

The Commonwealth of Massachusetts

Department of Public Utilities

Leverett Saltonstall Building, Government Center

100 Cambridge Street, Boston 02202

February 15, 1996

RECEIVED
MAYOR'S OFFICE
CITY OF CAMBRIDGE
96 FEB 22 AM 11:21

Re: Nextel, D.P.U. 95-59

Dear Sir or Madam,

We are writing to you because of your involvement in your municipality's zoning process, to inform you of a change in the Department of Public Utilities' policy regarding zoning exemptions for mobile telecommunications providers. As you may be aware, the Department has the authority under G.L. c. 40A, § 3 to exempt companies that qualify as "public service corporations" from the operation of municipal zoning regulations, if the exemption is required and "...reasonably necessary for the convenience or welfare of the public." In recent years, the Department has granted zoning exemptions in order to site facilities including electric transmission lines, substations, gas pipeline meter stations, and telecommunications towers.

On February 9, 1996, the Department of Public Utilities issued an Order concerning the ability of Commercial Mobile Radio Service ("CMRS") providers (commonly known as cellular phone companies) to petition the Department for exemption from local zoning by-laws. In this Order, which is referred to as Nextel (Dispatch Communications of New England, Inc. d/b/a/Nextel Communications, Inc., D.P.U. 95-59 (1996)), the Department denied Nextel's petition for a zoning exemption on the grounds that the company does not qualify as a public service corporation.

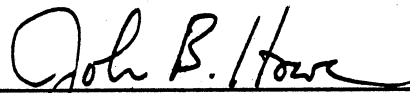
You should be aware that this finding extends to all CMRS providers, including those who previously were granted public corporation status (i.e., NYNEX Mobile and Cellular One). Therefore, those providers no longer qualify as public service corporations under G.L. c. 40A, § 3 and will not be recognized as such by the Department in the course of seeking exemptions from local zoning by-laws or ordinances.

As stated in our Order, the Department supports the build-out of CMRS systems consistent with Federal, State and local law and policy. We also note that the recently-passed Telecommunications Act of 1996 specifies that State or local governments, in regulating the placement and construction of CMRS towers, may not unreasonably discriminate between providers of functionally equivalent services, and may not take actions that prohibit or have the effect of prohibiting the provision of CMRS services. Therefore, we strongly encourage localities to work diligently with all CMRS providers to reach mutually acceptable solutions to the siting of CMRS towers.

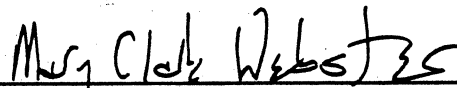
If you wish to receive a copy of the Department's Order, please contact Mary Cottrell, Secretary of the Department, at (617) 727-3500.

Thank you for your attention to this matter.

Sincerely,



John B. Howe, Chairman



Mary Clark Webster, Commissioner



Janet Gail Besser, Commissioner

cc: Massachusetts Municipal Association

Consent Communication #15

S-104

Communication was received from the
Commonwealth of Massachusetts,
Department of Public Utilities
informing of a change in policy
regarding zoning exemptions for
mobile telecommunications providers.

In City Council February 26, 1996

3/4/96

Referred to Cable TV Committee

sent to C. Galluccio 3/6/96