

D.P.U. 95-80

Petition of Dispatch Communications of New England, Inc. d/b/a Nextel Communications, Inc. for exemption from the zoning ordinance of the City of Marlborough for the purpose of constructing and operating communications facilities for public use.

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Boston, Massachusetts 02111

FOR: DISPATCH COMMUNICATIONS OF NEW  
ENGLAND, INC. d/b/a NEXTEL  
COMMUNICATIONS, INC.  
Petitioner

William A. Brennan, Esq.  
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Office of the City Solicitor  
City Hall  
140 Main Street  
Marlborough, Massachusetts 01752

FOR: CITY OF MARLBOROUGH  
Intervenor

ORDER OF DISMISSAL

I. INTRODUCTION

On July 10, 1995, Dispatch Communications of New England, Inc. d/b/a Nextel Communications, Inc. ("Nextel" or "Company") filed with the Department of Public Utilities ("Department") a petition for exemption from the zoning ordinance of the City of Marlborough. 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 by-laws 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 Marlborough on November 21, 1995 to receive public comments on the Company's petition. Additionally, an evidentiary hearing was held at the Department's offices on December 5, 1995. The City of Marlborough was 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's petition for exemption from the zoning by-laws of the Town of Sterling on the grounds that Nextel 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 by CMRS providers under G.L. c. 40A, § 3, regardless of whether they previously have been determined to be a public service corporation under this statute. Accordingly, Nextel's petition is hereby dismissed.

II. ORDER

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

ORDERED: That the Petition of Dispatch Communications of New England, Inc., d/b/a Nextel Communications, Inc. 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 Clerk of the City of Marlborough; and that Nextel shall serve a copy of this Order upon the Board of Selectmen, City Council, and City Council Urban Affairs Committee of the City of Marlborough 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,

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John B. Howe, Chairman

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Mary Clark Webster, Commissioner

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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).