteer.

Daniel Callaghan: Because of the legal ramifications, we did not initiate any lawsuits and we are not currently a party to any litigation. But there is ledigation pending.

Senator Richard L. Russman, D. 19: What I am sitting here thinking is it seems like, since the state didn't put this tower up, you probably could have put some other towers up. You could have paid for those and the state would have helped you do it. That would have filled in all your holes, and it also would have filled in their holes it seems like.

Daniel Callaghan: Based upon the comment... I think it was Major Booth, with the expense that the state would have had to pay, alternatively was in the range of 50-75 million dollars.

Senator Richard L. Russman, D. 19: Well it wouldn't be because you are putting them up.

Daniel Callaghan: I don't know that we would spend that kind of money Senator.

Senator Richard L. Russman, D. 19: Thank you very much. Now I have a sense here that the debate is being pretty well framed. So again I would urge you to tell us what you have to tell us and that is it. Tom Krager please.

Tom Krager: Good afternoon. Thank you Mr. Chairman, members of the committee. I will try to be brief and avoid overlap. I just want to point out what may be terribly obvious by now.

This entire process or actually the lack of process has really galvanized people in our area. It is extremely difficult to come in after the fact and determine necessity.
(Tom Krager continued)

Which ideally and properly would be considered on the front end.

I was asked to speak about the citizen response. This is characterized pretty much in sections 8-12 of the bill. In a nutshell, what happened after this tower appeared one day, was people began to organize on a grassroots basis. Inquires were made as to why the tower was there. What had lead to its going up and so on.

Efforts were made to have the governor and counsel reconsider their decision. It turns out this was a bullet item on one of their agendas to make the appropriations for this construction. The short of it is, we got nowhere. Early on it was cast as a public safety issue. I think the issue has been framed that way. Absence of process on the one hand versus the public safety on the other.

Articles were prepared for six town meetings in the towns of Danbury, Andover, Wilmot, Warner, Sutton and New London. Those were overwhelming passed. I believe the text of the petition articles is in the packet of materials that you all received. The essence of which is the people expressing their outrage at the State of New Hampshire and DRED, about the absences of due process in the erection of this tower.

As a result of that really nothing happened. The two towns most directly effected Wilmot and Warner, voted to remove the tower. At that point the selectmen wrote to the Governor, those letters should be in your materials. Nothing happened there.

Finally a lawsuit was filed in Merrimack County Superior Court. Essentially it alleged that DRED has acted beyond the scope of its regulations in permitting the construction of this tower. You heard about the societies lawsuit.

(Tom Krager continued)

I question and I don't pretend to know exactly the answer to this. The emanate domain issue that was brought up, it seems to me that the contract is illegal to begin with. There are serious questions about whether or not emanate domain issues would in fact apply. What has been the justification offered up by the state at this point beyond public safety, I would suggest that there hasn't been anything. It is awfully hard after the fact to examine properly the whole question of necessity.

I have to comment on two things. The state in its response to the suit pending in Merrimack County Superior Court, stated in its answer that the 180-foot tower did not constitute a substantial new use or a substantial change in use.

Now mind you there is a 40-foot fire tower that is displayed in the pictures you were given. That is what existed on top of this mountain. I happen to look out at this tower every morning from where I live in Wilmot. I can assure you it is a substantial change

in use. It is unfortunate that it is being passed so much in terms of a public safety issue.

As to the propagation studies, Mr. Jones may have seen them but in the first round of interrogatories, we asked the state to provide us copies of propagation studies so we could examine for ourselves the whole question of technical necessity and overlap. An objection was filed on grounds of public safety. It is my understanding that the attorney representing our group is working out a consent decree to meet those safety concerns.

I would be very interested in seeing them. I think perhaps this committee might be interested in seeing them. From these Motorola produced propagation studies just exactly what areas of overlap there. If the tower really has to be a 180-feet high, as DRED and the State Police have contended.

(Tom Krager continued)

In summary to us it is all about process. Public safety, no one is against public safety. The process stunk.

Senator Richard L. Russman, D. 19: Thank you very much for your time. Any questions? Senator Johnson.

Senator Carl R. Johnson, D. 3: I may have missed this in here did you appear before Governor and counsel?

Tom Krager: No. It was a presentation that was made by... Major Booth was there; there was a representative from DRED there. Questions from the audience were not permitted. The counselors were allowed to ask questions.

Senator Carl R. Johnson, D. 3: Was their vote unanimous?

Tom Krager: The initial vote was unanimous. But I think Senator... the sense that I got at least, from that meeting is that

nobody really understood what they were voting on. It was in a series of several hundred-cooperation items. I can tell you people ... Peter Spaulding for one was very surprised about the appearance of this tower.

Senator Patricia Krueger, D. 16: I just have a quick question. Was there any objection to the fire tower?

Tom Krager: I don't think that there has been historically. I think that is something in one shape or another there were a lot of things hung from that tower before the 180-foot tower went up. There wasn't nearly the extent of private US Cellular presence on the old tower as there is on the new tower.

Senator Richard L. Russman, D. 19: Thank you very much for your testimony. The chair will recognize Peter Atherton is it? And Marie Mitchell from Necta/Frontier Vision.
Speaking against the bill.

Peter Atherton: Possibly not. Mr. Chairman, members of the committee. I am Peter Atherton. I work for Frontier Vision Cable. We have cable systems in the Lebanon. We also service New London and Wilmot. We hold franchises for the Conway area, the Plymouth and Lincoln area, and the Littleton area and north of the White Mountains.

One of our concerns with this bill is that it seems to take all-commercial, including.... depending on whom you talk to in interpreting the bill, the microwave transmitters of the fire tower. We have no impact at all on the 180-foot tower or its associated building. Our concern is with the other portion of the bill that seems to impact other commercial ventures that are up there.

We would loose in our Conway area and also possibly Littleton and Lincoln area carriage of at least WMUR. The only affiliate broadcast station in the state of New Hampshire. We would also possibly loose WNNH the PBS channel. That is our concern.

I will pose it as a question, if I may. Would this legislation impact other people who are already on the mountain? That is something I would point out to you to consider. We are not on the tower; we are not part of the tower.

But to remove all of the commercial endeavors that are up there would greatly impact a service that our customers want. Which is WMUR, especially in the Conway area and Wakefield who are not currently carrying it. We are linking our cable systems together so that we can get it to our customers.

Senator Richard L. Russman, D. 19: Senator Krueger.

Senator Patricia Krueger, D. 16: The question I was leading up to was about the fire tower. Sometimes WMUR is not to kind to me so I might not mind that. However, one does need the weather. It is occasionally right.
(Senator Krueger continued)

I wanted to know if you had had any communications with the people who have come here today in expressing how they feel about that.

Peter Atherton: We have not had any conversations with the citizens groups, because to honest with you we have nothing of our own property that is on the tower. I did speak to Major Booth and then later as I went through this process the link to the television stations use, they are not physically on the tower.

That began a very convoluted are we affected or aren't we sort of discussion between WMUR, WNNH and Frontier Vision. So no we have not spoken with the local groups, but we have spoken with Major Booth and with the two television stations.

Senator Patricia Krueger, D. 16: Follow up question. So then you are relating to page 3 of the bill for everyone's reference, to the statement "and all related commercial communications installations".

Peter Atherton: Yes.

Senator Patricia Krueger, D. 16: I was hoping you could speak on that.

Senator Burton J. Cohen, D. 24: Maybe I can even follow up that question. Looking at the photograph here of the firetower, is the concern of the language "that all related ... whatever it is I can't remember what was said... is this where you guys are?

Peter Atherton: Yes. Those little bubble things are what are called microwave transmitters. The require a direct line of sight to work. We have another one similar to that over on Cranmore Mountain. That receives WMUR directly. There is also another one that is over on the top of Cannon Mountain,
(Peter Atherton continued)

and one of those little devices points in a different direction that does exactly the same thing. Just sends a signal up were it is received over this microwave path and there is another one of those little bubbles. It is those bubbles that we are worried about coming down. They kind of look like a satellite dish.

Senator Richard L. Russman, D. 19: So you want to keep the bubbles. Any other questions? Seeing none. Thank you very much. Is Chris Rugerberg here?

Chris Rugerberg: Good afternoon. My name is Chris Rugerberg and I work for the Sierra Club. We are for the passage of ***SB132.*** Written testimony. See attachment A.

TAPE CHANGE...

Brad Anderson: .... I don't have any prepared testimony. I intensely researched this issue when I first became aware of it in October 1997, when the helicopters started suddenly flying over

the house with concrete. I spent three months looking at records, coming down to Concord and got to know everyone at the Department of Safety and DRED pretty well.

I can verify all twelve points here in this bill as factual to the best of my knowledge. I can also say that there is one omission in there and that is that there is a constitutional issue that is not addressed. That is the demand of accountability of State Representatives of the Government to the public. That is not only not added but has been intentionally denied us.

The propagation studies that you have heard discussion of were shown to me after a period of time of getting lawyers involved and everything. I finally got them as a result of a 91A request to display those propagation studies. Major Booth
(Brad Anderson continued)

was kind enough to sit around with us for several hours while we made copies of things that we were permitted to copy. In questioning him about the propagation studies it became clear that the program is under two phases. I won't go into the technical aspects of what each phase constituted. I can't really because Major Booth wasn't able to make clear what those propagation studies represented.

In testimony in front of the courts and in front of the public at hearings Major Booth testified that DRED through Commissioner Thompson that they in fact couldn't really verify the propagation studies because Motorola had the information. The State Police and DRED do not have the capability to verify what Motorola told them.

What they did was they contracted out their accountability to us as citizens to private industry. That information is still not being given to us. With the relative data the public could analyze the claims of the Department of Safety that these towers need to be 180-feet tall. We could determine if that was true. That is what accountability means and we have been denied it.

I have copies of prorogation studies which I will leave with you today (see attachment B & C). These are just from some scanty information I was able to recall from raw data. One of them shows Bluejoe Mountain propagation pattern for a 180-foot tower. The other one shows for a 65-foot tower which is the height of the existing fire tower that is already up there.
When you look at these carefully and try to check the pattern one against the other you will see that it is very difficult to tell them apart. Maybe a picsel of difference here or there.

What that signifies is that the propagation is virtually identical. A shorter tower would not impact the ability of that signal from that point to get on outward. Just viewing those propagation studies yourself won't really help you.
(Brad Anderson continued)

You need to have a picture for the whole state. As Major Booth is fond of pointing out, it is a puzzle and everything has to fit together.

All the information needs to be provided to the public so they can verify it. Whether it is under the cover of secrecy because they are afraid a crime is going to be committed in one or two cow fields in the northern part of the state that isn't covered by their patterns or not, that can be done. They need to be accountable and that hasn't happened. That is important.

I would like to take a little time to address some of the comments that were made to the committee that were incomplete or not accurate.

Senator Richard L. Russman, D. 19: Keep to the research.

Brad Anderson: Thank you. One is that there were alternate sights available. There is one for Bluejoe Mountain, which is only 2 ½ miles away.

The State Police never contacted them. In fact they were made aware that well-known sight would donate space on the tower to the state for the states equipment. I'm sure that arrangement could be made else where as well. They did not contact the company. They refused to even consider the option.

I would just like to point out that Coldstream Realestate Advisors, that notice that you got handed around to you, the promotional item where they said they were able to circumvent...

Senator Richard L. Russman, D. 19: That has already been said. Let's not go back into that. (See attachments D & E)

Brad Anderson: I just want to point out that the client they are referring to is US Cellular.

Senator Richard L. Russman, D. 19: We assumed that.

Brad Anderson: Ok. But you should realize there are a lot of other clients. Nextel communications who is a business partner of Motorola who sighted these towers, who did the propagation studies and has the information that we can't get. They are a business partner and they own a number of these towers. There is a common interest there.

I have a lot of other information I could supply to you and I don't know how I am going to do that given the time limit...

Senator Richard L. Russman, D. 19: Send it to us in writing.

Brad Anderson: In addition you will notice that there is a website noted on the propagation charts. You can go there and... if you will forgive the editorial license that we have taken on this issue... you can see factual information posted up there. Some scanned items and also some other items that might be helpful.

Senator Richard L. Russman, D. 19: Questions? Senator Wheeler.

Senator Katherine W. Wheeler, D. 21: Thank you Mr. Chairman. Mr. Anderson, I recall talking to you about Bluejoe and I'm glad that you are reminding us there are a lot of other areas in the state that have some similar concerns.

I apologize for going in and out of the room, so perhaps this was addressed. You may not be the right person to address it. But, has anybody talked about the obsolescence of towers?

Brad Anderson: Yes, I can speak to that actually. I helped write the ordnance in our town that deals with telecommunications. In most of those circumstances, most of those ordnance's contain a clause somewhere in there that requires the person who erects the tower to be responsible for their eventual removal.

No such clause to my knowledge has been provided in the case of our state parks. Those towers... there is no exit strategy if you will, that I am aware of built into the contracts. Also, I think this committee should consider the other towers that are out there. The ones that are subject to these same injustices.

Senator Richard L. Russman, D. 19: Ok. That is enough. The Chair will recognize Sgt. Michael Doucette, with the State Police in Littleton, NH.

Sgt. Michael Doucette: See written testimony attachment G.

Senator Richard L. Russman, D. 19: Any questions for this gentleman? Thank you very much for coming in. I will now call John Dabuliewicz and he is in favor of the bill.

John Dabuliewicz: I have written testimony, Mr. Chairman, which I'll leave with you. For the record, my name is John Dabuliewicz, I live at 84 Kearsarge Mountain Road in Warner, and it's a pleasure to appear before your committee for the first

time ever as a private citizen. I'll try to be brief, in my testimony and touch on only those issues which I don't think you've heard about yet. Number one, the bill mentions the violation of RSA 674:54, but it does not mention the additional violation of RSA 541-A:39 which requires notice to towns and opportunity to comment when land use discussions are being made. That one I don't think has been brought up yet. Secondly, I would point out that in the lease itself, that copy of right here, section twenty-five states as follows; lessee shall have the unilateral right to terminate the lease at any time by giving ninety day written notice to lessor, of lessees excersize of this option. The state, however, interestingly enjoys no such right. I call that [inaudible]. Next thing I'd point out is that...

Senator Richard L. Russman, D. 19: Perhaps you could tell us who represented the state in the negotiations. Do you know?

John Dabuliewicz: From the Attorney Generals office?

Senator Richard L. Russman, D. 19: From wherever.

John Dabuliewicz: I really don't know that. I haven't had the time to find out. Another thing that I would point out is that section eight of the lease is an assertion that the State "has the full right, title, interest, power, and authority, to enter into this lease. Based on what's in the bill with regard to the deed restrictions, I would question whether that is a true statement, and if that's a true statement, the foundation of this contract may be flawed, and, therefore, the contract may be invalid, that's up to someone else to decide, but it's certainly a possibility. Another thing I would point out with reference to what was said by US Cellular is section 16 of the lease, conditions precedent states as follows; lessees title insurer must determine that lessor owns good and clear marketable title to the land underlying the premises and that such title is free from encumbrances and restrictions which would interfere with lessees intended use of the premises. I certainly think that if there is damage done to this company, that their title insurance is gonna be on the hook for that based on this

section. Another thing I want to point out with regard to what went on in Warner, I was at town meeting last year and they voted in favor of the article requesting that the tower be removed. I was personally dismayed at the letter sent by the selectman a few days ago that Senator Trombly gave to you. I talked to the chairman and selectman Mr. Kolcord last night on the telephone, he assured me that the letter was only aimed at the issue of the cost of removing the tower and was no way intended to contradict what the legislative body had ordered. The selectman could do in petitioning DRED to remove the tower. He said go ahead and tell them that if you want, because he didn't like looking up at the tower himself, and I will also tell you that he told me based on the uniformly negative reaction in being up that he has received from citizens since that letter became known, he said he would not send that letter if he had it to do over again. So I want you to take that into account. According to the lease for the first two years of payment that is received by the state for rent is one thousand dollars per month. With regard to the issue of other possible means by which the state police, whom we all agree need to have communications capabilities could do that, I'm no technician and I don't know what's capable of being done. I'm certain that with our technology, it won't be long before things will be able to be done without these kinds of monstrosities, however, I would point out one thing, Major Booth said that back in the Sununu administration, they looked into using satellite, in 1986. Now in 1999 , technology as we will all acknowledge, has greatly advanced. Have they looked into that issue more recently , like a couple of years ago before this tower went up. The other thing I would point out with regard to the use of cellular technology for their communications was, Major Booth said they looked into that in 1990, once again that was nine years ago and I think things have changed significantly since that time. The final thing I would say, having been a long time state employee myself, and having been involved in budget struggles when I was at Environmental Services, is I can understand the concern about spending that money I can understand the concern DRED has about spending that money. According to the Governor in council item the estimated cost of construction here was a hundred and twenty

thousand dollars, so I can't imagine that it's going to cost more than that to remove that tower, and given the way DRED has acted in violation of it's trust and in violation of at least two statutes as has been cited here, I think that it might be a cautionary note to other State agencies to take their stewardship responsibilities more seriously, that they were required out of their existing budget to come up with the money to do this, and I realize as a State employee that's a very hard thing to say 'cause I know how tight the budgets always are , but I believe they acted wrongly in this case and I am absolutely amazed that Jim Carter wrote what he wrote [inaudible] notice for a state employee to do that is amazing. Thank you. One final thing I'd just say is that if anybody's interested, I have the town report here with the minutes from last year with the wording of the article that we passed without any opposition to the petition the State to take this tower out.

Senator Richard L. Russman, D. 19: I just have one question Mr. Callaghan, do you know who was representing the state at the time that negotiations where going on?

Daniel Callaghan: I do not know that.

David Klumb: Our contract with the state was with Jim Carter, but he was given some advice from the Attorney Generals office. I don't know who it was that he spoke with there.

Daniel Callaghan: We can find that out for you Mr. Chairman.

Senator Richard L. Russman, D. 19: Ok. Thank you. The Chair will recognize Captain Jeff Gray from the New Hampshire Fish and Game.

Captain Jeff Gray: Thank you Mr. Chairman and members of the committee. My name is Captain Jeff Gray. I am the assistant chief of law enforcement for the Fish and Game Department. I am going to make my comments brief.

The crux of my testimony is public safety oriented. I would like to make you aware that our officers are on line with the new statewide communications systems. For the first time it allows us to communicate with troopers. We have a close working relationship. Often times we are involved with criminal actions and other activities with them that makes that very important.

Our officers, as I am sure are aware, are frequently out afield. Far removed from telephones and the use of a cruiser radio which carriers a larger wattage. So we do rely quite heavily on the 5-watt portable radios. We use them while we are patrolling the waterways on boats, in the woods with snowmobiles, and ATV's.

(Captain Jeff Gray continued)

Portable radios are a critical part of our search and rescue program. The ability to use them for search and rescue activities is something that we rely heavily on. It is something that we would be greatly handicapped without.

For all of those reasons the use of the tower on Kearsarge, which houses our repeater, and powers the lower 2/3rds of the state for most of our officers, is critical for operations. So I would again make you aware of our opposition to this bill. Thank you very much.

Senator Richard L. Russman, D. 19: Thank you very much for your testimony. Any questions? Senator Johnson.

Senator Carl R. Johnson, D. 3: Were you on Kearsarge before this tower was built?

Captain Jeff Gray: Yes we were.

Senator Carl R. Johnson, D. 3: Did that work?

Captain Jeff Gray: It did. But again we had limitations with the use of portables. We had a number of dead zones that we were unable to use our portables effectively.

Senator Richard L. Russman, D. 19: The chair will now recognize Richard Zuehlke.

Richard Zuehlke: Thank you Mr. Chairman and members of the committee. My name is Rick Zuehlke. I live in Wilmot were I laugh, sing, celebrate and cry too. I want to tell you why I shed a lot of tears recently.

My best friend and childhood buddy who lived in New Jersey with his wife and daughter delighted in visiting us here in New Hampshire.

(Richard Zuehlke continued)

One summer day in 1996 I walked with 9 year old Sarah, who loves the woods, lakes and mountains, but has none of them at home. We staked out a small rise were except for a few trees that needed trimming she had a lovely view of Mt. Kearsarge. We called it Sarah's hill. She looked forward to returning to her now favorite place.

On September 22, 1997, my buddy who was Sarah's father passed away after a long illness. I had promised Ned that as his family..... **TAPE CHANGE**

START OF TAPE #3 SIDE 1.

Richard Zuehlke:... In less then one month two of a little girls dreams where shattered. What I had wanted to give to our grandchildren was taken as well.

As I enquired and learned about what had happened I felt betrayed. Not only had none of us citizens had any input into a

decision to despoil property, which had been deeded to us, but also we had been intentionally excluded from any deliberations.

With citizen input we could have addressed both esthetic and safety concerns. Commercial uses, well I don't know that there would have been much support for that.

Recently however, I was heartened to read Governor Shaheens February 4th, proclamation. In which she orders the executive branch to assure the public at large that we are doing everything we possibly can to ensure that our traditional communities and landscapes will be available for our children and future generations. Well that is nice but I have a more personal request for the legislature, give the mountain back to Sarah. Restore it for all the children who come to New Hampshire for piece and solace. Thank You.

Senator Richard L. Russman, D. 19: Questions? Thank you very much for your testimony. The chair will recognize Sheriff Marty Heon.

Sheriff Marty Heon Strafford County: Good afternoon Mr. Chairman, ladies and gentlemen. I will be very brief here this afternoon. What I would like to do is just echo all the comments my brothers, Major Fred Booth, Chief Nelson, Sgt. Doucette and everyone else.

How this impacts on the Strafford County as a tower, we currently transmit off of Chesley Mountain; it does not meet our needs. We have been working very diligently with the State Police to move our tower on to Bluejoe. Bluejoe had no interaction, no comments on this bill. Other than hearing testimony today from people who are concerned with towers.

I can only share with this committee that these towers are very important. We need them and in addition to that it is an expense to the county that we pay for this private tower that we transmit

from on Chesley Mountain. With that I want to thank you very much for allowing me to say these few words.

Senator Richard L. Russman, D. 19: Thank you very much. Any questions for the Sheriff? Senator Wheeler.

Senator Katherine W. Wheeler, D. 21: I would like to just welcome my Sheriff. The Sheriff of Strafford County we are proud of you. Perhaps we don't always agree with you, but we are proud of you.

Senator Richard L. Russman, D. 19: Pat Novak.

Pat Novak: Thank you. Senators I hope in three minutes or less to convince you that the sighting of this tower was totally inconsistent with the present public use of the mountain.

(Pat Novak continued)

Kearsarge is and has always been a hikers mountain. It is just under 3000 feet. It is a very doable climb for people of all ages. It is a favorite for families. Each year about 20,000 people visit Winslow State Park and 25,000 visit Rollins State Park. The popular Rollins and Winslow trails are so heavily eroded by foot steps that a third trail, the Barlow trail was a welcome addition when it was opened and dedicated this past summer.

The state collects a few from visitors who use the parks and trails. Years ago this was a good value. But now many hikers expressed disgust with the sights and sounds that they encounter at the summit of Kearsarge. Some of them even go down and question the toll collectors as to what happened.

Here you see a relatively bald summit, and you have these pictures in your packet to look at later. It is now covered with buildings, equipment, paraphernalia and a 180-foot eyesore

mounted on huge concrete footings. How long before the paying public will decline to return to a scene like this?

When the State acquired ownership of the tower from US Cellular it acquired responsibility and liability, that could possibly turn out to be more costly then removing the tower now. Consider the following. People ski and snow shoe Mt. Kearsarge in the winter. Under certain conditions the tower becomes encrusted in ice. There is a danger of ice being blown off the tower and crashing to the ground causing serious injury. Here I show you one of the US Cellular buildings. Its roof has been heavily armored with 2x4's that will protect the building from falling ice. But what will protect the snow shoer, the skier, and the hiker?

At anytime of the year a tall lattice like structure, could be a temptation to intice someone to risk climbing it and perhaps falling. There are no barriers in place to prevent such a thing from happening.
(Pat Novak continued)

Last I have learned that there haven't been any emissions tests done on Mt. Kearsarge since 1994. Yet there have been many new users up there since then. Testing should have been done before now to determine if hikers and people working in the fire tower are being exposed to unsafe levels of radiation. I'm not sure of the exact regulations but when users licenses come up for renewal with the federal government they have to show that testing has been done before license renewal. According to Mr. Carter testing has not been done since 1994 so I don't understand how this has been working.

I hope you can see that our mountain parks were not intended for telecommunications sights. ***SB132*** can legislate the restoration of Mt. Kearsarge to those who love it and for future generations.

Senator Richard L. Russman, D. 19: Thank you very much. Any questions? Senator Cohen.

Senator Burton J. Cohen, D. 24: I'm not sure that you can answer this but maybe somebody else can about the falling ice. If a hiker got hurt right now who would be liable for the damages?

Pat Novak: Well in the case of someone getting hurt seriously, and I can't understand how that wouldn't be very serious. When my husband and I took this picture after the January ice storm last year, it wasn't windy and the ice was solid. A week or so later people went up and it was extremely windy and the ice was falling off.

As to who would be liable, we have many attorneys in this room today that could answer that better than I. Generally when people are injured they sue all involved parties. The State owns that tower; US Cellular does not own that tower.

(Pat Novak continued)

We now have this gift for which we are liable. I would certainly say the State would have some liability wouldn't you?

Senator Richard L. Russman, D. 19: Thanks. Further questions? Thank you very much. The chair will now call on John Clement DOT. He is speaking in opposition of the bill.

John Clement: Thank you Mr. Chairman. I am John Clement. I work for the Department of Transportation. I am director of operations there. I will make my comments very, very brief. I just want to share some information with the committee.

We at the Department of Transportation also have facilities at the mountaintop. I think that we all agree that an adequate two-way radio system is necessary to address our day to day communications needs. Along with emergency situations and weather related conditions.

We have had a presence's on the old tower and have been there since approximately 1970. We have a brand new radio system

that is currently being installed statewide. As far as the Department of Transportation is concerned, it is a 3 million-dollar effort that was part of the 1995 capital budget program approved by the legislature.

We do have a presence's on the new tower that is there now. We have two antennas on that tower we also have three repeaters in the equipment building at the sight. I want to state that the Department of Transportation did not have any involvement in the determination of the height of the tower.

We do feel that the Mt. Kearsarge sight is critical to our needs. It does serve our two highway maintenance districts, which covers the western-central part of the state as well as our eastern and central part of the state. We also do have statewide capabilities. **(John Clement continued)**

One last thing that I want to point out is that we have about a total of 19 sights around the state for our system. This controversial sight being one. We also have two other controversial locations. Those are Mt Monadnock, as well as Bluejoe over in Farmington. Thank you very much.

Senator Richard L. Russman, D. 19: Thank you for your testimony. Any questions? None. Jennifer Ohler. She is in favor of the bill but does not wish to speak. You do wish to speak?

Jennifer Ohler: Jennifer Ohler, Warner, NH. I have been waiting for one of you to ask somebody the question, so I will come up and ask.

Mt. Kearsarge stands at 3000 feet. We have been told tonight that, Merrimack County is the only county that didn't have certain coverage and that is why this tower had to go up.

However, not every other county has a mountain that is 3000 feet high. They didn't need a tower that would bring their antenna up to 3000 feet. Now why at 3000 feet why couldn't they have laid

that antenna on the ground and gotten better coverage than any place else in the state?

Senator Richard L. Russman, D. 19: That is a great question maybe somebody will choose to answer it.

Jennifer Ohler: I wish somebody would choose to answer that. I would like verification; I would like your committee to come up with some verification from an outside source. We keep being told again and again that 180-feet was absolutely essential. But all the information comes from sources that want the tower there. I would like an independent source to say why at 3000 feet you need another 180-feet to get that coverage.

Senator Richard L. Russman, D. 19: Thank you very much for your testimony. Ed Canar?

Ed Canar: Mr. Chairman, Senator Below, is my newly elected Senator. I am going to offer you a different view if you will. A different perspective. I live on Kearsarge Valley Road, by its very nature if you are not familiar with the area, I am right near the mountain. I run Labradors, I run quarter horses up on the mountain all the time. I hunt, I fish and I see the mountain every day.

I think if you cut right to the chase this boils down to esthetics and environmental impact. When I look at the mountain, what I see is a mountain with broad shoulders. I see multiple use. I am looking at all the bedrooms and livingrooms of all the game and wildlife and I am looking at a tower.

Personally at the risk of being labeled a cultural philistine, I have no issue what so ever with that tower from an esthetic prospective. A lot of my community feels the same way.
In terms of the environmental impact, I believe like many people that it is minimal.

I am also here to support DRED. I am just a working stiff. The only political connections I have, is that I met Clifton at a turkey supper. That is it. When I talked to DRED, when I asked them about Gulf State Forest, when I asked them about Forest and Lands at Gulf State, when I asked Parks and Recreation about Moose Brook, they were incredibly responsive. They sent me maps, they directed were to go, some people even told me were the game trails are.

So what I am here for is to support DRED. I am also concerned about public policy being directed by what I would consider to be a small group that may or may not be representative of the entire Kearsarge Region. Thank you.

Senator Richard L. Russman, D. 19: Any questions? Thank you very much for your comments. Maxwell Campbell.

Maxwell Campbell: See attachment I.

Senator Richard L. Russman, D. 19: Great testimony. I will now call on Derek Perhouse.

Derek Perhouse: I can be almost as brief. My concerns are on the height of the tower. Just simple arithmetic why do we need another 180-feet over the 3000 that is already there? I support the concept of getting some independent assessments. Thank you.

Senator Richard L. Russman, D. 19: Thank you for your comments. Chief Scott Hillard. The Chief was called out on patrol. He opposes the bill. The chair will recognize John Jones.

John Jones: Thank you very much Mr. Chairman. I do not know who wrote my name down.

Senator Richard L. Russman, D. 19: You do not have to speak believe me. We do not force anyone to testify. Is there something you would like to tell us, please step up here and tell

us. However, if you want to testify you have to do it from the table up front.

John Jones: I do not wish to testify other than to say I am delighted to support this bill.

Senator Richard L. Russman, D. 19: Sheriff Chet Jordan is opposed to the bill. I will now call on Reverend Allen Trent.

Reverend Allen Trent: One thing that I think has not been mentioned is that as a student of world religions, the wisdom and traditions of the world, and the contained collective wisdom of living for humanity. When we ignore the sacredness of creation in our stewardship of it, when we place those things which take away from the beauty of our earth we loose part of that which makes us uniquely human.
(Reverend Allen Trent continued)

We loose a part of that which makes us moral. When we ignore that wisdom, then we do so at our parrel. For it is the beauty of the earth that enables us in many ways to be human, moral, respectful of human beings of all races and of all peoples and of the sacredness of this trust which we have been given.

If we ignore that wisdom we loose part of what makes us human. Thank you.

SIC

Senator Richard L. Russman, D. 19: Thank you very much for your time. Howard Wilson? Howard is opposed to the bill. Richard Little.

Richard Little: Thank you Mr. Chairman, Senators. I am Richard Little. I am a resident of New London. I have spent a good part of my life in the shadow of Mt. Kearsarge and have a very personal relationship with it.

I am very much offended by, not only the desegregation of the mountain, but also... and more so the offense against my rights as a citizen through the process which this project was under taken.

Those kinds of words have been said enough today. I think, I hope they have come home to you. I have one other qualification beyond my relationship with the mountain. I am an engineer. I spent 35 years in the design and development of computer communication equipment. I have been involved in the development of those microwave systems and other systems at similar sights to this sight on top of the mountain.

(Richard Little continued)

I must say in all candor if I were US Cellular, if I were the State Police, I would die for that sight. It is a perfect sight. It gives more coverage to a greater area then any other sight in the area.

But there are trade offs. This is were the tower was put, the height that it was erected at. It was absolutely the cheapest solution for the communication problem. There is another side that has to be taken into account. What does it do to this beautiful precious resource of ours. Are there other solutions? Absolutely. Do they cost more money? Absolutely. Who bares the cost? In the case of the public system, the public. In the case of the so-called commercial system, the cell phone users. I as a cell phone user would be happy to pay my share of the cost of communicating through a system placed differently from the present system.

As a citizen of the state who depends on the services of our safety organization. I certainly want them to have the best chance to survive in the worst of situations. I want them, like all of us to protect me, as is their mission. Who bares the cost of doing it some other way? We do. That is a trade off we have to face. We

were never ever given the opportunity to see two sides of this issue. We only saw the one. The placement of that tower in the cheapest, dirtiest and I use that word advisedly, way that it could be done. That is what I have to say.

Senator Richard L. Russman, D. 19: Thank you. Maybe you can be the independent person who is going to figure out about the height and all that stuff.

Richard Little: Well I could say some words about that technically. I don't think you need to know those things really.

Senator Richard L. Russman, D. 19: I think we can probably make a decision here. We now recognize Dick Wright. He is with Capital Area Fire Compact.

Dick Wright: Thank you Mr. Chairman and members of the committee. My name is Dick Wright and am the Chief of The Capital Area Fire Compact. The compact is an organization, which is a public municipal cooperation. It encompasses the fire departments of 18 communities and the central part of Merrimack County. I have some concerns with the bill and I am opposed to the bill as it is written. For a couple of reasons.

Number one is that the bill does not appear to offer any type of alternative if the tower comes down. I have a great fear that somebody is going to call me up someday and say come get your antenna and your transmitter. I am going to have to take it back to my office and put it in the closet until we can make other arrangements to find an appropriate sight that will provide the coverage that we now enjoy from Mt. Kearsarge.

I say we enjoy because the service that we perform is the fire emergency dispatching. Emergency medical services dispatching, dispatching of our regional hazardous materials team and dispatching to motor vehicle accidents were there are personal injuries.

The reason that our system is on Mt. Kearsarge, as the previous speaker alluded to, is that it is a good sight. It is the best sight in the area. It is the only sight that we have found that gives us the coverage that we need in order to activate the pagers of our emergency responders and in order to communicate with our people when they are on the scene or responding to emergencies. The primary dispatch transmitter for the towns of Henniker, Hopkinton, Bradford, Warner, Dunbarton, Salisbury and Webster is on Mt. Kearsarge.

(Dick Wright continued)

We do have other sights that we use on the eastern side of the system that handles the other areas. But Mt. Kearsarge is the only sight we have found that provides us the coverage that we need. We feel that there is a great public safety concern involved here if that equipment has to be removed from that sight. I can only suggest that the hope that somehow there can be some kind of compromise that will satisfy both people that do not like the looks of the tower and I would certainly not argue that point. I don't think it is an attractive tower but it does perform a very vital public service.

Senator Richard L. Russman, D. 19: Thank you for your testimony. Any questions? None. Chair will recognize Linda Rauter. Linda? What about Francine Philippe. They both favor the bill. Pricilla Parmenter and Jane Parmenter are in favor of the bill. Rusty Chandler, Jeremiah Zick, both are in favor of the bill but do not wish to speak. Jonathan Purick from Newbury.
TAPE CHANGE

START OF TAPE 3 SIDE 2...

Jonathan Purick: ... it is our rights that have been infringed upon. That is the key issue here. I'm thinking of our state motto

live free or die. I think we have a choice. I know the State Police are concerned, DRED is concerned, other people are concerned but we pay their salaries. I think it is a matter of we have a right to some input here. They are talking about the end here. The end, the end, the end. The means are important too. I think the ends and means have to meet. We have a commitment to be socially and environmentally responsible. That is the major concern here.

Senator Richard L. Russman, D. 19: Thank you very much for your thoughts. Linda Wilson, does not wish to speak but is in favor of the bill. Posy Bass.

Posy Bass: Thank you. Members of the committee, my name is Posy Bass and I am from Peterborough. I have been editing what I wanted to say today. An awful lot of things have been pointed out by other individuals.

There were a few points in the testimonies that I wanted to reiterate. Someone brought up the issue of fall zone around the towers and the safety issue of ice falling off the towers. This is something that is used in criteria for sighting towers. It is definitely a concern. I understand at Mt. Sunapee the have had to close down the back of the summit building because they have had problems with large pieces of icing falling on the deck. That was one point I wanted to make.

Another point I wanted to make was that, last winter I was driving to Washington, DC, and I noted on the New Jersey turnpike that every State Police facility there was a dead ringer facility like the one on Mt. Kearsarge and the other mountain tops. It astonishes me that a facility that maybe appropriate for sight on the New Jersey turnpike, could be appropriate for sight on a protected piece of property.

Which brings me to what really interest me in this whole debate, that is where do we stand in terms of individuals who over this century have very generously given properties towards public use. They deeded properties to the state of New Hampshire with

specific language in the deeds restricting the use of this property. They trusted the state to protect these lands. I think that the states actions in this case set a poor precedence. I see a resource being eroded by some poor decisions. I hope discussions like the one today will help us guide DRED, and help them do a better job and make better decisions. Thank you very much.

Senator Richard L. Russman, D. 19: Thank you for coming and telling us that. Now that concludes my list. If there is someone who has not spoken and feels compelled to speak, we would be happy to hear them. You wish to speak sir?

Jeremiah Zick: My name is Jeremiah Zick and I am from Sutton, NH. I am in favor of the bill. I think kids at our school, Kearsarge Regional High School, when they think of the name they think of the mountain. They think of the mountain without a tower on it, that is a beautiful mountain. I think putting up the tower has destroyed some people's view of our school and even the mountain. That is all I have to say.

Senator Richard L. Russman, D. 19: Well said. Anybody else? Yes sir.

Alan Topliff: Mr. Chairman, Senators. My name is Alan Topliff and I live in Pembroke. I own Wright Communications. We are a two-way radio servicing organization. We service a lot of the users on Mt. Kearsarge and have done so for a number of years. I spent quite a bit of time this fall on the big tower. NH DOT, Secret Service, NH Electric cooperative, US Army Core of Engineers among them. I do oppose the bill.

I would like to talk about a couple of technical things very briefly. One is the structural strength of this tower. Granted it is big, it is ugly, no question about it. However, there were three additional towers on the mountain. They were smaller towers which where not obtrusive but since 1990, they have failed do to the wind and weather conditions that have been mentioned by other folks. Unfortunately, none of those were structurally strong enough to

withstand the very harsh conditions on the mountain. This tower was designed for this location. It was designed for the antennas that are there, and in all likelihood will survive. Yes we have a hazard of falling ice, I am not sure whether falling towers is a greater concern.

One of the other issues is the tower height. The tower does hold a number of antennas. Without getting very technical the need for vertical separation between antennas is important. It is necessary to minimize interference between users on the tower. We had talked to a manufacturer of interference equipment, this past year and had determined that to provide
(Alan Topliff continued)

similar kinds of isolation that are now provided by the vertical separation on the tower it would take not only a lot of money but probably a building about half the size of the one that is there now to house all this equipment. Can it be done? Sure. But there are some issues. I'm not sure that a smaller tower would be capable of handling all of the non-commercial folks out there. You would have to have a number of towers. Whether that would be better, I am not convinced of that.

The other thing that I would like to address, the concern about radiation hazard to the public. The higher an antenna is off the ground, the farther away it is from people and therefore that hazard is minimized. That is a very valid concern. The height does help to minimize that. Thank you.

Senator Richard L. Russman, D. 19: Thank you very much. You had second thoughts? Come on up. This is it the last speaker.

John Jones: John Jones from Wilmot Flats. Thank you for giving me the opportunity to speak. I think that it is important that we do the very best that we can to give accurate information. The smaller antennas that were referred to were in disrepair and could not sustain the weather. One of the antennas had never

ever had any repairs done to it. Not even basic maintenance. That is it.

Senator Richard L. Russman, D. 19: Alright that will conclude the hearing on *SB 132.*

Hearing closed at 5:50PM.

Respectfully submitted,
Kristiana Dudley, Secretary

Attachment A

New Hampshire SIERRA CLUB®

Testimony before the New Hampshire Senate Environment Committee in Support of SB 132 as Introduced

Sierra Club of New Hampshire

March 4, 1999

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Printed on Recycled Paper

Chairman Russman and members of this committee, I thank you for the opportunity to speak before you today on behalf of the Sierra Club of New Hampshire. The Sierra Club supports the passage of SB 132.

We are supporting the Save Our Mountain group with our own legal action requesting the court to approve the removal of the 180- foot telecommunications on Mount Kearsarge, as requested in section 2 of SB 132. This bill is important because it complements the work being done in the courts. This bill also supports the notion that the state has an obligation to follow the public trust doctrine in its management of the state parks.

Public Trust Doctrine

The Sierra Club legal action is based on the argument that the State has breached its public trust. We agree with Senators Trombly and Below that the Department of Resources and Economic Development has failed to conform to the laws governing the use of public lands. State park land is being leased for commercial uses at the expense of the public uses to which it is dedicated.

The public trust doctrine is a common law concept that requires just what it says- when the state owns public land, it holds that land in trust for the use of the public.

The public trust doctrine has been applied in Massachusetts to publicly owned park land. It has also been applied in this context in cases brought by the Sierra Club against the Department of the Interior.

Public Trust Doctrine in New Hampshire

Thirty years ago the doctrine was asserted by the State of New Hampshire itself against the federal government. New Hampshire brought an action against the federal Atomic Energy Commission to enjoin the granting of a license to build a nuclear power plant on the Connecticut River.

The public trust doctrine was also relied on by the New Hampshire Supreme Court in 1994 in its opinion concerning the ownership of coastal beaches.

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Society for the Protection of New Hampshire Forests

v.

The State of New Hampshire,
acting by and through
George M. Bald, Commissioner,
Department of Resources and Economic Development

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES the Society for the Protection of New Hampshire Forests (the "Society"), Petitioner in the above-entitled action, by and through its attorneys, Barto and Puffer, P.A. and petitions for declaratory relief under RSA 491:22, I with respect to the construction and placement of a commercial telecommunications tower, other towers and buildings on Mount Kearsarge in the Town of Warner in said County on land donated by the Society to the State of New Hampshire in 1949 in violation of the Society's deed of gift to the State and for injunctive relief with respect thereto and in support thereof says:

1. By Deed dated July 7, 1949, recorded in Merrimack County Registry of Deeds, Book 665, Page 292, a copy of which deed is attached hereto and made a part hereof as Attachment A, the Society conveyed as a gift to the State of New Hampshire a Five Hundred Twenty-one (521) acre parcel known as the Frank West Rollins Reservation in said Warner, including that part of the summit of Mount Kearsarge which lies in said Town, the Society having

previously gifted to said State in 1935 some One Thousand Five Hundred Seventy-four (1,574) acres lying more or less equally on either side of said Reservation. After 1949 and through 1975 the Society also sold to the State of New Hampshire in various lots some One Thousand Seven Hundred Ninety-nine (1,799) additional acres for a total from the Society of some Three Thousand Eight Hundred Ninety-four (3,894) acres on said Mountain.

2. The Society's said deed of gift dated July 7, 1949, stated:

> "This conveyance is made upon the express condition that the State will maintain said tract as a forestry and recreation reservation for public use and benefit and as a perpetual memorial to Frank West Rollins, the founder of the Society and former governor of the State; and further that the State will place and maintain in a convenient location on said tract a bronze table to be furnished by the Society, bearing an appropriate inscription regarding said memorial."

Additionally said deed was

> "made subject to a lease made by said Society to the United States of America covering the right to maintain an air-way beacon at or near the summit of said mountain, reserving to said Society the right to receive the rentals accruing under the terms of said lease; and this conveyance is also made subject to the right of the State to maintain a forest fire lookout tower on the granted premises.",

the State having maintained a forest fire lookout tower on the said granted premises from approximately 1924 and the United States of America having maintained an air-way beacon at or near the summit of said Mountain since approximately 1935.

3. In response to the proffer of said deed of gift, the Society through its Forester, Laurence C. Rathbun, received a letter from the New Hampshire Secretary of State

dated February 23, 1949, a copy of which letter is attached hereto and made a part hereof as Attachment B, stating in part:

> "The Governor and Council, assembled in executive session on February 15, 1949, instructed that a letter be sent to you, expressing their thanks and appreciation of the gift of the Kearsarge Mountain land, presented by your Society to the State of New Hampshire, as a memorial to Frank West Rollins, and to be used for forestry and recreation purposes."

4. The Society also received a letter directed to its President and Directors from W. R. Brown, Chairman, New Hampshire Forestry and Recreation Commission, a predecessor to the present Department of Resources and Economic Development ("DRED"), dated March 24, 1949, a copy of which letter is attached hereto and made a part hereof as Attachment C, which letter on behalf of that Commission also acknowledged the Society's said gift stating:

> "This to be added to the land already owned by the State to give control of said Mountain in order to keep it in perpetuity a Forestry reserve and a Park area, where opportunity will be offered for forestry demonstration and an easy access to one of the most beautiful views in the State."

and adding:

> "We wish to assure you that every effort will be made to carry out your wishes, that this area will be dedicated as a memorial to your first President, ExGovernor Frank W. Rollins and that it will be kept up in a manner worthy of the best traditions of your Society."

5. At that time Revised Laws 234:1 entitled "Reservations" provided as follows:

"The forestry and recreation commission is authorized to purchase with the consent of the governor and council suitable tracts of land for use as public reservations and to make provisions for the management of the same. The words 'public reservation' or 'state forest or reservation' shall be understood to include forests and reservations used for public recreational and park purposes."

6. By letter to the Governor and Council dated July 1, 1997, a copy of which is attached hereto and made a part hereof as Attachment D, Philip A. Bryce, Director, Division of Forests and Lands with the written approval of Robb R. Thomson, then Commissioner of DRED, requested authorization to lease land at Kearsarge Mountain, Kearsarge Mountain State Forest in Warner to USCOC of New Hampshire #2, Inc. ("USCOC") for a cellular telephone installation for a term of five (5) years with a five (5)-year extension option and rent of $1,000 per month with specified inflationary adjustments, to include a one hundred eighty (180) foot self-support communication tower and a twelve (12) feet by twenty (20) feet prefabricated communications and equipment building in order to expand and improve its cellular telephone service in central New Hampshire, and to provide a microwave link to its other facilities. Upon completion of construction by USCOC and acceptance by DRED said tower would become the property of the State and be available for installation of antennae of such existing DRED tenants as NET, NH Electric Cooperative, Corps of Engineers, FBI, Secret Service, and Merrimack County Sheriff and provide sufficient space for accommodating the NH State Police state-wide radio system and consolidating State Police and NH Department of Transportation radio systems currently located in the fire tower and watchmen's cabin, and allow for the removal of the two (2) existing guyed towers at the NET building and the DOT tower at the watchmen's cabin. Said

letter indicated that the lease had been requested by United States Cellular doing business as USCOC of NH #2, Inc.

7. The Governor and Council approved said request at its meeting of July 18, 1997, as Agenda Item #70. A copy of said Lease as executed with Exhibits A, B, and E thereto is attached hereto and made a part hereof as Attachment E, said Exhibit E being the statutory Notice of Lease as recorded in the Merrimack County Registry of Deeds at Book 2069, Page 0994.

8. Section XVI of said Lease (on page 6) provides that Lessee's obligations thereunder are expressly conditioned upon and subject to certain listed conditions precedent, item (c) of which states:

> "LESSEE'S title insurer must determine that LESSOR owns good and clear marketable title to the land underlying the Premises, and that such title is free from encumbrances and restrictions which would interfere with LESSEE'S intended use of the Premises or would impair LESSEE'S ability to pledge the leasehold estate as collateral to secure debt financing."

with the Lessee having no obligation to pay rent until such condition precedent had been satisfied or waived.

9. On or about October 16, 1997, said one hundred eighty (180) foot self-support commercial telecommunications tower was erected on Mount Kearsarge along with the approximately twelve (12) by twenty (20) foot prefabricated equipment building, both on the said land conveyed to the State of New Hampshire by aforesaid deed of gift. The State of New Hampshire acknowledges that such is the fact.

10. With the erection of said one hundred eighty (180) foot self-support commercial telecommunications tower, the Society also became aware of DRED's various other tenants, being private commercial entities, public utilities and public agencies, and their various antennae, structures and buildings on the land in issue. Neither DRED nor any of its predecessors had ever informed the Society of the State's such rental of communication sites thereon. A listing of the users of the Kearsarge Mountain "communication site" in said Warner taken from DRED's "Communication Site User Break Down as of April 15, 1998" is attached hereto and made a part hereof as Attachment F.

11. The State of New Hampshire, however, owns at the summit of Kearsarge Mountain in the Town of Wilmot immediately adjacent to the land in issue gifted to the State by the Society, and less than two hundred (200) feet from the said newly erected one hundred eighty (180) foot commercial telecommunications tower, land understood to be free of any conditions by deed or otherwise which would preclude the removal to, the erection thereupon and the effective operation there of said towers, antennae and buildings violative of the Society's said Deed to the State. Attached hereto and made a part hereof as Attachment G is a DRED General Site Plan of the "Kearsarge Mt. Summit Past and Present Structure Locations Wilmot & Warner, NH" dated 8/98, also showing Kearsarge Mountain State Forest of 4,965 acres, more or less, which delineates the relationship of said newly erected tower on the land in issue in Warner to said immediately adjacent land in Wilmot

12. Under the circumstances hereinbefore set forth, the State of New Hampshire, however, asserts that the placement of said one hundred eighty (180) foot commercial telecommunications tower, said equipment building, and the other commercial, public and public

utilities antennae, structures and buildings sited on the land in issue are not in violation of the Society's said Deed, while the Society contends that the placement of all thereof with the exception of the existing forest fire lookout tower and its supporting building are in violation of its said Deed.

WHEREFORE, the Society respectfully prays this Court to:

A) Declare that said one hundred eighty (180) foot commercial telecommunications tower and twelve (12) foot by twenty (20) foot prefabricated equipment building along with said other towers, antennae and supporting buildings and structures (other than said forest fire lookout tower and its supporting building) are and have been in violation of the Society's said deed of gift to the State of New Hampshire as expressly accepted by said State on the condition therein expressed that "the State will maintain said tract as a forestry and recreation reservation for public use and benefit . . . .";

B) Enjoin the State of New Hampshire from continuing to maintain any and all of said towers, antennae, buildings and structures on said tract gifted to the State of New Hampshire by the Society as aforesaid with the exception of said forest fire lookout tower and its supporting building;

C) Order the removal thereof from the said land gifted to the State of New Hampshire by said Deed of the Society; and

D) Order such other and further relief as may be just.

Respectfully submitted,

SOCIETY FOR THE PROTECTION OF
NEW HAMPSHIRE FORESTS
54 Portsmouth Street
Concord, NH 03301-5400

By Its Attorneys:

Barto and Puffer, P.A.
6 Loudon Road, Suite 4
Concord, NH 03301-5321
(603-224-3863)

January 8, 1999

By: John W. Barto
John W. Barto

G:\SPNHF\MOUNT KEARSARGE PETITION.wpd

Summary of SPNHF Land Protection on Mt Kearsarge

Tract ID	Date of Purchase	Acres	Location	Date of Conveyance to State
Rollins Memorial Champlain Realty	1918	521	S. Slope, Warner [1]	1950--Donation
NH Women's Club American Realty	1935	1574	SW and E of Summit[2] Warner and Salisbury	1935—Donation
??	1963	585	NE Slope	1963—Sale
NE Resources Trust	1971	921	Andover	1971—Sale to F&G
Tasker Tract	1973	215	NW slope, Wilmot[3]	1973—Sale
Dodge Tract	1974	78	NW slope, WIlmot	1975—Sale
Totals		**3894**		

[1] This piece was adjacent to a 839 acre State owned parcel. The SPNHF purchase included the included the bare summit.
[2] Two 800 acre tracts adjoining the Rollins Tract. Formed the basis of then designated Rollins State Park.
[3] 1973 press release "This purchase ensures that the vista of the well known mountain as seen from Andover and New London and surrounding towns will not be despoiled by development or heavy timber cutting.

THE LEAGUE
OF WOMEN VOTERS
OF THE KEARSARGE SUNAPEE AREA

P.O. Box 660 • New London, NH 03257

March 24, 1999

Senator James Squires, MD
Legislative Office Building, Room 5
Concord, NH, 03301

Dear Senator James Squires, MD,

The League of Women Voters of New Hampshire supports the Trombly-Below bill, SB 132, which requires that the department of resources and economic development cause the removal of the telecommunications tower and related installations and buildings on Mount Kearsarge.

Our support is based on an in-depth study of the New Hampshire state government which resulted in League positions on various aspects of that government. The following is the relevant section of our position on the siting of special features:

> The League of Women Voters of New Hampshire finds that, in order to minimize conflict in major facility siting decisions, the state must assume a leadership role in the process.
>
> 1. Siting a Facility
>
> a. The state should develop a comprehensive siting process which will insure public participation at every level in each stage of the process. In developing the siting process, the state must give priority to protecting the environment and the public health and safety.
>
> b. Local master plans should include provisions dealing with special facility siting.
>
> The local community will negotiate as an equal partner with the state and the developer. The state has the further responsibility of providing technical and financial assistance to the community.
>
> If conflicts arise, the League recommends use of the mediation process at an early stage.

The state did not insure public participation at every level in each stage of the process and did not allow the local community to negotiate as an equal partner. Also, the Kearsarge tower was erected so suddenly that there was no time for mediation before the conflict arose.

For these reasons, we support SB132 and urge you to vote for it.

Sincerely,

Jane K. Armstrong

Jane K. Armstrong,
League of Women Voters of New Hampshire
Board Member

cc: Governor Jeanne Shaheen

Donald Novak
HC 66 Box 12A
Wilmot, NH 03287
dnovak@sugar-river.net
(603) 526-4135

March 11, 1999

Sen. Katherine Wheeler
Room 115
State House
Concord, NH 03301

Dear Sen. Wheeler:

I attended the hearing for SB132 which asks for the removal of the Mt. Kearsarge telecommunication tower, but I did not testify. Attached is my written testimony in support of this bill for your consideration.

At the hearing, some speakers indicated an intent to amend this bill to include the towers on Pack Monadnock and Blue Job. I am against this as those situations are very different and if so amended, this bill will become unmanageable.

I hope you will vote to *Recommend to Pass,* allowing a process to proceed that will hopefully result in the majesty of Mt. Kearsarge being restored. The committee may want to consider including a request to fund studies to:

- Determine the cost of removing the tower and who would be responsible for it.
- Determine the true communication needs of the various public agencies using data such as propagation studies.
- Compare the cost, benefit, and risk for other communication options such as satellite technology.
- The cost and character of a replacement tower to be used only for public service communications.
- The legality of the contract between U.S. Cellular and the State of New Hampshire.

Respectfully,

Donald P. Novak

As you deliberate on SB132, please consider the following testimony:

Just about everyone agrees that the 180 foot communication tower on Mt. Kearsarge is ugly. Did it have to be? **No.** This tower was built by a cellular communication company to support cellular antennas. If it had been designed solely for public use, the tower could have been much shorter and slimmer. Attached is a cross-sectional drawing of the tower supplied by DRED showing all antennas on the structure, a third of which belong to U.S. Cellular, and another third that belong to other commercial users. Only a **third** of the antennas are for public use such as the State Police. Also attached is a recent photo of the tower which shows that the only large antennas on the tower belong to U.S Cellular. All the public service antennas are small and together wouldn't weigh 200 pounds. A 180 foot tall tower which is 20 foot wide at the base is not required for 200 pounds of antennas. **This tower is for cellular communications.**

Police and other public service representatives testified at the March 4th hearing as to the need for a communication tower on Mt. Kearsarge, which I would be inclined to agree with. Many of these representatives also testified as to the specific need for a 180 ft. communication tower, which I strongly disagree with. Everyone seems satisfied with their communications irregardless of the placement of their antennas on the tower, which are as low as 30 ft. Reference was made during the hearing as to propagation studies, which are maps showing where signals can and cannot be received. With the terrain around Mt. Kearsarge, there will always be signal dead spots irregardless of the height of the antenna. At the 3000 ft. elevation of Mt. Kearsarge, increasing the height of the antenna does not improve performance. Even a 1000 ft. high antenna on the mountain would have some signal dead spots. Mr. Klumb who testified at the hearing for U.S. Cellular was quoted in the *Concord Monitor* with regard to the height of the cellular antennas on Mt. Kearsarge. "We could get by at 80 ft.", he said. If they could, so could everyone else. Also consider that a warden in the fire tower has a clear line of sight at 35 ft. elevation.

There was discussion during the hearing on alternatives to placing towers on scenic vistas such as using satellite technology and antennas on existing cellular towers. It was obvious from the testimony that such alternatives were looked at many years ago when the technology was much less sophisticated and more costly. Other options need to be revisited. There were staggering numbers thrown out as to what alternatives would cost. Personally, I don't put much credence in that testimony.

There is the contract between U.S. Cellular and the State to consider. I believe **this contract is invalid**. Mr. Klumb of U.S. Cellular testified that they did not determine if there were encumbrances as required under section XVI(c) of the contract. The deed for the property clearly states that it was to be used as a forestry and recreation reservation. The placement of a commercial cell tower on the land is a violation of the deed.

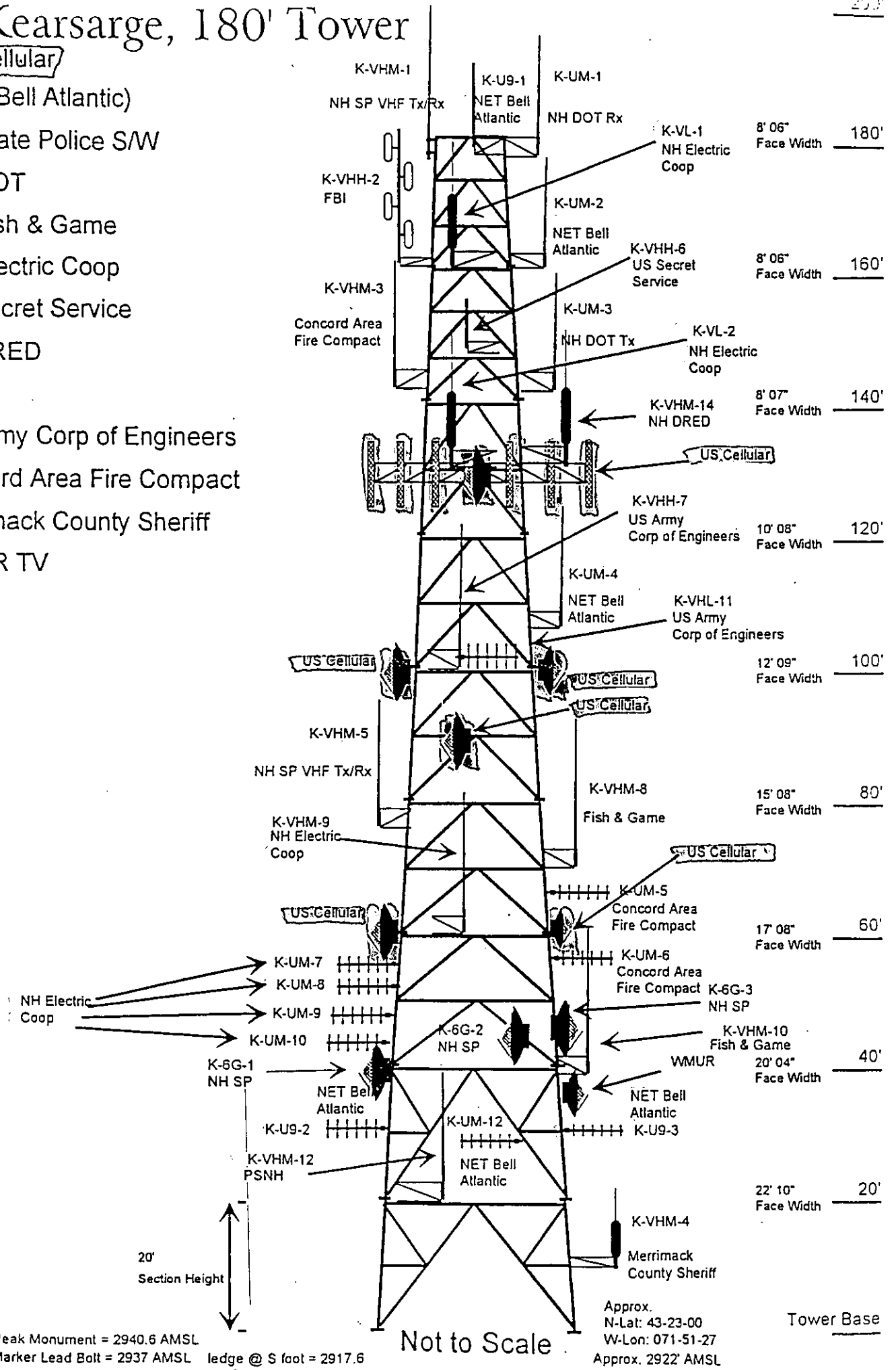
There is the cost of removing the tower to consider. One, I would expect U.S.Cellular to shoulder all or most of the cost as they violated the contract. Two, the tower itself is reusable, so the cost would only be for relocating equipment and dismantling the tower.

There is the cost of replacing the tower to consider. One, a tower specific to public use would not be overly expensive. Two, the State had budgeted for this tower as part of the improved State Police communication system upgrade. Third, the State will save considerable legal expense by resolving this case out of court. Fourth, the residents of the Mt. Kearsarge area would, I believe, help out financially, using funds collected for their legal challenge.

Donald P. Nanak
March 11, 1999

Mt. Kearsarge, 180' Tower

- US Cellular
- NET (Bell Atlantic)
- NH State Police S/W
- NH DOT
- NH Fish & Game
- NH Electric Coop
- US Secret Service
- NH DRED
- FBI
- US Army Corp of Engineers
- Concord Area Fire Compact
- Merrimack County Sheriff
- WMUR TV
- PSNH



Revision
3/27/98

Peak Monument = 2940.6 AMSL
Marker Lead Bolt = 2937 AMSL ledge @ S foot = 2917.6

Mt. Kearsarge Tower

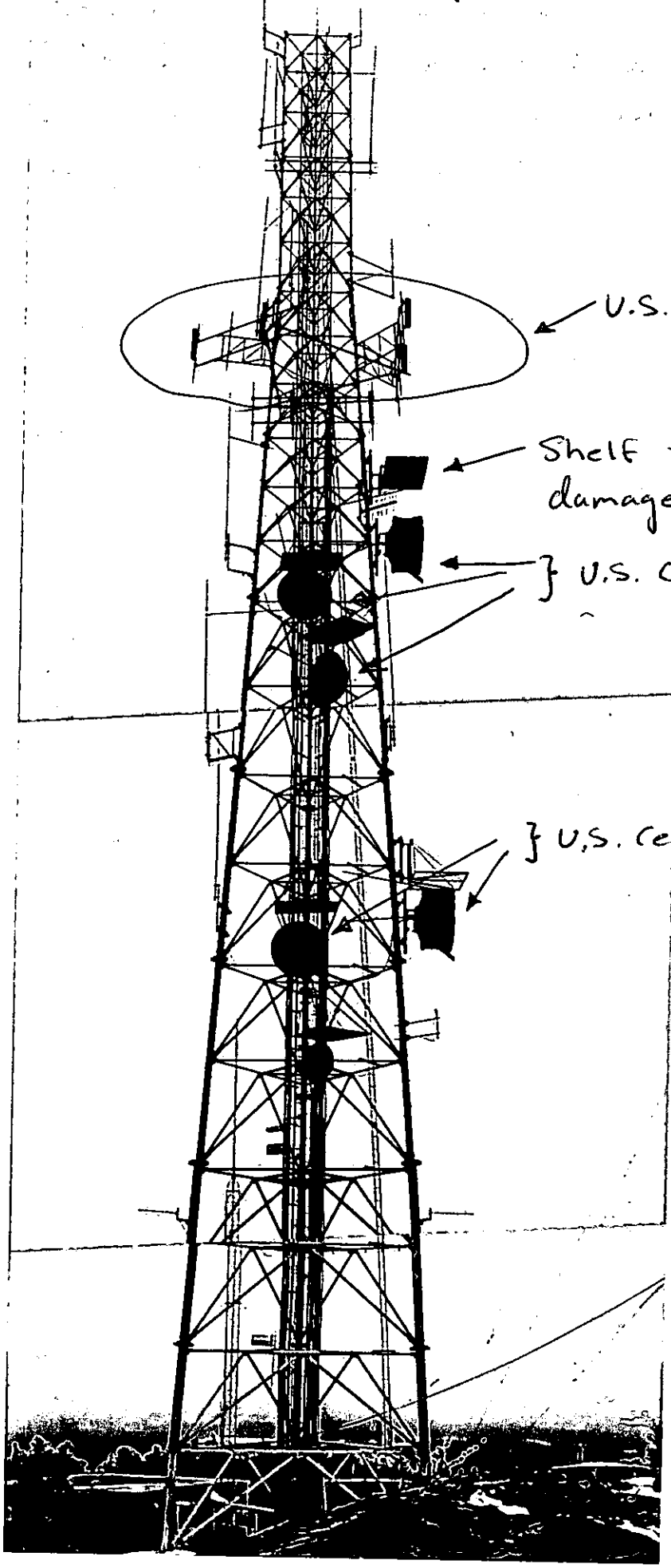
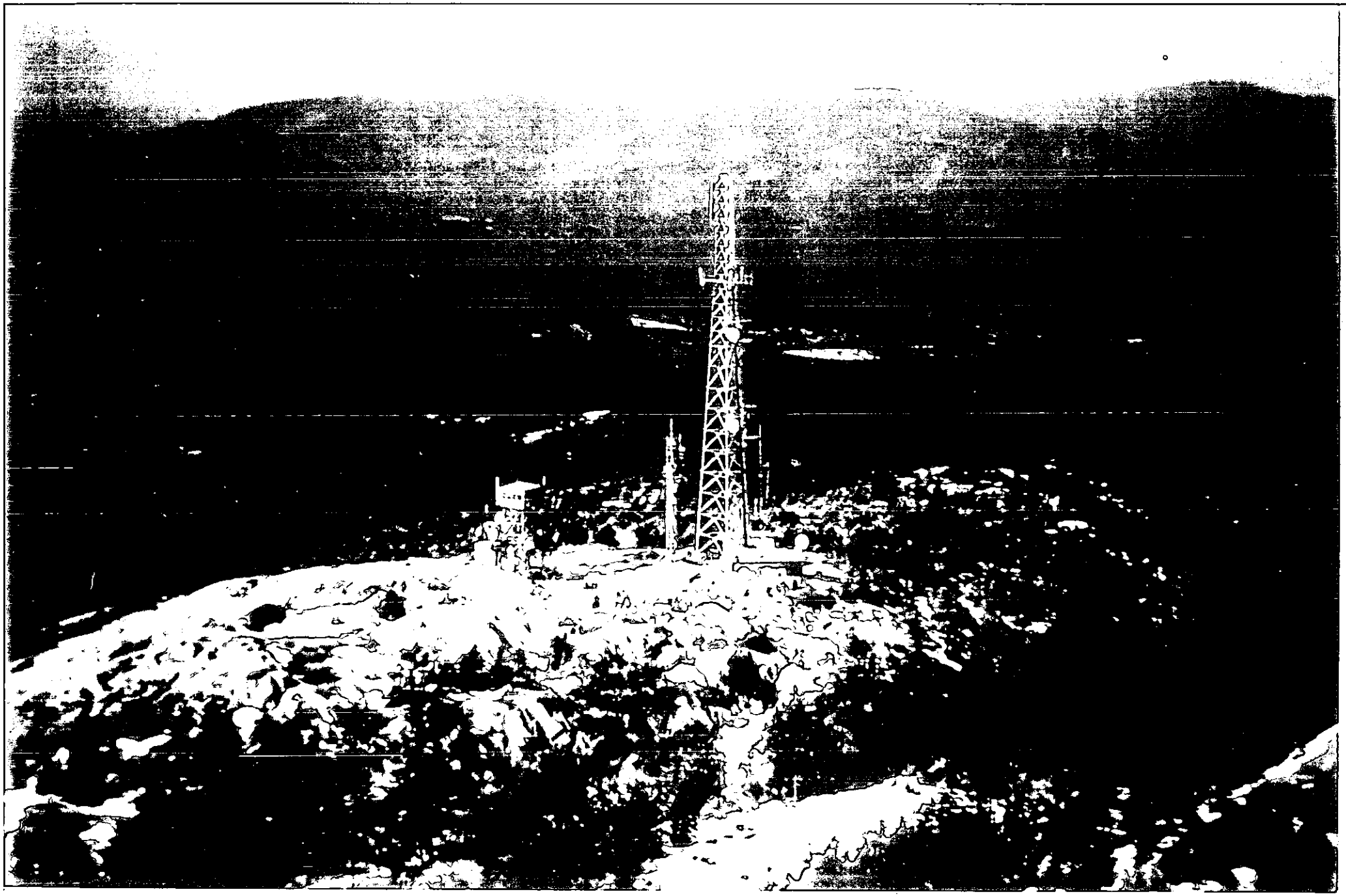


Photo taken in early March, 1999

Sen. Trombly



"Celling" of Mt. Kearsarge - A Summary

In October, 1997, a one hundred and eighty foot communication tower was erected by U.S. Cellular and the State of New Hampshire on Mt. Kearsarge in the town of Warner. The construction of this tower and support facilities disfigured a mountain that has been a source of wonder and enjoyment for area residents and visitors alike. The construction of this tower:

- violated DRED policy of maintaining this summit as a scenic area.
- violated the deed which stipulated the land was to be used as a forestry and recreation reservation.
- violated the law whereby DRED had to notify the public.

Lack of Public Notification

U.S. Cellular used the services of Coldstream Real Estate Advisors to expedite approvals without local input. Coldstream advertised being able to use its "contacts with State officials to explore erecting towers on State owned mountains." (Appendix 1) The State purposely withheld public notification. The administrator for State's Division of Forest and Lands, James Carter, said in a memo to Robb Thompson, commissioner of DRED, "If possible, I think we should avoid a general public notice and abutter notification." (Appendix 2) State law mandates the local municipality be notified, it wasn't. The law at the time said, "The state .... shall give written notification to a municipality of any proposed government use of property within its jurisdiction, which constitutes a substantial change in use or a substantial new use." Warner, where the tower is located, was not notified of construction until the footings were in place and just days before the tower was erected. Robb Thompson later stated that the lack of notification "was due to a staff oversight for which I apologize." (Appendix 3)

Impact

The tower built by U.S. Cellular was conveyed to the state at no cost with the proviso that U.S. Cellular would be able to rent (for $1000 a month for five years) a substantial amount of the tower's space for its commercial cellular antennas. The rest of the space was to be used for public communication services (State Police, FBI., ...) and rental to other commercial users. This tower was built on the highest, most visible part of the mountain (Mt. Kearsarge is a bald with no natural screening at its peak), and as tall as possible without requiring FAA lighting. The tower did not have to be a broad lattice style tower, 20 ft. on a side at the base. This tower is vertical real estate. The primary reason for its size is to provide space for cellular equipment. There was no consideration of the visual impact on the surrounding area. The tower also requires a substantial amount of support equipment at the summit, further disfiguring the mountain. This equipment emits a constant drone which is frequently augmented by huge cooling fans cycling on and off. The tower, support equipment, and noise pollution at the summit truly lessen the experience of the 50,000 people that climb this popular mountain each year.

State Police and Emergency Communications

The State maintains that the tower is necessary for State Police communications. This claim that has not been supported. At Mt. Kearsarge's height of almost 3000 ft., the gain of a 180 ft. tower over a much shorter tower is infinitesimal. Even if the tower were 1000 ft. high there would be communication dead spots. In the mountainous terrain of central and northern New Hampshire, the State Police would be better served by a satellite based communication system.

Public Response

When this tower was erected, citizens in the neighboring towns united in protest and sought its removal. At the 1998 town meetings, warrant articles passed in Andover, Danbury, New London, Sutton, Warner and Wilmot expressing "outrage and dismay at the State of New Hampshire, the Governor, the Governor's Council, and the New Hampshire Department of Resources and Economic Development (DRED) for the lack of due process and notice for the erection of a 180 foot tower at the summit of Mount Kearsarge; the disregard for the scenic and aesthetic values consistent with the use of public park land; and the selling of public resources for commercial uses under the guise of police and public safety, and the betrayal of the public trust." (Appendix 4) In addition, motions passed in the towns of Warner and Wilmot to petition the State to remove the tower. (Appendix 5) Further, a petition reading "that we support legal action to remove the U.S. Cellular constructed tower and their 12' x 20' prefabricated building from Mt. Kearsarge" was signed by over a thousand citizens and presented to the Governor. Further, citizens banded together and formed a group called *Save Our Mountain* which filed a lawsuit against the State of New Hampshire to seek removal of the tower. Subsequently, the Sierra Club and Appalachian Mountain Club stated their intent to file amicus briefs in behalf of this lawsuit, and The Society for the Protection of New Hampshire Forests filed a separate lawsuit.

Deed and Lease

The deed conveying the property on which the tower sits, from the Society for the Protection of New Hampshire Forests to the State of New Hampshire, provided for enjoyment and utilization of the forest, not commercial uses. The deed states, "This conveyance is made upon the express condition that the state will maintain said tract as a forestry and recreation reservation for public use and benefit ...". The lease agreement between U.S. Cellular and the State of New Hampshire states, "LESSEE'S title insurer must determine that LESSOR owns good and clear marketable title to the land underlying the Premises, and that such title is free form encumbrances and restriction which would interfere with LESSEE'S ability to pledge the leasehold estate as collateral to secure debt financing." (Appendix 6) U.S. Cellular either did not research the deed or chose to ignore it, but in doing so, violated the terms of the lease and is responsible for removal of the tower and restoring the site to previous condition.

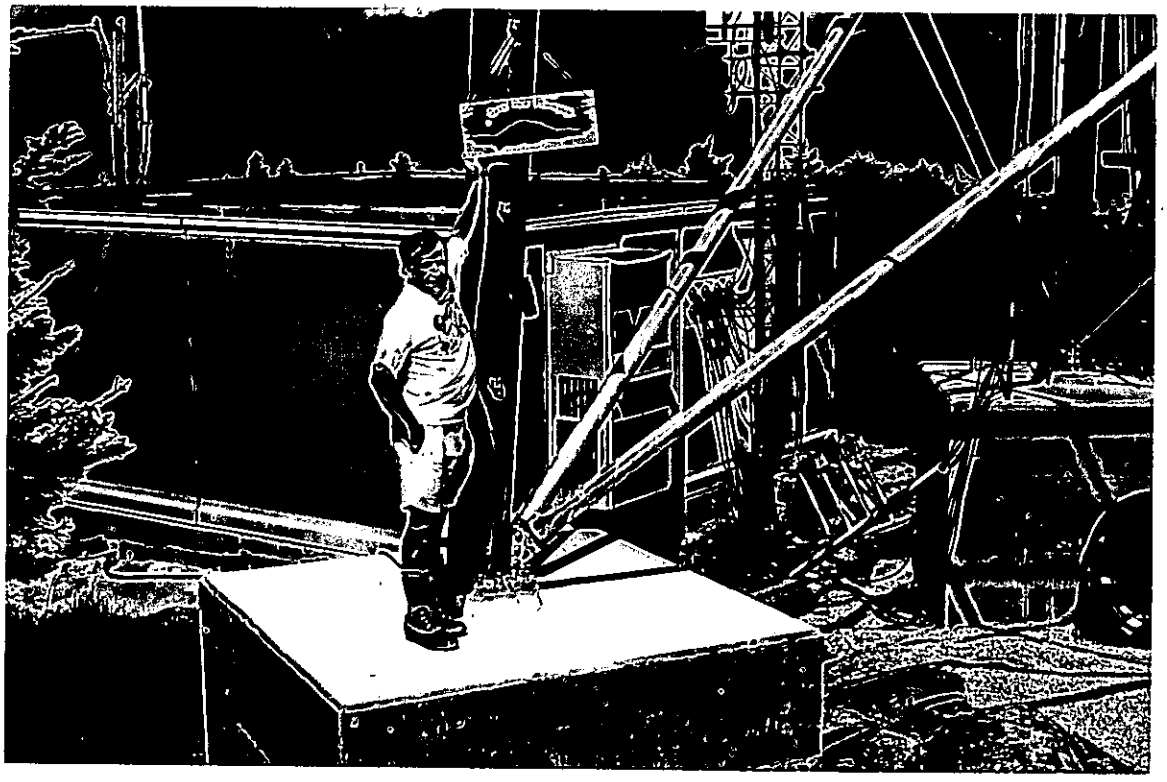
Safety

As a result of the tower there are now significant risks to the thousands of people that climb to the summit each year.

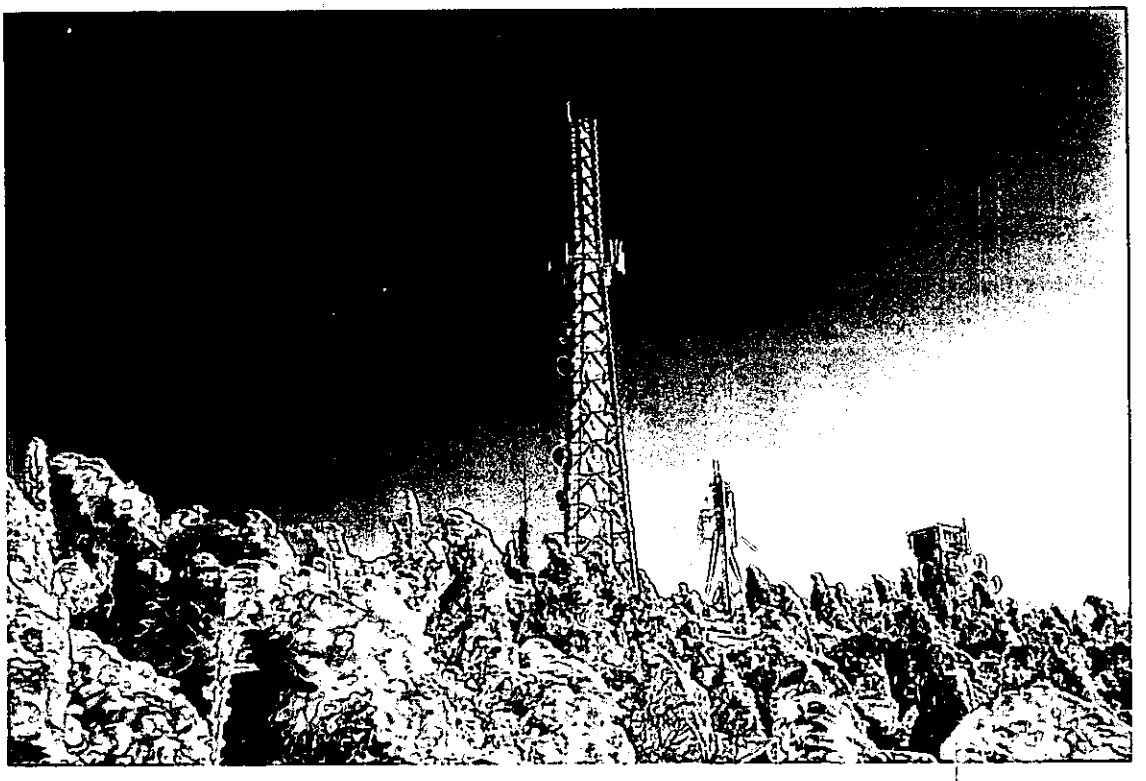
- There have been incidents of large sheets of ice falling from the tower barely missing people.
- There is no means of preventing individuals from climbing the tower.
- Day users and wardens manning the fire tower may be exposed to radio frequency emissions beyond the FCC maximum. Emission levels for the site have not been tested since 1994.



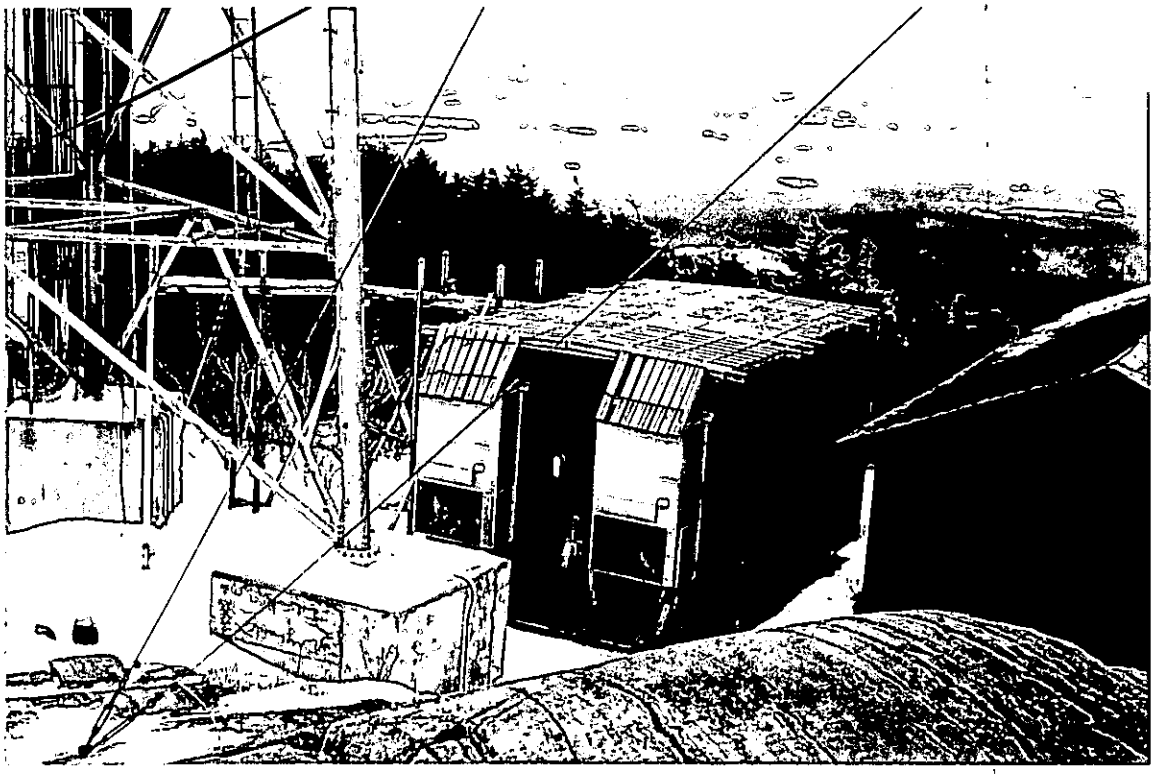
This scene "rewards" the hiker when reaching the summit



Putting the enormous size of the tower in perspective



Tower encrusted in ice



2x4's protect equipment from falling ice. What about people?

App. 1

COLDSTREAM REAL ESTATE ADVISORS, INC.
CASE STUDY #104

Site Search and Approvals

Client:	Large Telecommunications Company
Objective:	Locate cellular tower sites in strategic geographic areas and receive all permits and approvals for same as quickly as possible in order to expand coverage ahead of the competition.
Assignment:	Coldstream was retained to identify the most cost effective and quickest turnaround locations for the placement of cellular towers and related equipment buildings.
Strategy:	Coldstream determined that communications towers are not an allowed use in most towns in the areas where the client wanted to locate them. Obtaining a variance to erect a tower in a residential or rural zone (the usual zoning for the highest and least accessible areas in a town) is difficult and can consume many months without any assurance of success.
Results:	Coldstream used its contacts with State officials to explore erecting towers on State owned mountains. Since governmental agencies are exempt from local zoning, the turnaround time for approval and construction was dramatically reduced. To date, fourteen such towers have been erected, saving the client valuable time, while ensuring the best locations in the region.

crea/casestud/cs104

App. 2

INTEROFFICE MEMORANDUM

To: Robb R. Thomson, Commissioner

CC: file

From: James R. Carter

Date: March 19, 1997

Subject: Construction on DRED Lands
State Police Statewide Radio System

Very shortly I expect to receive a formal request from N.H. State Police for communication tower/radio building construction on several DRED properties. Their site list and construction time line and draft tower specification are attached.

In this regard, we need to decide what political/public involvement will be required for these projects on DRED lands. Apparently the word is already out that "we" will be constructing a new tower on Pack Monadnock Mountain, Miller State Park. Posey Bass, of the prestigious Bass family in Peterborough, called today inquiring about what we planned. Their land abuts Miller on our northerly boundary.

At a minimum, I recommend that we notify local town government (selectmen/planning board) and the appropriate Governor's Councilor. If possible, I think we should avoid a general public notice and abutter notification.

cc: Phil Bryce
Rich McLeod
Brent Edmonds

I JUST WANT YOU TO SEE HOW SINCERE THE STATE IS TO [illegible] COMMUNICATE YOU REALLY IS.

SINCERELY

GREG [illegible]

From The Desk Of...

James R. Carter
Administrator
Division of Forest and Lands
172 Pembroke Road
Concord, NH 03301

603-271-3456
Fax. 603-271-2629

App. 3

STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE of the COMMISSIONER
172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

603-271-2411
FAX: 603-271-2629

RECEIVED DEC 04 1997

November 26, 1997

Board of Selectmen
Town of Warner
PO Box 265
Warner, New Hampshire 03278

Dear Selectmen:

Thank you for your letter dated November 18, 1997 regarding notification to the Town of Warner of the construction of the communication tower on Mt. Kearsarge.

I understand the concern expressed in your letter and offer the following. Notification by the Department of Resources and Economic Development was made to the town of Warner, by sending a copy of the Governor and Council agenda item #70 approved at the July 18, 1997 meeting.

The enclosed notification was sent to the Town of Warner on or about October 6, 1997. The lateness in submitting this to the town of Warner was due to a staff oversight for which I apologize.

The communication tower built by US Cellular will be owned by the State of New Hampshire and is part of the statewide State Police communication system. In addition to State Police, this tower will be utilized by NET, NH Electric Cooperative, US Corp of Engineers, FBI, Secret Service, Merrimack County Sheriff and NH DOT.

By consolidating these users on the new tower, we will be able to remove two existing guyed towers. A third tower on Mt. Kearsarge was removed previously.

I hope this explanation provides you with the clarification that you were seeking.

If I can be of further assistance, please feel free to contact me.

Sincerely yours,

Robb R. Thomson
Commissioner

RRT:lc
cc: Governor Shaheen
Councilor Peter Spaulding

App. 4

Town of New London
Selectmen's Office

P.O. Box 248
120 Main Street
New London, NH 03257

April 13, 1998

Governor Jeanne Shaheen
Executive Department
Office of the Governor
107 No. Main Street Rm 208-214
Concord, NH 03301-214

Dear Governor Shaheen:

The March 11, 1998 New London Annual Town Meeting voted and passed by an overwhelming majority, a warrant article directing the New London Board of Selectmen to act in their behalf to send this letter.

The residents of New London wish to express their "outrage and dismay at the lack of due process and notice for the erection of a 180-foot tower at the summit of Mount Kearsarge; the disregard for the scenic and aesthetic values consistent with the use of public park land; the selling of public resources for commercial use under the guise of police and public safety; and the betrayal of the public trust."

New London is one of five (5) area towns to pass such a warrant article at a 1998 Annual Town Meeting. As your constituents we would like to request that you reply either in writing or in person to enlighten us on your intentions to remedy this grievance.

We look forward to a timely reply.

Sincerely,
New London Board of Selectmen

Douglas W. Lyon, Chairman

Edmund R. Taylor

Mark Kaplan

imh98\townreport\tower.doc

(603) 526-4821 (tel)
(603) 526-9393 (fax)

App. 5

Town of Wilmot

March 25, 1998

The Honorable Jeanne Shaheen
The State House
Concord, NH 03301

Dear Governor Shaheen:

At the Wilmot Annual Town Meeting of March 10, 1998, the following article appeared on the Warrant:

> Article 12: To see if the Town will vote with the passage of this article to resolve to publicly express its outrage and dismay at the State of New Hampshire, the Governor, the Governor's Council, and the New Hampshire Department of Resources and Economic Development (DRED) for the lack of due process and notice for the erection of a 180-foot tower at the summit of Mount Kearsarge; the disregard for the scenic and aesthetic values consistent with the use of public park land; and the selling of public resources for commercial use under the guise of police and public safety; and the betrayal of the public trust. Petitioned by Thomas G. Kraeger and others.

The article was discussed at great length and when voted on was passed with but two negative votes out of approximately one hundred and twenty participants.

After the article was passed, then under general discussion a motion was made to Petition the State of New Hampshire to remove the existing Cellular One Tower. This motion was passed unanimously, and so we are, as representatives of the people, requesting that you, also a representative of the people, immediately begin the process to rid our mountain of the sight pollution foisted upon us by an unthinking corporation. Also, to reinstate our area with the property values we are taxed for but have been denied by this ill conceived construction.

Sincerely,

WILMOT BOARD OF SELECTMEN

Gerald F. Rayno, Chairman

Richard E. Lee

Mary Kay Huntoon

P.O. Box 72 ■ Wilmot, NH 03287 ■ Phone/Fax (603) 526-4802

App. 6

Should the communication tower be substantially damaged by fire, other casualty or act of God, then the LESSOR shall immediately notify the LESSEE whether or not it intends to rebuild said communication tower and the likely time frame within which the rebuilding would be accomplished. During such rebuilding the LESSEE shall, at its option, have the right to erect suitable temporary structures to effectuate the broadcast of LESSEE's signal. If the LESSOR elects not to rebuild said communication tower, then the LESSEE may, at its option, elect either to terminate this Lease or to rebuild on the same site, substitute structures of similar design and size as existed prior to the damage.

XV. INSTALLATION AND MAINTENANCE - COST

Maintenance of the communication tower and the costs thereof, shall be the responsibility of the LESSOR. Installation of the communication tower and installation and maintenance of the other authorized facilities and the cost thereof shall be the responsibility of the LESSEE. All facilities shall be kept neat in appearance and shall be installed and maintained so as to minimize visual impact. Equipment installation (both initial and replacement) shall be coordinated with and approved by the LESSOR or the designated site manager. However, routine or normal maintenance operations and testing performed by the LESSEE from time to time on its equipment is allowed without such approval.

XVI. CONDITIONS PRECEDENT - RENT ABATEMENT

This Lease and LESSEE'S obligations hereunder, including the obligations to pay rent or liquidated damages, are expressly condition upon and subject to the following:

(a) LESSEE must receive all necessary governmental approvals relating to LESSEE'S intended use of the Premises;

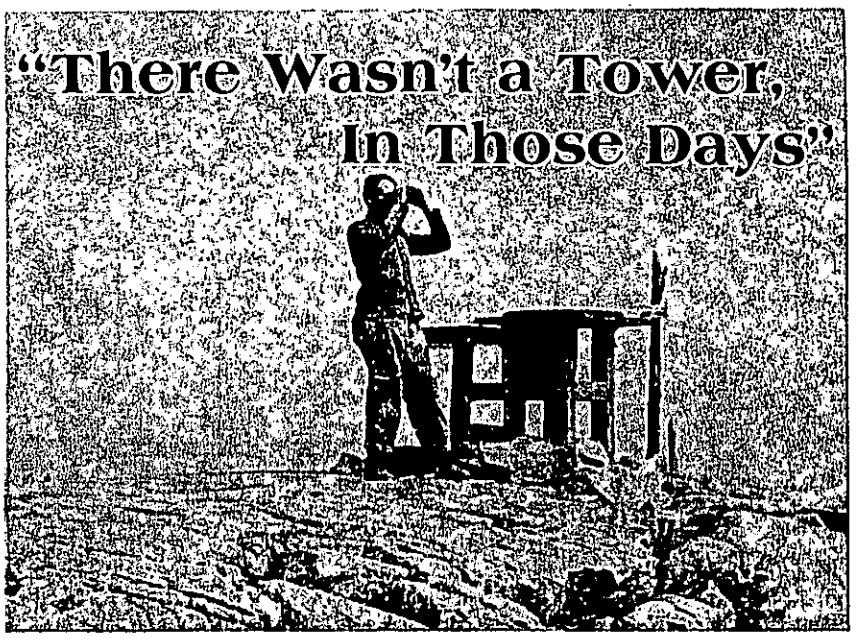
(b) LESSEE'S technical reports must establish to LESSEE'S exclusive satisfaction that the Premises are capable of being suitably engineered to accomplish LESSEE'S intended use of the Premises; and

(c) LESSEE'S title insurer must determine that LESSOR owns good and clear marketable title to the land underlying the Premises, and that such title is free from encumbrances and restrictions which would interfere with LESSEE'S intended use of the Premises or would impair LESSEE'S ability to pledge the leasehold estate as collateral to secure debt financing.

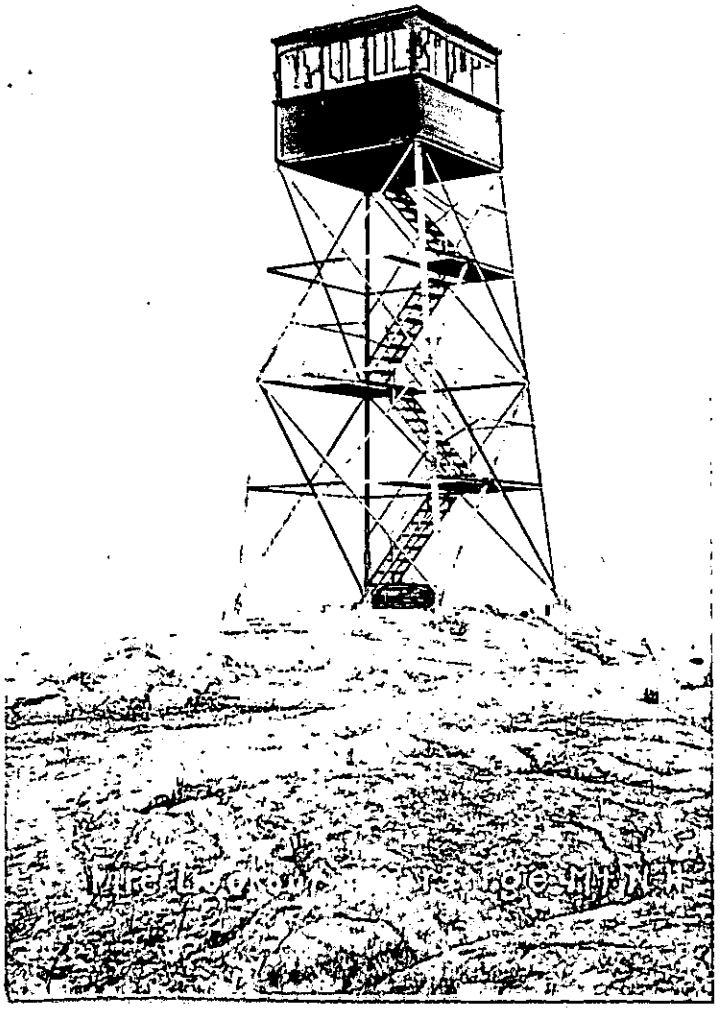
LESSEE shall have no obligation to pay rent until all the Conditions Precedent have been satisfied or waived, and rent which would otherwise be due to the intervening time pending satisfaction of the Conditions Precedent is hereby excused and forgiven.

XVII. LEASE RUNNING WITH THE LAND

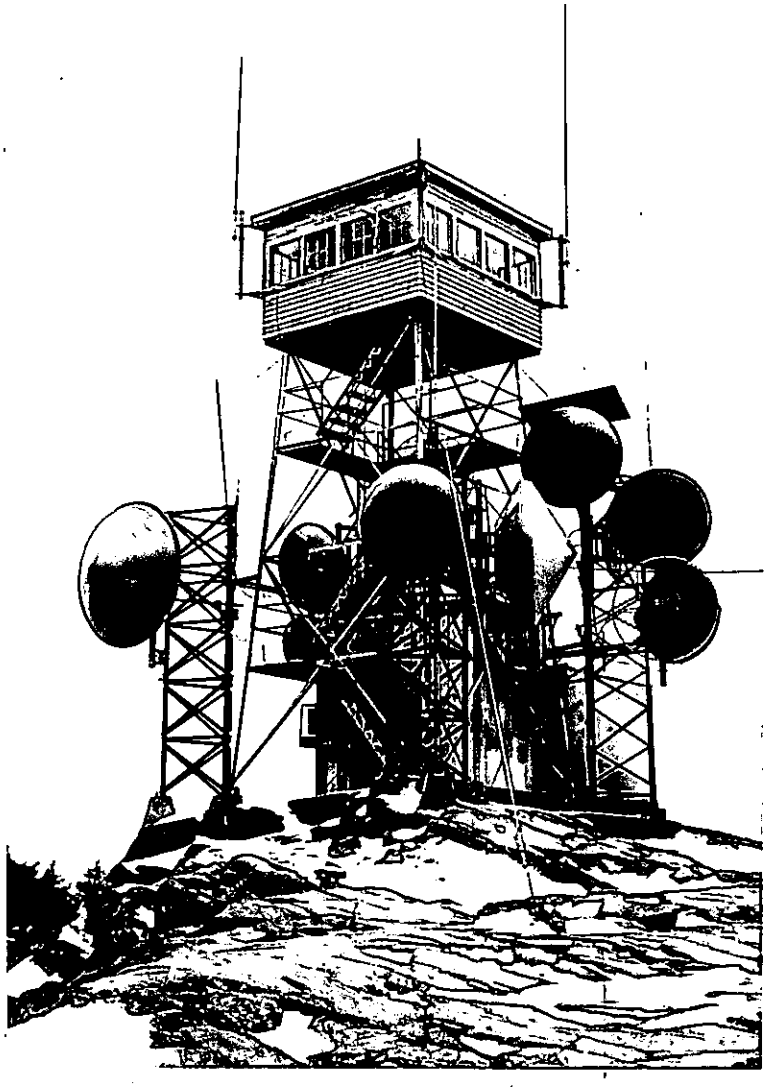
The covenants, terms, conditions, provisions and understandings in this Lease shall be construed as covenants running with the land and are binding upon and inure to the benefits of the respective successors and assigns of the parties herein.



The early map table atop Kearsarge



Fire tower in 1924



Fire tower today

STATE OF NEW HAMPSHIRE
FORESTRY DEPARTMENT
CONCORD

COMMISSION
W. R. BROWN, BERLIN
JOSEPH B. MURDOCK, HILL
JOHN M. CORLISS, MANCHESTER

JOHN H. FOSTER, STATE FORESTER

October 15, 1923.

Mr. Philip W. Ayres,
4 Joy Street,
Boston, Mass.

Dear Ayres:

At this time of the year, we are planning to make some further improvements in the lookout service from several of our stations; one of which is to build a telephone line from the Ark to the summit of Monadnock by the state cabin, in place of the line running from the Halfway House on the west side. If we can secure funds which have been promised, it may be possible to build a stone cabin in place of the present one on Monadnock. I doubt if this will materialize before another year.

Another change being considered is to place a 20 foot or possibly 30 foot tower on Kearsarge. It is about this matter particularly that I wish to write and get your views as to what objection there might be if any on the part of your members and persons living near Kearsarge. I understand the criticisms once made against the wooden cabin on Monadnock and hope this may be in time corrected. I wonder if there are any reasonable grounds for a similar criticism to a low towerou Kearsarge. As the tower would probably be placed where the present map stand is located, it would be partly on Society Land and would therefore need your approval. There is great need of some kind of a shelter at this point and in view of the number of points on the summit which obscure a view in every direction, it is highly desirable to have a lookout elevated at least 20 feet. At the present time, our watchman has to travel a circuit of the mountain top in order to view all sides of the mountain. We can combine a shelter with a tower and gain two ends in view.

Kindly let me hear from you at your earliest convenience relative to the Kearsarge tower. With favorable weather conditions, we might be able to have this work done during the month of November as we have a steel tower, sections of which we would use for this mountain.

Sincerely yours,

J H Foster

State Forester.

JHF/CDS.

copy Mr Foster's letter with this copy in basket

October 25, 1923

Mr. John H. Foster,
Concord, N. H.

Dear Foster:

At a well attended meeting of the Society's Executive Committee yesterday afternoon I presented your letter about the proposed tower on Kearsarge. The Committee discussed the matter fully. They are sympathetic with the effort of the State to prevent forest fires in the neighborhood of Kearsarge, and they instruct me to write a letter to our members in the towns in the vicinity of Kearsarge suggesting to them the importance of this proposed shelter and tower.

The Committee urges upon the Forestry Commission that the whole structure be as unobtrusive as it is possible to be at the summit of Kearsarge.

Enclosed is a copy of letter that we are about to send to members in Sunapee, New London, Warner, Andover, and neighboring towns. May I have promptly any suggestions you may have concerning it?

Sincerely yours,

Forester

PWA:R

Rollins Memorial

SOCIETY FOR PROTECTION OF NEW HAMPSHIRE FORESTS

4 Joy Street,

Boston.

Sent To:-
C

October 29, 1923.

To Members of the Society in the Vicinity of Mount Kearsarge:

In order better to protect the woodlands and forests in the neighborhood of Kearsarge from fire, the State Forestry Commission desires to construct a fire warden's shelter and tower at the summit of the mountain. The tower will be from 20 to 30 feet high and include a shelter from the wind for the observer.

This structure would be located partly on the property of the State and partly on that of the Society on the Frank West Rollins Memorial Reservation which extends to the summit. The State has asked the cooperation of the Society in locating this shelter and tower.

This matter has been very carefully considered by the Executive Committee of the Society, which looks with sympathy upon the effort of the State to protect the woodlands in that vicinity from fire. The Committee agrees that the fire warden should be protected from severe wind and that his efficiency will be increased if he is able to look in all directions without traveling some distance over the top of the mountain as is now necessary.

The Society desires that as far as possible the structure should harmonize with the topography and be as unobtrusive as possible at the top of the mountain. It will be constructed of steel, and therefore somewhat less conspicuous than if made of wood.

Your opinion will be very welcome.

Yours very truly,

Philip W. Ayres

Forester.

Look what they did to our mountain

Cellular tower mars Kearsarge's beauty

By MARY LYN RAY
For the Monitor

To Robb Thomson, commissioner, New Hampshire Department of Resources and Economic Development:

Where I live in South Danbury, Ragged is the mountain that comes down into my neighbors' houses. Ragged is the mountain we live with. Kearsarge is the mountain we look to. Kearsarge is our holy mountain. It is the holy mountain for all the towns around. A neighbor in Wilmot, the poet Donald Hall, said it this way in his classic book *String Too Short To Be Saved*:

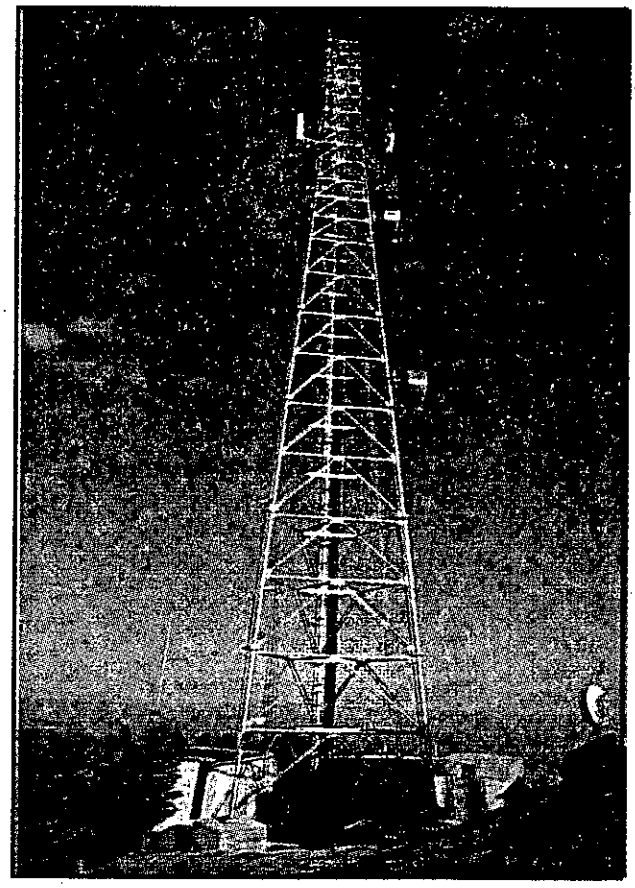
"We look out the window at Mount Kearsarge, which stands tall and aloof, steep sides and narrow flat top, five miles to the south. . . . For most of my grandmother's ninety-seven years she stood at the kitchen window early in the morning – beside her rocker, under her canary, in its many incarnations always named Christopher – braiding her long hair and looking out at Kearsarge. 'Mountain's real pretty today,' she would say to my grandfather, bringing sticks for the stove, or 'Can't see the mountain too good today.' . . .

"There are many hills for looking at. We sit on the side of Ragged, which is eight miles long. But Kearsarge has a presence denied the other hills. Farms and little towns surround Kearsarge on all sides – New London west of it, Warner south. All of us, wherever we stand to look, look out on Kearsarge, its colors shifting each day by sun's light and by season, its red beacon at night witnessing to invisible granite. All of us claim the best sight of Kearsarge. Primitive people, when they looked for the house of the gods, looked to mountains. There is no question where the god lives, if a god lives among us here."

But it doesn't require a poet to know this. Another neighbor, who's a logger, says, "Kearsarge is our Statue of Liberty." And this new tower erected by U.S. Cellular with approval from the state Department of Resources and Economic Development "has violated it," he says.

I was away the Wednesday the tower went up. Tuesday evening I closed the day the way I always close the day, looking at the mountain. It's a kind of prayer. Thursday I was home again, but there was

■ See TOWER – Page D-3



A.J. WOLFE / Monitor staff

The cellular phone tower atop Mt. Kersarge.

■ TOWER

Continued from Page D-1

fog all day; I couldn't see the mountain. Friday cleared. I looked to the mountain, and it was wired. All I saw was tower. This tower that's totally out of scale with need and height and respect for sacred symbol.

It's a cheap exchange the state made with U.S. Cellular. I am outraged that this could have been done, done in a day, without hearings or consideration of what the mountain means, how it informs the landscape and our lives.

How did a commercial company get permission to put this tower on protected land – the people's land – with some incidental "benefits" to state agencies for "improved communication?"

What counts? What does protection mean? And where is remembrance of why the mountain was protected (one of the first lands to be protected in New Hampshire)?

I attempt to earn a living writing books, but I'm not always writing at my desk. Until the year becomes too cold, most days I sit on my doorstep with paper to write on. To my neighbors I probably look as if I'm doing nothing. But what I'm doing is looking across the field. toward the mountain, toward Kearsarge. I am finding the ground I write from. And often, here on the doorstep, is where the story comes.

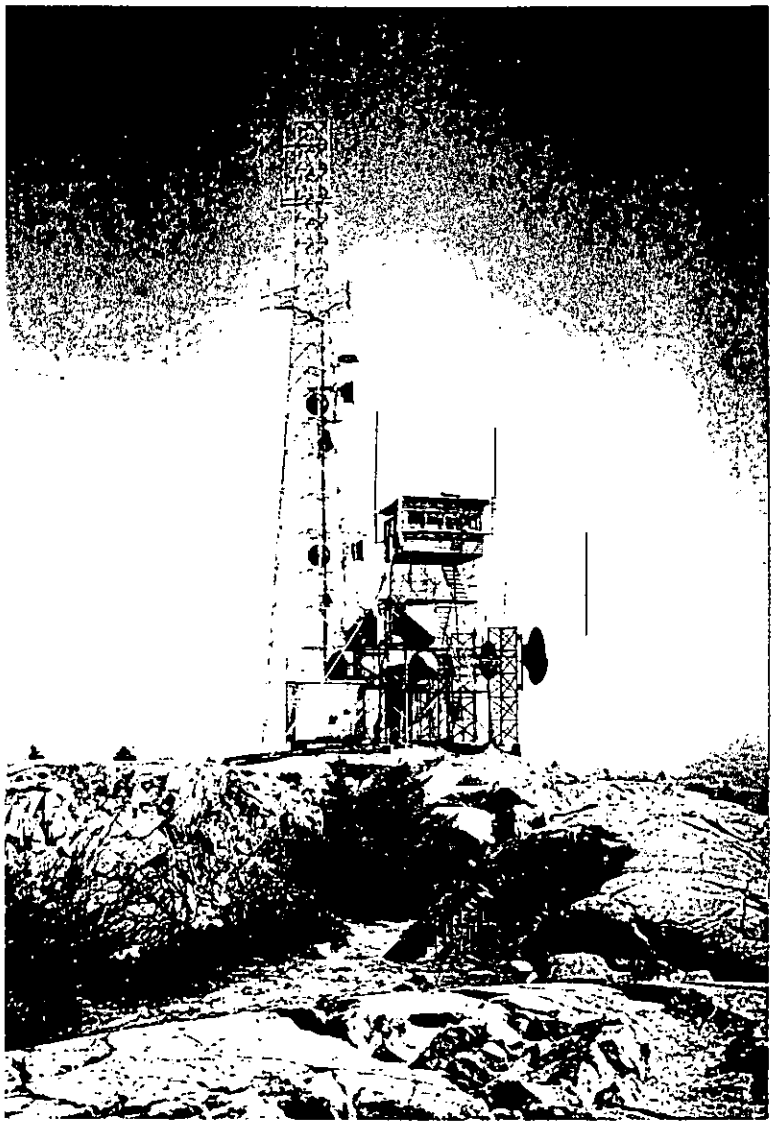
I've lost that now. All I see is tower and everything that tower represents.

Each of us who look to Kearsarge has lost something. Something our eye and soul want and need.

I like to think it is the mountain that endures. It is the mountain that is permanent. Not a tower. Grass grows up in asphalt. But what restores the mountain? Some intervention. Which could begin with your office. If enough of us speak our loss, can the tower be removed or reduced in height? And can we have some promise that there won't be more surprises like this one?

From Concord you can't see how this tower has changed everything. But come here and I will show you what I speak of.

Save Our Mountain



MOUNT KEARSARGE

Mt. Kearsarge is the lord of our domain. For people of the towns around, it is the gathering place of our eyes...as it was for our ancestors, as it was for the people who lived here before our ancestors. In the worst of times, we find its noble solidity and endurance a source of content to troubled spirits.

It is outrageous that, for the benefit of wealth, a one hundred and eighty foot excrescence should remove the top of our mountain. This mountain is the people's...not the State's and not the US Cellular Corporation's. Disfigurement of Kearsarge is an act of vandalism, public beauty revoked by private interest.

~DONALD HALL~
1998

This poem was written in the late 19th century, we thought it was quite appropriate for the late 20th century also.

MT. KEARSARGE

Looking down on quaint New London
In the midst of lake and river,
Stands a fair and lofty mountain,
Shield and bulwark, from the giver
Of all good things to his children.

He who to them all has spoken
In the good book called the Bible,
This he says to all his children
When they are in greatest trouble,
"Look for strength unto the hilltop."

So we have our stately Kearsarge
Standing near us like a fortress,
Giving inspiration daily
'Gainst the turmoil and the weakness
That besets us on our journey.

Would we had the calm and quiet
Of that fair and lofty mountain
In each soul and heart among us,
Ever flowing like a fountain,
Bringing courage to us always.

As our mountain in New Hampshire,
Beautiful, serene through ages
Stands untroubled through our strivings
Through the storm that round it rages,
Would that we were thus untroubled.

May we look upon you, Kearsarge,
Get from you each day a vision,
May we stand, a smaller fortress,
Each one filling his own mission,
Each a bulwark for New Hampshire.

-Eunice Worthen

Sen. Tremblay

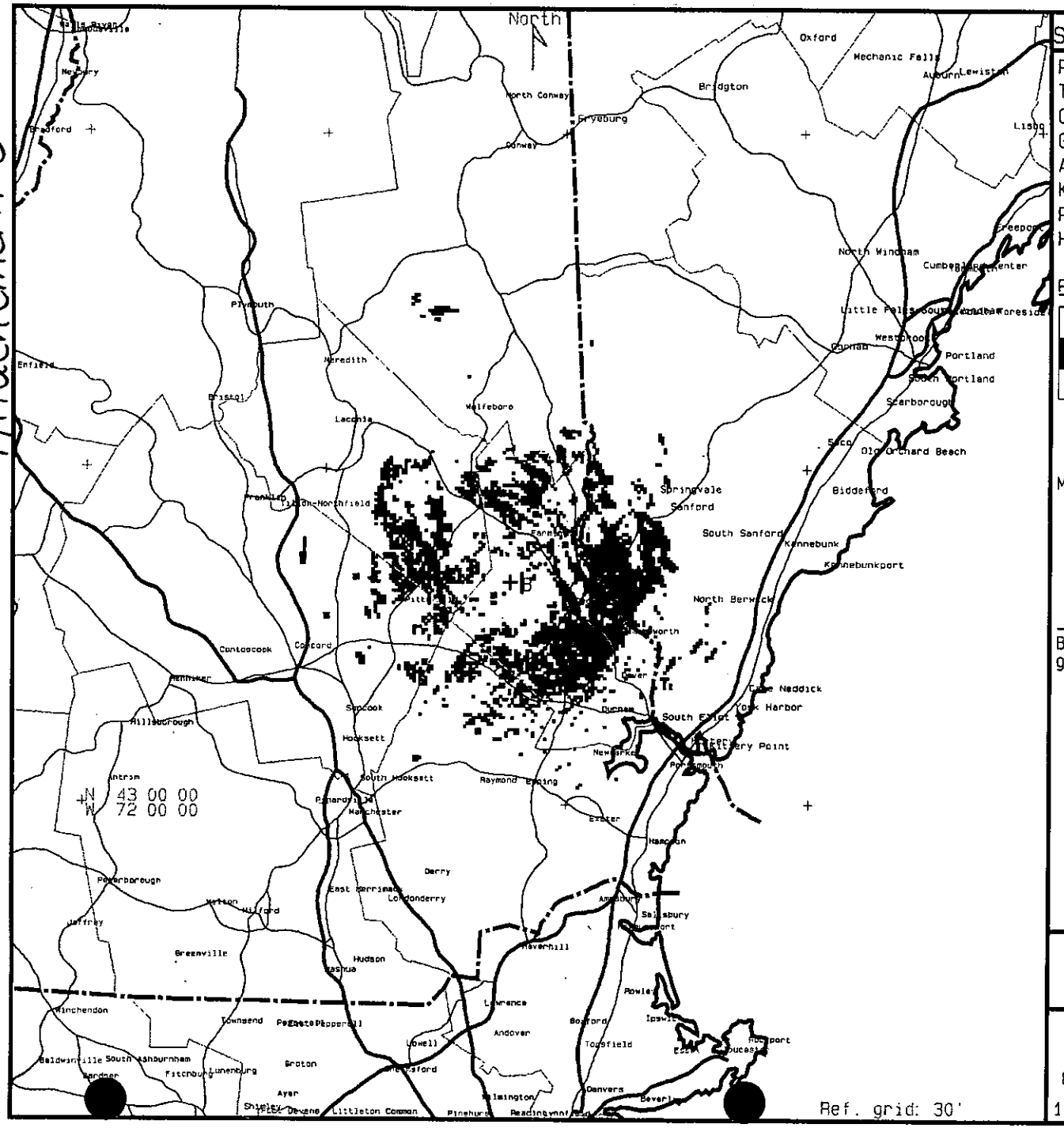
WINSLOW + ROLLINS STATE PARKS



MT. KEARSARGE

65' AGL - (PATTERN VIRTUALLY IDENTICAL TO 180' AGL)

Attachment B



SIGNAL (tm): d: \studies\nh\BLUE.SDY

Propagation model: TIREM-EDX
Time: 95.00% Loc: 95.00% Margin: .0 dB
Climate: Continental Temperate
Gndcvr: Dense foliage
Atm. factor: None
K Factor: 1.333
RX Antenna: Omni
Height: 5.0 feet AGL Gain: .0 dBd

Received power (at remote)

- > -98.0 dBmW
- -108.0 to -98.0 dBmW
- < -108.0 dBmW

Minimum threshold level: -108.0 dBmW

Site	Ant Elv AMSL (feet)	ERPd (dBW)	Ant. Type /Orient.	Coordinates
B	* 1423.0	18.80	OM-V	N 43 19 53.00
grp: 1	860.0000 MHz			W 71 7 .00

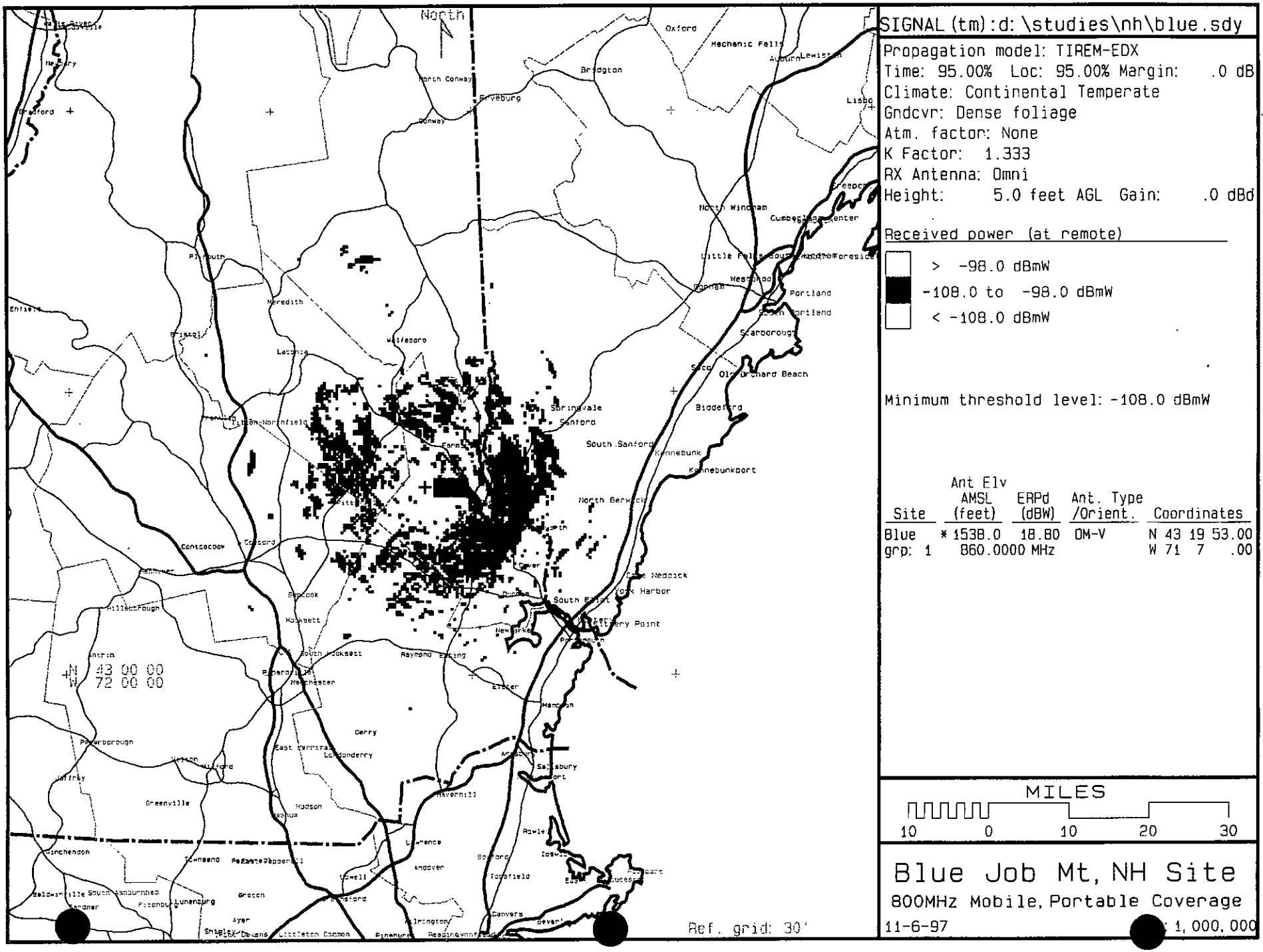
MILES
10 0 10 20 30

Blue Job Mt, NH Site
800MHz Mobile, Portable Coverage
11-10-97 , 000, 000

QUESTIONS? BRAD ANDERSON 332-6338
WWW.ISGA.COM/NHTOWER

180' ABOVE GROUND LEVEL.

Attachment C



SIGNAL (tm): d:\studies\nh\blue.sdy

Propagation model: TIREM-EDX
Time: 95.00% Loc: 95.00% Margin: .0 dB
Climate: Continental Temperate
Gndcvr: Dense foliage
Atm. factor: None
K Factor: 1.333
RX Antenna: Omni
Height: 5.0 feet AGL Gain: .0 dBd

Received power (at remote)

- > -98.0 dBmW
- -108.0 to -98.0 dBmW
- < -108.0 dBmW

Minimum threshold level: -108.0 dBmW

Site	Ant Elv AMSL (feet)	ERPd (dBW)	Ant. Type /Orient.	Coordinates
Blue	* 1538.0	18.80	OM-V	N 43 19 53.00
grp: 1	860.0000 MHz			W 71 7 .00

MILES
10 0 10 20 30

Blue Job Mt, NH Site
800MHz Mobile, Portable Coverage
11-6-97 1:1,000,000

WWW.ISGA.COM/NETTOWER

QUESTIONS? BRAD ANDERSON 372 6338

Attachment D

COLDSTREAM REAL ESTATE ADVISORS, INC.
CASE STUDY #104

Site Search and Approvals

Client: Large Telecommunications Company

Objective: Locate cellular tower sites in strategic geographic areas and receive all permits and approvals for same as quickly as possible in order to expand coverage ahead of the competition.

Assignment: Coldstream was retained to identify the most cost effective and quickest turnaround locations for the placement of cellular towers and related equipment buildings.

Strategy: Coldstream determined that communications towers are not an allowed use in most towns in the areas where the client wanted to locate them. Obtaining a variance to erect a tower in a residential or rural zone (the usual zoning for the highest and least accessible areas in a town) is difficult and can consume many months without any assurance of success.

Results: Coldstream used its contacts with State officials to explore erecting towers on State owned mountains. Since governmental agencies are exempt from local zoning, the turnaround time for approval and construction was dramatically reduced. To date, fourteen such towers have been erected, saving the client valuable time, while ensuring the best locations in the region.

crea/casestud/cs104

Attachment E

INTEROFFICE MEMORANDUM

To: Robb R. Thomson, Commissioner

CC: file

From: James P. Carter

Date: March 19, 1997

Subject: Construction on DRED Lands
State Police Statewide Radio System

Very shortly I expect to receive a formal request from N.H. State Police for communication tower/radio building construction on several DRED properties. Their site list and construction time line and draft tower specification are attached.

In this regard, we need to decide what political/public involvement will be required for these projects on DRED lands. Apparently the word is already out that "we" will be constructing a new tower on Pack Monadnock Mountain, Miller State Park. Posey Bass, of the prestigious Bass family in Peterborough, called today inquiring about what we planned. Their land abuts Miller on our northerly boundary.

At a minimum, I recommend that we notify local town government (selectmen/planning board) and the appropriate Governor's Councilor. If possible, I think we should avoid a general public notice and abutter notification.

cc: Phil Bryce
Rich McLeod
Brent Edmonds

I JUST WANT YOU TO SEE THAT SINCE WE SPOKE WE [illegible]

REGARDS.

SINCERELY,

GREG [illegible]

JAMES P. CARTER

FROM THE DESK OF...

JAMES P. CARTER
ADMINISTRATOR
DIVISION OF FOREST AND LANDS
172 PEMBROKE ROAD
CONCORD, NH 03301

603-271-3456
FAX 603-271-2629

Attachment F

David E. Klumb
Director of Network Operations
603-533-2200

Northeast Region
288 Route 101
Bedford, NH 03110-5145
Office: (603) 533-2201
Facsimile: (603) 533-2277

UNITED STATES
CELLULAR.
WIRELESS COMMUNICATIONS

Excellence in Communications Services *A TDS Company*

PREPARED REMARKS OF DAVID KLUMB
UNITED STATES CELLULAR
REGARDING SB-132
March 4, 1999

Good afternoon, Mr. Chairman and members of the Senate Committee on Environment. I am David Klumb and I am employed by United States Cellular. I am a resident of Deering, New Hampshire. I appear before you today together with our counsel, Dan Callaghan from Devine, Millimet & Branch. We appear before you today to discuss SB-132.

Before I comment on the specifics of this bill, I would like to take this opportunity to provide you with some background information regarding United States Cellular and our involvement with the Mount Kearsarge Tower. United States Cellular has been in New Hampshire since 1988. United States Cellular provides cellular telephone service to customers throughout most of New Hampshire. In order to provide the services sought and demanded by the public, United States Cellular utilizes towers in order to provide wide coverage for cellular telephone use. As I am sure you know, this service is very much in demand by consumers and is considered a necessity by New Hampshire's business community.

In 1997, as you have heard from representatives from various State agencies today, the State determined that it needed to build a tower at Mount Kearsarge for State requirements. United States Cellular believed that its needs and the State's needs had the makings for a public- private partnership that would benefit both of us. Therefore, we approached the State and agreed to construct the tower at no cost to the State in return for space on the tower. The State and United States Cellular entered into a written agreement unanimously approved by Governor and Council. United States Cellular proceeded to construct this tower at a total cost to us of approximately $1,000,000. As a result of this public-private agreement, the State obtained a tower deemed necessary by various state agencies at no cost to the State. It is important to point out that this tower is no different than the tower that would have been built if we were not located on it. Our company did not and does not need a 180 foot tower and we are located much further down.

SB-132, if enacted, will force the State to break its contract with us by requiring the State to remove the tower. We maintain that this proposal, if enacted, is not appropriate, will be costly to the State, and probably violates the State and Federal Constitutions.

As noted, SB-132 proposes making several findings, which will be interpreted to extend beyond simply Mount Kearsarge and this telecommunications tower. These findings impose significant limitations upon the power of the State to take actions intended to protect the interests of its citizens. Removal of the tower will also be very costly to the State and will significantly impair essential governmental communications. We believe that you should consider these costs before you pass SB-132.

Lastly, United States Cellular has a contract with the State. The State and Federal Constitutions prohibit the state from taking property rights. Moreover, the Federal Constitution prohibits the State from impairing the rights of contract. In our view, SB-132, if enacted, would violate these constitutional prohibitions.

Therefore, we urge you to consider the testimony presented today and analyze the financial consequences of SB-132. We believe that you will conclude that you should not pass SB-132.

Mr. Callaghan and I would be pleased to answer any of your questions.

Attachment G

Sergeant Michael Doucette
New Hampshire State Police / New Hampshire Troopers Association

RE: Senate Bill 132

Mr. Chairman and Ladies and Gentlemen of the Committee:

My name is Michael Doucette, and I am a Sergeant with the New Hampshire State Police. I am a lifelong New Hampshire resident, and I have been a trooper since June of 1980. I am also a Past President of the New Hampshire Troopers Association.

I came today on my own time to plead with this committee to understand the dire need for this tower and others like it throughout the state that some people here would like torn down. I want you to know that the inadequacy of the New Hampshire State Police Radio system has been an issue all of the years that I have been a trooper, as it was for several years before I enlisted. Prior to enlisting with the State Police I was a local police officer who was used to having a portable radio on my belt, that when you talked into it, your dispatcher could hear you. This was back in the mid to late ***1970's***, and we in the New Hampshire State Police have **NEVER** to this day had that measure of safety. I remember that this was a safety issue brought up each time the collective bargaining agreement was negotiated. When a trooper walked out of his or her cruiser, s/he cut him or herself off from the rest of the world until their return to the cruiser.

The high cost of changing and upgrading was always the reason cited for not doing anything before now.

Over the last ten or so years, I was assigned as part of the many different committees that studied the needs for upgrading the New Hampshire State Police Radio System. In 1992 a company studied the needs and costs of upgrading to new technology. The company (RAM Communications) came back stating that the cost to the State would be approximately $14 Million dollars (1992 dollars). The Commissioner of the Department of Safety and the administrators of New Hampshire State Police took this information over to this building and were granted $7.5 Million dollars to start moving toward a new statewide system. We were ecstatic to say the least, that someone finally cared enough to put some money toward our safety!!

After that vote, I was assigned to the committee that put together the Request for Proposals (RFP) that brought us the technology that we are currently in the process of implementing. In the many committees that I was a part of, we researched countless possible solutions to our crisis. With the widely varying terrain throughout our state, we were limited in our possible solutions. We could not migrate to the 800mhz band that many departments were doing, as we would have had to put a tower atop upwards of 40 to 50 mountaintops. We researched use of satellite technology, but that was quickly ruled out due to the exorbitant costs. In

the RFP we made the vendors do the work of designing a Radio System that they would guarantee a coverage area that in 95% of New Hampshire, 95% of the time, a trooper who talked into his portable radio could reach a state police dispatcher. The manufacturers have the high-tech equipment that modeled the State and they came forward with their proposals. One vendor identified 24 mountaintop sites that they would need to place towers to make the system work. As an example, this vendor identified that they would have to place a 180-foot tower atop Mount Monadnock (not Pack Monadnock), which is a pristine site that currently has no power, no building, no service access, or an antenna of any kind. There were 15 sites identified such as this one that had never previously been developed. The other company utilized basically the sites that we currently use and a few others, identifying that they would have to upgrade much of the equipment and install several new towers. The reason for the new towers is that with our current (or old) system many of the antennas were just attached to the side of fire towers, and they needed the additional height to get the required coverage. Along with the new towers, many sites needed new buildings to house the transmitters and associated components, as the newer equipment needed to be operated at a constant temperature, which the old buildings could not accommodate.

Regarding the issue that the State did not pay for this tower; people should be applauding our administration for using the resources of the private

sector to get something done that would have cost the State of New Hampshire hundreds of thousands of dollars, not throwing it in their faces as being something that was done seemingly underhanded. We knew going into this upgrade process that we did not have enough money to get done what we needed to. I applaud Commissioner Flynn, Colonel Barthelmes, and Executive Major Booth in their efforts to get our system up and running in partnership with these private concerns! Given the renown "Claremont Issue" being discussed elsewhere here, if my bosses came in today telling you we needed another eight to ten million dollars of general fund money to complete the upgrade, how do you think that request would be received...

Mount Kearsage is not new to having towers atop of it; there have been towers up there as long as I can remember. I do realize that the new tower is larger and to some people this creates problems. Some people here today spoke about rights. I submit to you that the aesthetics do not outweigh my right, and the rights of all New Hampshire Troopers, to be safe when we work. This tower and others like it installed around the state are the only way that we can try to assure the safety of the men and women of the New Hampshire State Police.

I bring up to you a dark day in August of 1997 where we lost two troopers and two fine citizens. After that tragedy the federal government put up $1

Million dollars to study how we can better communicate with the State of Vermont. I am here to tell you today that we STILL cannot reliably communicate amongst ourselves ***within the State of New Hampshire,*** let alone with the State of Vermont!! If this bill is passed it will be a devastating blow to the safety of the men and women of the New Hampshire State Police. The "not in my backyard" attitude of many people opposing this tower and others is disgusting. We are YOUR police department, and we ask for ***your support!***

JOHN DABULIEWICZ
84 Kearsarge Mountain Road
Warner, New Hampshire 03278
Telephone (603) 456-2312

Attachment 1f

March 4, 1999

The Honorable Richard L. Russman, Chairman
Senate Environment Committee
Room 104, Legislative Office Building
Concord, NH 03301

RE: SB 132

Dear Senator Russman:

I appear before the Environment Committee today to express my wholehearted support for SB 132. The findings section of this bill clearly captures many of the reasons why I and my family hope that the General Court will right the wrong which has been committed by the executive branch in allowing the erection of the grossly over-sized tower on Mount Kearsarge.

As our Constitution states, a fundamental purpose for our legislature to assemble is "...for the redress of public grievances" (NH Constitution, Part First, Article 31). If ever there were a public grievance which your enactment of legislation can redress, demanding the removal of the monstrosity now defiling Mount Kearsarge is it. For many years I have enjoyed mountain biking, skiing and hiking to Tory Meadow near my home. Each such trip was heretofore highlighted by gazing up at the peak of the mountain to enjoy spiritual nourishment and aesthetic pleasure from simply beholding it. Now I find myself averting my gaze from the looming specter of that 180 foot tower.

By enabling this travesty to occur, in return for a trifling $12,000 per year, DRED has violated:

- the trust of numerous New Hampshire citizens;
- its obligation to "protect and preserve...natural areas within the state" (RSA 216-A:1, I); and
- its duty to support this legislature's declaration that state-owned reservations "contribute to the...distinctive quality of life in the state." (RSA 227-H:1)

There is also the matter of DRED's direct and willful violation of RSA 674:54, as cited in the bill, as well as that agency's violation of RSA 541-A: 39 through its failure to notify and provide my town and others an opportunity to comment on this land use decision.

Furthermore, the one-sided nature of the contract with the cellular phone company is striking. This contract affecting state land intended primarily for uses beneficial to the public at large, instead benefits mainly private commercial entities. Despite that context, the contract

contains the following provision:

> LESSEE shall have the **unilateral right** to terminate the lease at any time by giving ninety (90) day written notice to LESSOR of LESSEE'S exercise of this option. (Mount Kearsarge Lease Agreement, Section XXV, emphasis added)

Curiously the state enjoys no similar right to terminate the contract. Why was a private commercial entity which sought the right to access state park land for a use contrary to the purposes for which that land was given to the state provided such a clear and lopsided advantage by the executive branch?

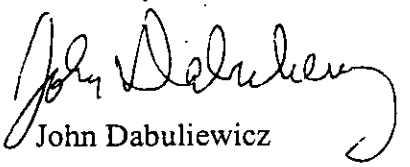
Turning now to those purposes for which the land was given to the state, paragraph VI of the bill's findings reveal that the tract upon which the tower and its attendant buildings are constructed is subject to an express deed condition which certainly seems to prohibit such structures. Nevertheless, the contract approved by the executive branch asserts that the state "has the full right, title, interest, power and authority to enter into this lease." (Mount Kearsarge Lease Agreement, Section VII) The General Court can surely be forgiven for questioning this particular representation in the face of the deed restriction noted in the bill.

And the General Court can also rightfully assert its authority to overturn the misguided action of the executive branch in this particular case. Indeed, a legislative solution to a public policy violation like this one is probably more appropriate than the emotionally and financially exhausting litigation approach to which affected citizens have been forced to resort due to DRED's unresponsiveness on this matter.

Since the state now owns the unnecessarily gargantuan tower this bill seeks to remove, some have argued that the expense of removal should doom this legislation. The July 1, 1997 Governor and Council letter from DRED pegs the cost of construction at $120,000. Surely the cost of removal will not be more. As a cautionary note to state agencies charged with stewardship of state-owned lands to take such responsibilities more seriously in the future, I submit that DRED should be forced to bear the removal cost from within its budgeted funds.

As a citizen, voter, and taxpayer of New Hampshire, I am confident this legislature can pass SB 132 to redress the grievance felt by so many of us who live in the shadow of Mount Kearsarge, as well as those from within and without the state who merely enjoy its beauty on occasion. Thank you for your consideration.

Sincerely,



John Dabuliewicz

cc: Members of Senate Environment Committee

Attachment I

Statement of Maxwell S. Campbell, of Wilmot, N.H., March 4, 1999, re: SB - 132, requiring removal of telecommunications tower on Mt. Kearsarge.

In late July 1998, the Forest Society challenged DRED to cite legal authority for the presence of the new telecommunications tower on land the Society had deeded to the state with restrictions to forestry and recreational use. DRED Commissioner Robb Thomson cited, at first, the precedent represented by the fire-watch tower, which had existed on the same land since 1924.

DRED has since abandoned this argument, for various reasons, but the question of what precedents the fire-watch tower does provide was revived by the discovery of a series of 3 letters in Forest Society archives. [Copies have been supplied to you.]

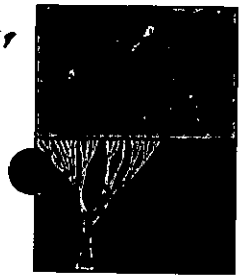
The first of these letters, from the State Forester to the Forest Society, dated Oct. 15, 1923, announces the state's desire to build a fire lookout tower on Kearsarge, and goes on to say: "I wish to ...get your views as to what objection there might be if any on the part of your members and persons living near Kearsarge." The objections he had in mind were aesthetic ones, such as had been raised against a wooden structure put on Monadnock.

The next two letters show the Forest Society following through on the state's request to solicit public response to the tower proposal. Philip Ayres, executive officer of the Society, wrote: "The Society desires that as far as possible the structure should harmonize with the topography and be as unobtrusive as possible at the top of the mountain. It will be constructed of steel, and therefore somewhat less conspicuous than if made of wood."

In recent years, the state seems to have been cured of its sensitivity to the aesthetics of towers, and to the public's opinion. This is the tower consented to by the Forest Society and the public. [Photo of 1924 tower.] This is that tower today. [Photo of same tower, 1999.] Only the steel skeleton is original.

Public feelings — about the incremental changes that converted the old fire tower from an unobtrusive structure to a massive object — were never consulted. More recently, public notification of plans for a tower six times the size of the fire tower was actively avoided. What a change from the way things were done in 1923. What a departure from the precedent actually established by the Mt. Kearsarge fire tower.

And how unsettling, that someone put in charge of our public lands could see, or could pretend to see, no significant difference between the 1924 fire tower and the 1997 communications tower — could see, or could pretend to see, no need for the public to know about plans that would have such a drastic effect on our public lands, and on our lives.



SOCIETY
FOR THE
PROTECTION
OF
NEW HAMPSHIRE
FORESTS

54 PORTSMOUTH STREET
CONCORD, NH 03301-5400
(603) 224-9945
FAX (603) 228-0423

MEMORANDUM

TO: Sen. Rick Russman, Sen. Burt Cohen - Senate Environment Committee
Sen. Rick Trombly, Sen. Cliff Below - Prime Sponsors, SB132
FR: Charlie Niebling
RE: Senate Bill 132
DA: March 9, 1999

I've been thinking about the Kearsarge Tower bill and would like to propose the following rough solution for your committee to consider. As I said in my testimony, I hope that the committee will resist the temptation to punt on this controversial and politically charged bill and wait for the court to decide the two lawsuits a year or two from now. We can expect that the bill as introduced will die a horrific death before the House Public Works committee, where it would likely be referred. So my motivation with this proposal is to get something out of the Senate that stands a chance of passing in the House, then you can negotiate over inevitable House amendments in conference.

The elements of my proposal are the following:

- Findings language similar to existing bill which documents the extent of the violation of due process and public right to know (Note that NO ONE refuted these findings during the hearing).

- Language acknowledging the legitimate public safety needs served by telecommunications on the mountaintop.

- Language requiring disclosure of all documents at Dept. of Safety and DRED which will allow the legislature to make an objective determination of what is the least intrusive structure and technology necessary to satisfy legitimate public safety needs (Somebody's hiding something!!).

- A requirement that the tower be removed from its existing location on the Frank West Rollins Memorial tract encumbered by the 1949 deed language, with the cost borne by DRED's operating budget (Someone used the term "penance" during the hearing and I think that DRED

somehow needs to be held responsible for their gross violation of due process – I wouldn't expect this provision to survive but it's an important statement to make).

- If you read SPNHF's petition, you will see that we point out to the court that the state owns land without deed restriction within a stone's throw of the current tower location (further evidence of shoddy deed research by the state)!! The bill should include a directive that the tower, or some lesser structure, be relocated on the Robie tract owned by the state less than 200 feet to the west that is unencumbered by deed language, subject to a series of public hearings under RSA 674:54. This directive would make clear that moving the tower constitutes a significant change in governmental land use, so that the provision's of RSA 674 (amended last year by Sen. Cohen's bill) must be applied.

- Language absolving US Cellular of any legal wrong doing in connection with the title search that failed to reference the deed language (not quite sure how to do this).

- A directive that the state shall remove this and other towers on public mountaintops if and when the technology becomes obsolete and the towers are no longer necessary.

- Some consideration of Sen. Fernald's request to include consideration of the Pack Monadnock tower, and perhaps the establishment of a review process to take another look at the State Police radio system build out and their dependence on public mountaintops for tower locations.

This proposal strikes a reasonable balance between concerned citizens and public safety issues. It finds the state guilty, in effect, but it allows all sides to save face. It gives citizens a say in how the mountaintop will be used, but it sets forth the legitimacy of using the summit for public telecommunications purposes. It keeps the cost of the solution to a minimum, but there must be a cost (but who bears the cost will surely be a sticking point).

I take no pride of authorship and am open to any other suggestions. I would be pleased to discuss this further with you.

SEN. RUSSMAN

There is hereby established a committee to study the feasibility and affordability of removing the telecommunications tower at the summit of Mount Kearsage in Rollins State Park in the town of Warner. The committee shall hear testimony on the costs associated with removal of the towers and the economic impact of alternative communications sites. In determining the replacement costs of alternative locations, the committee shall determine the approximate cost associated with providing the same or similar means of communication, which assures the same level of service to both public safety officials and the general public.

The fiscal committee of the general court shall approve funds not otherwise appropriated to cover the costs in assisting the committee with the study. The Senate President and the Speaker of the House shall appoint the following members to the committee:

I. One Senator
II. One Representative
III. The Commissioner of Safety or his designee
IV. The Commissioner of the Department of Resource and Economic Development or his designee
V. The Commissioner of the Department of Transportation or his designee
VI. The Director of the Office of Emergency Management or his designee
VII. The Director of the Department of Fish and Game or his designee
VIII. A member of New Hampshire Public Television

NEW HAMPSHIRE SENATE
107 North Main Street
Concord, NH 03301-4951
(603) 271-2111
TDD Access: 1-800-735-2964

TO: Members of the Senate
FROM: Megan Konys, Legislative Aide
DATE: March 8, 1999
RE: **Hearing report on SB132,** requiring the removal of the telecommunications tower on Mount Kearsarge. **(Senate Environment Committee, 3/4/99)**

Sponsor: Sen. Trombly, Dist 7; Sen. Below, Dist 5

What the bill does: This bill requires that the department of resources and economic development cause the removal of the telecommunications tower and related installations and buildings on Mount Kearsarge.

Who supports the bill: Chris Rueggeberg, NH Sierra Club, Save Our Mountain; Charles Niebling, Neil Nevins, Tom Kraeger, Frad Anderson, Rick Zuehlke, Pat Novak, Maxwell Campbell, John Jones, Rev. Allen Trent, SPNHF; and numerous members of the public (See Committee Secretary for complete list)

Who opposes the bill: ; Assistant Commissioner John Stephen and Major Booth, Department of Safety; Robert D. Nelson representing George M. Bald, Commissioner of DRED; David E. Klumb, United States Cellular; Daniel J. Callaghan, Representing United States Cellular; John Clement, NHDOT; Capt. Jeff Gray, NH Fish and Game Department; numerous State Troopers and a few members of the public(See Committee Secretary for complete list)

Testimony report: Those in favor of this bill testified that SB132 redresses the grievance felt by many NH citizens in the construction of the telecommunications tower on Mount Kearsarge and the State's breach of public trust. In their opinion, DRED has violated the trust of numerous NH citizens; its obligation to "protect and preserve...natural areas within the state" (RSA 216-A:1, I); and its duty to support this legislature's declaration that state-owned reservations "contribute to the ...distinctive quality of life in the state" (RSA 227-H:1). They also testified that DRED directly and willfully violated RSA 674:54, as cited in the bill, and that the agency violated RSA 541-A:39 through its failure to notify and provide the towns an opportunity to comment on this land use decision. Those in support of this legislation also cited the purposes for which the land (including Mount Kearsarge) was given to the state. They believe that the tract upon which the tower and its attendant buildings are constructed is subject to an express deed condition, which would prohibit such structures. They testified that DRED failed to conform to the laws governing the use of public lands. They stated that state park land is being leased for commercial uses at the expense of the public uses to which it is dedicated. The public trust doctrine, they testified, is a common law concept that requires that when the state owns public land, it holds that land in trust for use of the public. Also testifying in support of SB132, were numerous members of the public who feel the tower is an obtrusive, unsightly, enormous eyesore that disrupts the natural beauty of Mount Kearsarge. Others stated that the tower presents hazards to

NH citizens, by way of falling ice from the 180 foot structure and the lack of any barrier at the base of the tower.

Those opposed to this legislation, including the Department of Resources and Economic Development (DRED) testified that Mount Kearsarge is one of 16 DRED Communication Sites designated under their *Policy on Use and Management of Mountaintops for Communication Facilities*. They testified that all of these locations have existing communication equipment installations and have historically provided the "backbone" of the public health and safety communication sites. According to their testimony, a new State Police statewide radio system, authorized by the 1993 Legislature and designed by Motorola, recommended a 180 foot communication tower on Kearsarge. They stated that the tower height was determined based on State Police radio coverage requirements and antenna space needs of existing site users that will be relocated to the tower. These include 3 federal, 4 state, 2 local/county, 3 quasi-public, and 2 private entities. At least a dozen State Troopers they need the tower to remain atop Mount Kearsarge to provide the transmission of radio communication for Troopers statewide. DRED stated that they negotiated a lease with United States Cellular allowing tower construction, with the condition that the tower would become property of the State upon completion and acceptance of construction. They testified that this arrangement was approved by NH Governor and Executive Council on July 18, 1997.

In addition, United States Cellular testified that SB132, if enacted, will force the State to break its contract with their company by requiring the State to remove the tower. United States Cellular has a contract with the State. Those opposed testified that the State and Federal Constitutions prohibit the state from taking property rights, and the Federal Constitution prohibits the State from impairing the rights of contract. In their view, SB132, if enacted, would violate these constitutional prohibitions.

Funding: N/A

Future Action: Pending

Speakers

Fill in ONLY if Speaking on Bill

Bill # SB 136 Date _____

Committee Environmental

I support the bill +

I oppose the bill _____

I have written testimony _____

(Number of copies) _____

Time needed to speak: 200 max Pres

Name Hon. Robert Scott

Address Newport NH

_____

Phone _____

Representing _____

SB132

SENATE ENVIRONMENT. COMMITTEE

Date 3/4/94 Time Public Hearing On

Appearing in FAVOR: (Please print) Please check box at left to speak.

Speaking?	Name	Address	Representing
☒	~~Peter Evans John Stephenson~~		
☒	Posy Bass	Peter Sorousn	
☐	Linda Wilson	Box 144 Walker Brook Road - So. Danbury NH	Myself - (on annual leave) and my parents
☒	Maxwell Campbell	Wilmot NH.	Myself
☒	John Dabrowiecz	84 Kearsarge Mtn Rd, Warner	Self
☒	Jonathan Pucci	Newbury NH	Self
☐	Jeremiah Zicic	13 Brown RD Sutton	self
☐	Priscilla Parmenter and for Jane Parmenter	Fairview Farm New London Wilmot Flat NH	self
☐	Rusty Chandler	Chandler Farm Wilmot Flat	self
☐	Jennifer Ohler	Kearsarge Gore Farm Warner	Self

Appearing in OPPOSITION: (Please Print) Please check box at left to speak.

☐	~~HOWARD~~ H. WILSON	PO BOX 1, ANDOVER	Coca-Cola
☑	Asst Comm John Stephen	/ Maj. Booth	Dept of Safety
☑	for Commissioner Bald	Robert O Nelson	DRED
☑	DAVID KLUMB	United States Cellular	Bedford NH
☑	Daniel J Callaghan	Representing US Cellular	Manchester NH
☑	DICK WRIGHT	CAPITAL AREA FIRE COMPACT	CONCORD NH
☑	Allen Topliff	Wright Comm.	Concord, NH Clients
☑	John Clement	NHDOT	Concord
☐			
☐			

SENATE ENVIRONMENT. COMMITTEE

Date 3/4/98 Time Public Hearing On SB132

Appearing in FAVOR: (Please print) Please check box at left to speak.

Speaking?	Name	Address	Representing
YES	~~Chris Rueggeberg~~	~~Sierra Club~~	
☒ Yes	Chris Rueggeberg	N.H.	Sierra Club Concord
☒	Sen. Clifton Below		Sen Dist 5
☒	CHARLES NIEBLING		SPNHF
☒	STEVEN J. WINTER	NEWBURY, NH	
☒	Residents of Kearsarge Area, Wilmot, Warner Etc		per D. Novak
☒	BRAD ANDERSON		SELF
☒	DEREK PERSHOUSE	WARNER	SELF
☒	Richard Zuehlke	Wilmot	Self
☒	Dr. Alan G. Trent,	Warner	self
☒	RICHARD E. LITTLE	NEW LONDON,	SELF
☒	Pat Novak	Wilmot	self

Appearing in OPPOSITION: (Please Print) Please check box at left to speak.

☒	PETER AXELSON	MAURICE LANCELLE	(NECTA/FRONTIAVISION)
☒	~~-~~		
☒	SGT. MICHAEL DOUCETTE,	NH STATE POLICE	OF LITTLETON, NH
☒	Capt. JEFF GRAY,	N.H. Fish and Game Dept.	
☒	SHERIFF MARTY HEON		STRAFFORD COUNTY
☒	~~Pat~~ Self	Ed Cannane	Kensington, NH North Sutton, NH
■	Chief SCOTT E. HILLIARD	Northfield Police	Department
☐	Sheriff Chet Jordan	Merrimack County	Sheriff
☐			
☐			

In favor

- Linda Rauter 51 Canterbury Rd Chichester NH self
- Francine Philippe 234 EastSide Dr. Concord NH self

~~OPPOSITION~~

SB 132

IN FAVOR

Mary Coffey Self	PO Box 2010 Wilmot		Self
Wayne + Sally Ducall	Box 62 Andover		SELF
Edwin + Mary Hillier	Box 207 East Andover		self
Bedford + Gail Richards	P.O. Box 90 Andover, VT		self
RUTH MANN	CANTERBURY		SELF
Douglas Sartwell	172 Burkehaven Hill	Sunapee NH	Self
Eric Johnson	Tucker Mtn. Rd.	E. Andover, NH	Self
Don Nowak	Wilmot	526-4535	Self
Ed Weaver	Wilmot		self

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SENATE BILL 132 Date 3-4-99

Committee ENVIRONMENT

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
MARK LIEBL	91 AIRPORT RD CONCORD	271-1162	NHSP		✓
MICHAEL A. MACFADDEN	91 AIRPORT Rd CONCORD NH.	271-3636 NHSP			✓
David McCormack	PO Box 102, TWIN MTN, NH	846-5517	NHSP F		✓
SETH E COOPER	PO BOX 102 TWIN MTN., NH	846-5517	NHSP-F		✓
ROBERT LACROIX	92 ORANGE ST, MANCHESTER		TROOP D		✓
BERNIE SPARKS	38 TONGA DRIVE BOW, NH	03304	TROOP D		✓
LOUIS COPPONI	20 CROCKETT DR GOFFSTOWN NH	234-6535	NH TROOPERS		✓
PAUL A. MASSARO	114 PINE HILL RD WEARE, NH	271-1154	TROOP B		✓
PETER W GOULD	28 SANBORN RD., HAMPTON, NH	271-1150			✓
KELLY J. McCLARE	RR1 BOX 3365 FREEDOM, NH		STATE POLICE-MCU		✓
JOHN M. CODY	5 Hunter Drive Bow NH	271-1162	NH TROOPERS		✓
JOSEPH E. BURKE	159 FISHERVILLE RD CONCORD NH		NH STATE POLICE		✓
RICHARD S. SPAULDING	6 CHERRY ST. CONCORD NH	271-1162	NH STATE POLICE TROOP D		✓
ROB FOLEY	12 HAMPTON ST CONCORD NH	03301			✓
BRUCE ILOFON, PRESIDENT,	NH TROOPERS ASSOCIATION	CONCORD			✓

Speaking for SB132
Citizens of the Mt. Kearsarge Area and Environmental Groups

Preferred Priority of Speaking (4 minutes or less)

Charles Niebling

Neil Nevins

Tom Kraeger

Mary Lyn Ray- not here

----------Preferred break if necessary ----------

Brad Anderson

Chris Rueggeberg

Rick Zuehlke

Pat Novak

----------Preferred break if necessary ----------

Maxwell Campbell

John Jones

Rev. Allen Trent

Testimony

Statement of Maxwell S. Campbell, of Wilmot, N.H., March 4, 1999, re: SB - 132, requiring removal of telecommunications tower on Mt. Kearsarge.

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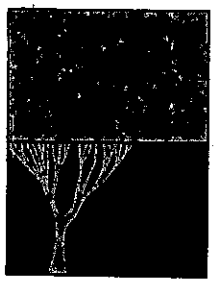
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TO: Sen. Rick Russman, Sen. Burt Cohen - Senate Environment Committee
Sen. Rick Trombly, Sen. Cliff Below - Prime Sponsors, SB132
FR: Charlie Niebling
RE: Senate Bill 132
DA: March 9, 1999

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I take no pride of authorship and am open to any other suggestions. I would be pleased to discuss this further with you.

Voting Sheets

Senate Environment. Committee
EXECUTIVE SESSION

Bill# SB 132

Hearing date: April 29, 1999 Room: LOB 104

Motion of: M. referred to Committee

Made by Senator:			*Seconded by Senator:*		
	Russman	☐		Russman	☐
	Cohen	☐		Cohen	☐
	Below	☒		Below	☐
	D'Allesandro	☐		D'Allesandro	☐
	Johnson	☐		Johnson	☐
	Krueger	☐		Krueger	☐
	Pignatelli	☐		Pignatelli	☐
	Wheeler	☐		Wheeler	☒

Committee Member	*Present*	*Vote*	*Reported out by*
Senator Richard Russman, Chairman	☒		
Senator Burton Cohen, Vice-Chair	☒		
Senator Clifton Below	☒	6-0	Sen. Below
Senator Lou D'Allesandro	☐		
Senator Carl Johnson	☒		
Senator Patricia Krueger	☐		
Senator Debora Pignatelli	☒		
Senator Katherine Wheeler	☒		

*Amendments:

NOTES:

SB 132 OTP w/A

1st Below

2nd Wheeler

4-0
+
1
5+0

Committee members present:

Wheeler

Rusoman

Below

Eaton obstain

Krueger

Eaton - Obstaining

+ Ignatelli's vote = She attended the hearing + we therefore can take her vote as she had to leave

Act By Below

Committee Report

Date: January 24,1999 Time:

The Senate Committee on Environment held its hearing in Room LOB104, Concord, New Hampshire.

BILL NO.: SB132 TITLE: (New Title) requiring a review of public safety communications requirements regarding the summit of Mount Kearsarge, establishing an advisory committee regarding the review, and placing a moratorium until July 1, 2001 on new leases, use permits, or extensions of lease or permit terms for telecommunication facilities on the summit of Mount Kearsarge.

Members of the Committee present:

Senator Russman
Senator Eaton
Senator Krueger
Senator Pignatelli
Senator Wheeler

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

☐ Ought to Pass ☐ Interim Study

- [x] Ought to Pass w/ Amendment
- [ ] Inexpedient to Legislate
- [ ] Rereferred
- [ ] Continued Hearing
- [ ] Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: January 24,1999

THE COMMITTEE ON Environment

to which was referred Senate Bill 132

AN ACT requiring the removal of the telecommunications tower on Mount Kearsarge.

VOTE: 5-0

2000-3159s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Clifton Below
For the Committee

Date: 3/4/99 Time: 3:30pm

The Senate Committee on Environment held its hearing in Room LOB104, Concord, New Hampshire.

BILL NO.: SB132 TITLE: requiring the removal of the telecommunications tower on Mount Kearsarge.

Members of the Committee present:

Senator Russman
Senator Cohen
Senator Below
Senator Johnson
Senator Pignatelli
Senator Wheeler

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☐ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☒ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: April 29,1999

THE COMMITTEE ON Environment

to which was referred Senate Bill 132

AN ACT requiring the removal of the telecommunications tower on Mount Kearsarge.

VOTE: 6-0

Having considered the same, report the same with the following recommendation that the bill be: **REREFERRED TO COMMITTEE.**

Senator Clifton Below
For the Committee