

D.P.U. 95-110

Petition of Cellco Partnership d/b/a Bell Atlantic NYNEX Mobile for exemption of certain lands and structures to be used for transmission of Telecommunication Services from the operation of the zoning bylaw of the Town of Holliston.

APPEARANCES: Michael S. Giamo, Esq.
Rackeman, Sawyer & Brewster
One Financial Center
Boston, Massachusetts 02111-2659
FOR: CELLCO PARTNERSHIP d/b/a BELL
ATLANTIC NYNEX MOBILE
Petitioner

The Honorable Barbara Gardner
The Commonwealth of Massachusetts
House of Representatives
State House
Boston, Massachusetts 02133-1020
Intervenor

Michael P. Healy, Esq.
770 Washington Street
Holliston, Massachusetts 01746
FOR: NEW ENGLANDER INDUSTRIAL PARK LOT
OWNERS ASSOCIATION
Intervenor

ORDER OF DISMISSAL

I. INTRODUCTION

On September 22, 1995, Cellco Partnership d/b/a Bell Atlantic NYNEX Mobile ("Cellco" or "Company") filed with the Department of Public Utilities ("Department") a petition for exemption from the zoning bylaws of the Town of Holliston. The filing was made pursuant to the provisions of G.L. c. 40A, § 3, which authorizes the Department to exempt public service corporations from local zoning ordinances or bylaws if the Department finds that an exemption is required and the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. After due notice, the Department held a public hearing in the Town of Holliston on December 13, 1995 to receive public comments on the Company's petition. Additionally, Cellco requested and on January 2, 1996, received a continuance of evidentiary hearings in this case to allow it to evaluate an alternative site for the proposed communications facility in the subject petition. State Representative Barbara Gardner and the New Englander Industrial Park Lot Owners Association were granted leave to intervene in the case.

On February 9, 1996, the Department issued an Order in Dispatch Communications of New England, Inc. d/b/a Nextel Communications, Inc., D.P.U. 95-59 (1996), which denied Nextel Communications, Inc.'s petition for exemption from the zoning bylaws of the Town of Sterling, Massachusetts on the grounds that Nextel Communication, Inc. and other Commercial Mobile Radio Service ("CMRS") providers do not qualify as public service corporations under G.L. c. 40A, § 3. The Department also held that its finding applies to all other petitions filed under G.L. c. 40A, § 3 by CMRS providers, regardless of whether they previously have been determined to be a public service corporation under this statute. Accordingly, Cellco's petition is hereby dismissed.

II. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That the Petition of Cellco Partnership d/b/a Bell Atlantic NYNEX Mobile for a zoning exemption is hereby denied on the grounds that it does not qualify as a public service corporation under G.L. c. 40A, § 3; and it is

FURTHER ORDERED: That the Secretary of the Department shall transmit a certified copy of this Order to the Town of Holliston Town Clerk; and that Cellco shall serve a copy of this Order upon the Town of Holliston Zoning Board of Appeals, Planning Board, Board of Selectmen, Conservation Commission, and Town Counsel within five business days of its issuance and shall certify to the Secretary of the Department within ten business days of its issuance that such service has been accomplished.

By Order of the Department,

John B. Howe, Chairman

Mary Clark Webster, Commissioner

Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).