The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

April 7, 1999

D.T.E. 98-102

Petition of Sprint Spectrum L.P. d/b/a Sprint PCS for exemption from the operation of zoning by-laws of the Town of Sturbridge, Massachusetts.

APPEARANCES: Kenneth Ira Spigle, Esq.
Rosenberg, Freedman and Goldstein
246 Walnut Street
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-and-

Joseph Assenzo, Esq.
Sprint Spectrum L.P. d/b/a Sprint PCS
4900 Main Street, 12th Floor
Kansas City, Missouri 64112

FOR: SPRINT SPECTRUM L.P. D/B/A SPRINT PCS
Petitioner

Joel Bard, Esq.
Patricia A. Cantor, Esq,
Kopelman and Paige, P.C.
31 St. James Avenue, Suite 700
Boston, Massachusetts 02116

FOR: TOWN OF STURBRIDGE
Intervenor

I. INTRODUCTION

On October 1, 1998, Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS" or "Petitioner"), filed a petition ("Petition") with the Massachusetts Department of Telecommunications and Energy ("Department") for exemption from the zoning by-laws of the Town of Sturbridge, Massachusetts ("Sturbridge" or "Town"), in order to install, construct, maintain and operate two communications facilities, each of which would consist of an anchor-bolted single mast monopole of approximately 180 to 190 feet in height (Exh. SP-34, at 6-7). One or more arrays of antennas consisting of up to four sectored panel antennas, each measuring approximately four feet by six inches, would be attached to each monopole (id.). Each monopole would be capable of bearing the antenna arrays of at least three other wireless communications providers (id.). Each facility would also include an equipment shelter located on a concrete pad approximately 14 feet by 10 feet adjacent to the monopole, and each installation would be surrounded by security fences (Exh. SP-32, at 10). The total area used for each installation would be approximately 1,600 square feet (Exh. SP-34, Att. C and D).

One of the proposed facilities would be located at 174 Charlton Road, in an area zoned for an industrial park ("Charlton Road site"). The other proposed facility would be located at 400 Route 15, on the site of the Sturbridge Isle Truck Stop between the northbound and southbound lanes of Route 84, which is located in a commercial zone ("Sturbridge Isle site"). The Petitioner proposes to use the communications facilities to provide mobile telecommunications services in the Sturbridge area (id. at 8).

The Petitioner is requesting exemptions from Sections 4.00, 4.41, 4.44, 4.61, 4.64, and 4.71 - 4.79 of Chapter 4, all of Chapter 5, and all of Chapter 11 of the Sturbridge zoning by-laws

pursuant to G.L. c. 40A, § 3 (Exh. SP-32, at 10). In its Petition, Sprint PCS asserts that its proposed monopoles would not conform to the Town's by-laws because they would exceed the height limit set forth in the zoning by-laws (id. at 8).

Sprint PCS maintains that it has the right to apply for a zoning exemption as it is a commercial mobile radio service ("CMRS") provider and public service corporation ("PSC") as defined in Chapter 164 of the Massachusetts General Laws and as determined by the Department in Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U./D.T.E. 95-59-B/95-80/95-112/96-13 (January 8, 1998) ("D.P.U./D.T.E. 95-59-B") (Exh. SP-32, at 11).[1]

II. PROCEDURAL HISTORY

On October 1, 1998, Sprint PCS filed its Petition for exemption from the zoning by-laws of the Town for the purpose of constructing and operating two monopole towers with associated antennas, equipment shelters and co-location facilities located at the Charlton Road and Sturbridge Isle sites in the Town. Sprint PCS filed its Petition because (1) the Sturbridge Zoning Board of Appeals denied its application for a building permit on the Charlton Road site and (2) Sprint PCS determined that the zoning by-law would make it "impossible" to obtain a building permit for its proposed telecommunications monopole at the Sturbridge Isle site (Exh. SP-32, at 8).[2] On January 13, 1999, the Town of Sturbridge filed a petition to intervene as a party, which

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[1] The January 8, 1998, Order in D.P.U./D.T.E. 95-59-B addressed the question of whether Nextel Communications, Inc., and other CMRS providers are PSCs within the meaning of G.L. c. 40A, § 3.

[2] Sprint PCS stated that it leased a 1,600 square foot parcel for the Charlton Road site in March 1997 and a 1,600 square foot parcel for the Sturbridge Isle site in February 1998 (Exh. SP-34, at 2, Att. D). On June 11, 1997, and on July 9, 1997, the Town conducted

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the Hearing Officer granted during the January 21, 1999, public hearing on the Petition. On February 4, 1999, the Department conducted a procedural conference in its offices and issued a procedural schedule. The Department issued information requests to Sprint PCS on January 8, 1999, and February 5, 1999, and to the Town on February 5, 1999. Sprint PCS filed its responses to the first set on January 21, 1999, and issued its own information requests to the Town on January 29, 1999.[3] On March 26, 1999, Sprint PCS and the Town filed with the Department a Joint Motion for Approval of Decision as a proposed settlement of the litigation between the parties.

III. STANDARD OF REVIEW

In its Petition for a zoning exemption, Sprint PCS seeks approval under G.L. c. 40A, § 3, which, in pertinent part, provides:

> Land or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the [D]epartment of [T]elecommunications and [E]nergy shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public.

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[2](...continued)

public hearings on Sprint PCS's application for the special permit that would have allowed Sprint PCS to construct its communications facilities at the Charlton Road site (Exh. SP-34, Att. F). On August 11, 1997, the Zoning Board of Appeals denied Sprint PCS's petition for a building permit on the Charlton Road site (Exh. SP-34, at 3, Att. F). Sprint PCS subsequently filed this Petition.

[3] The Department hereby moves and receives into evidence DTE-SP-1-1 through 1-31, DTE-SP-2-2, 2-3, 2-15, 2-16, and 2-17, together with the Petition and the pre-filed testimony of Sprint PCS's two witnesses, including all attachments, as Exhibits SP-1 through 39.

Under this section, Sprint PCS first must qualify as a public service corporation (see Save the Bay, Inc. v. Department of Public Utilities, 366 Mass. 667 (1975) and D.P.U./D.T.E. 95-59-B) and establish that it requires an exemption from the local zoning by-laws. The Petitioner then must demonstrate that the present or proposed use of the land or structure is reasonably necessary for the public convenience or welfare.

In determining whether a petitioner qualifies as a "public service corporation" for purposes of G.L. c. 40A, § 3, the Supreme Judicial Court has stated:

> among the pertinent considerations are whether the corporation is organized pursuant to an appropriate franchise from the State to provide for a necessity or convenience to the general public which could not be furnished through the ordinary channels of private business; whether the corporation is subject to the requisite degree of governmental control and regulation; and the nature of the public benefit to be derived from the service provided.

Save the Bay at 680.

In determining whether the present or proposed use is reasonably necessary for the public convenience or welfare, the Department must balance the interests of the general public against the local interest. Save the Bay, at 685-686; Town of Truro v. Department of Public Utilities, 365 Mass. 407 (1974). Specifically, the Department is empowered and required to undertake a "broad and balanced consideration of all aspects of the general public interest and welfare and not merely [make an] examination of the local and individual interests which might be affected." New York Central Railroad v. Department of Public Utilities, 347 Mass. 586, 592 (1964). When reviewing a petition for a zoning exemption under G.L. c. 40A, § 3, the Department is empowered and required to consider the public effects of the requested exemption in the State as a whole and upon the territory served by the applicant. Save the Bay at 685; New York Central

Railroad at 592.

With respect to the particular site chosen by a petitioner, G.L. c. 40A, § 3 does not require the petitioner to demonstrate that its preferred site is the best possible alternative, nor does the statute require the Department to consider and reject every possible alternative site presented. Martorano v. Department of Public Utilities, 401 Mass. 257, 265 (1987); New York Central Railroad at 591. Rather, the availability of alternative sites, the efforts necessary to secure them, and the relative advantages and disadvantages of those sites are matters of fact bearing solely upon the main issue of whether the preferred site is reasonably necessary for the convenience or welfare of the public. Martorano at 265; New York Central Railroad at 591.

IV. MOTION FOR APPROVAL OF AGREEMENT

On March 16, 1999, the Hearing Officer conducted a settlement conference to discuss a tentative settlement agreement between Sprint PCS and the Town of Sturbridge, the only parties in this docket. On March 26, 1999, Sprint PCS and the Town of Sturbridge filed a Joint Motion for Approval of Agreement for Decision ("Joint Motion") and an Agreement for Decision ("Agreement", attached hereto as "Attachment A") for the Department's action.

Under the terms of the Agreement, Sprint PCS will be permitted to build its proposed communications facilities at the Charlton Road and Sturbridge Isle sites subject to certain conditions.[4] Sprint PCS and the Town ask the Department to enter a final order concluding the

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[4] These conditions address height restrictions, co-location facilities, visibility, landscaping, lighting, security fencing, parking spaces, radio frequency monitoring, hazardous wastes, noise levels, maintenance, abandonment and removal. The Agreement binds the successors and assigns of the parties. In addition, the Agreement contains a non-severability clause which states that "if the Department of Telecommunications and

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proceedings in this docket which (1) grants Sprint PCS an exemption from Sections 4.00, 4.41, 4.44, 4.61, 4.64, and 4.71 - 4.79 of Chapter 4, all of Chapter 5 and all of Chapter 11 of the Sturbridge zoning by-laws, and (2) finds that the proposed use of the land subject to the Agreement is reasonably necessary for the convenience or welfare of the public (Agreement at 5).

V. ANALYSIS & FINDINGS

In D.P.U./D.T.E. 95-59-B at 44, the Department found that CMRS providers such as Sprint PCS are public service corporations within the meaning of G.L. c. 40A, § 3. Consequently, the Department finds that Sprint PCS qualifies as a public service corporation and is eligible to petition the Department for an exemption from a local zoning ordinance pursuant to G.L. c. 40A, § 3.

The Department next considers whether Sprint PCS's proposed use is reasonably necessary for the convenience and welfare of the public. In this proceeding, Sprint PCS has presented evidence establishing the need for additional communications facilities in order to allow Sprint PCS to serve its customers in the Sturbridge area, the intersection of the Massachusetts Turnpike and Highway 84 (Exh. SP-33, at 3). The Town does not dispute this need. Sprint PCS has documented a thorough site selection process that analyzed travel corridors, examined proposed sites in Connecticut and in towns near Sturbridge, and

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[4](...continued)

Energy does not incorporate this Agreement in its entirety into its final Order in this proceeding, then either party may, at its sole discretion, within five (5) business days after receipt of the final Order of the D.T.E., notify the other Party that the Agreement is rescinded." Agreement at 5.

preliminarily identified fourteen potential sites for a two-site design (id. at 4). Sprint PCS considered many factors, including proximity to residential neighborhoods, in narrowing the fourteen potential sites to the two proposed sites.[5] Sprint PCS asserts that the two proposed sites will provide adequate coverage and offer tower-sharing opportunities (Exh. SP-33, at 8; Exh. SP-34, at 6-7). Consequently, the Department finds that the construction of the proposed communications facilities will improve Sprint PCS's ability to provide adequate service in the Sturbridge area while offering an opportunity for co-location by other CMRS providers.

Sprint PCS and the Town have jointly presented the Department with an Agreement for Decision that addresses the other aspects of our standard of review. Specifically, Sprint PCS and the Town agree that Sprint PCS should be permitted to construct communications facilities at the proposed sites, that a certain number of additional co-locators should be allowed on each facility without further action by the Town or the Department,[6] and that specific exemptions from the zoning by-laws of the Town are necessary to accomplish these purposes. The Agreement incorporates a series of conditions which address the environmental, visual, and other impacts of the proposed facilities in a manner that renders the facilities acceptable to the Town.

The Department has indicated that issues regarding tower proliferation and site selection, the degree of municipal support or opposition, and the steps taken by the petitioner to address

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5 The Charlton Road site is located at least 1,400 feet away from the nearest residence and the Sturbridge Isle site is located over 500 feet away from the nearest residence (Exh. SP-6). Sprint PCS considered other factors including location of the sites within a network grid, elimination of overlapping coverage, topography, elevation, line-of-sight access, residential development, FCC and FAA regulatory compliance issues, local zoning provisions, constructability and site availability (Exh. SP-33, at 4; Exh. SP-9).

6 Agreement at 1-2.

municipal concerns may be relevant to its analysis of zoning exemption petitions filed by CMRS providers. D.P.U./D.T.E. 95-59-B at 45-46. The Agreement addresses issues of tower proliferation by providing for the co-location of additional CMRS providers on the proposed facilities. The Agreement has the support of the Town and addresses the Town's concerns through an extensive set of conditions related to issues such as tower height, landscaping and screening, security fencing, radio frequency monitoring, noise, disposal of hazardous wastes, maintenance, and removal of abandoned facilities.

Consequently, based on our review of the record in this case and of the Agreement, the Department finds that the proposed communications facilities with antennas, related service buildings, and co-location facilities as described and conditioned in the Agreement are reasonably necessary for the convenience or welfare of the public. One obvious question raised by the Agreement is why the Town cannot grant whatever relief is needed under its zoning code. The reason appears to be that the Town itself is distinct from its Zoning Board of Appeals and only the Zoning Board of Appeals can so act.[7] Thus, without the Department's determination under G.L. c. 40A, § 3, the proposed structures and uses would be nonconforming and illegal.

In addition, the Department finds that, pursuant to G.L. c. 40A, § 3, Sprint PCS should be granted an exemption from Sections 4.00, 4.41, 4.44, 4.61, 4.64, and 4.71 - 4.79 of Chapter 4, all of Chapter 5, and all of Chapter 11 of the Sturbridge zoning by-laws in accordance with the

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[7] This type of municipal internal inconsistency is not unusual. See, e.g., New York Cellular Geographic Service Area, Inc., D.P.U. 94-111 (1995); Town of Amherst, New Hampshire v. Omnipoint Communications Enterprises, Inc., __F.3d__, No. 98-2061 (1st Cir. decided March 30, 1999) (the towns leased town-owned property to the carriers, but the towns' zoning boards did not grant the carriers' applications for variances).

terms of the Agreement. Finally, the Department finds that this Order shall constitute the final decision in this matter and that the terms and conditions set forth in the Agreement shall be incorporated into this final decision by reference. The Department's approval of the Agreement is case-specific and shall not bind the Department from resolving similar issues differently in future Department zoning exemption petitions under G.L. c. 40A, § 3.

VI. ORDER

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

ORDERED: That the Department hereby grants the Joint Motion for Approval of Agreement for Decision filed by Sprint Spectrum L.P. d/b/a Sprint PCS and the Town of Sturbridge on March 26, 1999, and that the proposed communications facilities including a 180-foot communications tower at the Charlton Road site and a 190-foot communications tower at the Sturbridge Isle site, with related antennas, service buildings, and co-location facilities as described in the Agreement and as further described in the Petition on file with the Department, be exempt from the operation of Sections 4.00, 4.41, 4.44, 4.61, 4.64, and 4.71 - 4.79 of Chapter 4, all of Chapter 5, and all of Chapter 11 of the Sturbridge zoning by-laws, pursuant to G.L. c. 40A, § 3; and it is

FURTHER ORDERED: That Sprint PCS and the Town shall abide by all terms and conditions set forth in the Agreement, the terms of which are incorporated herein by reference; 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 Town of Sturbridge; and that Sprint PCS shall serve a copy of this Order upon the Board of Selectmen, Planning Board, and Zoning Board of the

Town of Sturbridge 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,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

A true copy
Attest:

MARY L. COTTRELL
Secretary

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 may be filed with the Secretary of the Commission within twenty days after the date of service for 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).

ATTACHMENT A - AGREEMENT FOR DECISION

Submitted on March 26, 1999 by
Sprint Spectrum L.P. d/b/a Sprint PCS and the Town of Sturbridge

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AMANDA ZURETTI

March 26, 1999

98-102

BY HAND

Ms. Mary L. Cottrell
Secretary
Massachusetts Department of Telecommunications and Energy
100 Cambridge Street, 12th Floor
Boston, MA 02202

Re: Sprint Spectrum L.P. d/b/a Sprint PCS
Petition for Exemption from the Operation of the Zoning By-law of the Town of Sturbridge
DTE No. 98-102

Dear Secretary Cottrell:

Enclosed for filing in the above case please find the Joint Motion for Approval of Agreement for Decision and Agreement for Decision.

Thank you for your attention in this matter.

Very truly yours,

Patricia A. Cantor

PAC mjm
Enc.
cc: Town Administrator
Karlen J. Reed, Massachusetts Department of Telecommunications and Energy
Jeffrey Brandt, Massachusetts Department of Telecommunications and Energy
Kenneth Ira Sprigle, Esq.
Thatcher W. Kezer, III, Massachusetts Municipal Association

PRINTED ON RECYCLED PAPER

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

SPRINT SPECTRUM L.P. d/b/a SPRINT PCS	D.T.E No. 98-102

JOINT MOTION FOR APPROVAL OF AGREEMENT FOR DECISION

Sprint Spectrum L.P. d/b/a Sprint PCS and The Town of Sturbridge, the sole parties to this proceeding, jointly move that the Department approve and adopt the attached Agreement for Decision, and that the Department enter a final Order in this proceeding in accordance with the terms set forth therein.

Respectfully submitted,

SPRINT SPECTRUM L.P. d/b/a SPRINT PCS,

by their attorney,

Kenneth Ira Spigle, Esq.
c/o Rosenberg, Freedman & Goldstein
246 Walnut Street
Newton, MA 02460
(617) 964-7000

Respectfully submitted,

TOWN OF STURBRIDGE,

By their attorneys,

Joel B. Bard, Esq.
Patricia A. Cantor, Esq.
Kopelman and Paige, P.C.
Town Counsel
31 St. James Avenue
Boston, MA 02116
(617) 556-0007

Dated: March 26, 1999

CERTIFICATE OF SERVICE

I, Patricia A. Cantor, hereby certify that on the below date, I served a copy of the foregoing Joint Motion for Approval of Agreement for Decision, by hand delivery to the following:

Mary L. Cottrell
Secretary
Massachusetts Department of Telecommunications and Energy
100 Cambridge Street, 12th Floor
Boston, MA 02202

Karlen J. Reed
Hearing Officer
Massachusetts Department of Telecommunications and Energy
100 Cambridge Street, 12th Floor
Boston, MA 02202

Jeffrey Brandt
Analyst, Siting Division
Massachusetts Department of Telecommunications and Energy
100 Cambridge Street, 13th Floor
Boston, MA 02202

and by first class mail, postage prepaid, to the following:

Kenneth Ira Spigle, Esq.
246 Walnut Street
Newton, MA 02460

Thatcher W. Kezer, III
Legislative Analyst
Massachusetts Municipal Association
60 Temple Place
Boston, MA 02111

Dated: March 24, 1999

Patricia A. Cantor

AGREEMENT FOR DECISION

WHEREAS, Sprint Spectrum L.P. d/b/a Sprint PCS (hereinafter "Sprint") has petitioned the Massachusetts Department of Telecommunications and Energy (the "Department" or "D.T.E.") in Docket No. 98-102 for exemption from certain provisions of the Town of Sturbridge's Zoning By-Law in order to permit the construction of two telecommunications towers within the Town; and

WHEREAS, the Town of Sturbridge (hereinafter the "Town")has sought and obtained status as a party in D.T.E. No. 98-102, and Sprint PCS and the Town are the only two parties in this proceeding; and

WHEREAS, Sprint and the Town both seek to achieve a resolution of D.T.E. 98-102 which will permit the construction of personal communications facilities in a manner which will minimize the total number and visibility of new towers which will need to be constructed in the Town and will address appropriate concerns of the Town, while allowing construction in locations which will provide signal coverage adequate to meet the needs of Sprint PCS and other providers of wireless communications services; and

WHEREAS, the parties agree that it is in their best interests and the best interests of the residents of the Town to resolve this matter in a mutually-acceptable manner, with the approval of the D.T.E. in the context of D.T.E. Docket No, 98-102;

NOW, THEREFORE, the undersigned Parties agree as follows:

1. The Town will permit construction of monopole type wireless communications towers and other appurtenant structures at the sites proposed by Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint"), namely 174 Charlton Road (the "Charlton Road" site) and 400 Route 15 (the "Sturbridge Isle" site), subject to the following conditions.

2. The tower at Charlton Road may be constructed to a maximum height of 180 feet and the Sturbridge Isle tower may be constructed to a maximum height of 190 feet.

3. In addition to the antennas, supporting structures, and equipment cabinets or shelters to be installed by Sprint, the parties agree that up to three (3) other wireless communications providers may attach their antennas and associated facilities and equipment (including equipment

cabinets or shelters) at the Charlton Road site, and that up to four (4) other wireless communications providers may attach their antennas and associated facilities and equipment (including equipment cabinets or shelters) at the Sturbridge Isle site, without the necessity of any additional zoning approval from the Town or any further zoning exemption from the D.T.E. Sprint will give the Town written notice at least twenty-one (21) days prior to any such attachment. Sprint shall include comparable provisions of this agreement as set forth in paragraphs 10, 11, 12 and 13 below in any co-location agreement whereby other wireless communications providers locate on either tower.

4. As of the date of the execution of this Agreement for Decision, the Parties agree that there shall be no existing dwellings or other buildings or structures (excluding fences) within 180 feet of the planned location of the Charlton Road monopole, and there shall be no existing dwellings or other buildings or structures (excluding fences) within 190 feet of the planned location of the Sturbridge Isle monopole. The Parties further agree that nothing contained in this Agreement for Decision shall prohibit or prevent any person or entity from building or constructing any dwelling, building or structure closer to either monopole than 180 feet or 190 feet, respectively, at any time after the date of the execution of this Agreement, nor shall this Agreement otherwise constitute a limitation on the use of the property of the lessors of Charlton Road site or the Sturbridge Isle site.

5. Each tower and any antennas and/or dishes attached thereto shall be painted to minimize their visibility to abutters, adjacent streets and residential neighborhoods, and to blend with the natural environment. No antenna or dish located on any tower shall exceed ten feet above the level of its attachment to the tower.

6. Equipment cabinets and/or shelters shall be camouflaged behind an effective year-round landscape buffer (equal to the height of any proposed cabinet and/or shelter), and/or wooden fence. Such landscape buffer and/or wooden fence shall be comparable to similar buffers depicted in photographs shown to the Town prior to the execution of this Agreement for Decision.

7. Lighting shall be limited to minimal security lighting and any lighting which may be required by the Federal Aviation Administration.

8. All ground-mounted wireless communications facilities shall be surrounded by a security barrier. The parties agree that a single security barrier (which may be a fence) surrounding the entire installation may comply with this provision.

9. There shall be at least one parking space at each facility, to be used in connection with the maintenance of the facility and the site and not to be used for long-term storage of vehicles and other items. The parties agree that the location of each such parking space may be within the security barrier or fence at each location.

10. All equipment proposed for the facility shall be authorized in accordance with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation.

11. No hazardous waste shall be discharged by Sprint PCS or by any co-locating provider at the Charlton Road site or the Sturbridge Isle site. The Town agrees that there may be one or more propane tanks at each facility, to provide for short-term emergency power generation, but any such propane tanks shall be of double-wall manufacture and shall be maintained and inspected on a routine basis.

12. Ground-mounted equipment for wireless communications facilities shall not generate noise in excess of 50 decibels as measured at the property line, except during the operation of any emergency generator. If the Town has reasonable grounds for believing that there has been non-compliance with this provision, it shall notify Sprint, in writing by certified U.S. Mail, of the basis for its belief, including within said notice a reasonably detailed description of the date, time and circumstances of any such non-compliance, and Sprint shall have twenty-one (21) days within which it shall either correct the problem or provide the Town with a written explanation of the situation. If the Town is not satisfied with Sprint's correction or explanation, the Town may hire a qualified, impartial acoustical engineer at Sprint's expense to verify noise levels.

13. After Sprint's wireless communications facility is operational, and after each co-locating wireless provider's facilities are operational, the operator of each such facility shall submit within 90 days after initiation of operation, and at biennial intervals thereafter, existing measurements of Radio Frequency Radiation ("RFR") from its wireless communication facilities. Such measurement shall be signed

and certified by an RF Engineer, stating that the RFR measurements are accurate and meet applicable FCC guidelines.

14. Sprint shall maintain the wireless communications facility in good condition. Such maintenance shall include, but shall not be limited to: painting, structural integrity of the mount and any security barrier and maintenance of the buffer area and landscaping.

15. At such time that Sprint plans to abandon or discontinue operation of the wireless communications facility, Sprint shall notify the Town by certified U.S. Mail of the proposed date of abandonment or discontinuance of operations. Such notice shall be provided no less than 30 days prior to the abandonment or discontinuance of operations. Upon abandonment or discontinuance of operations, Sprint shall physically remove the wireless communications facility within 90 days of the expiration of the 30-day notice. "Physically Remove" shall include, but not be limited to:

A. Removal of antennas, mount, equipment shelters and security barriers from the subject property.

B. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

C. Restoration of the location of the wireless communications facility to its natural condition, except that any landscaping and grading shall remain in the "after" condition.

16. Sprint shall provide the Town with written authority from the owner or owners of record for the subject property where each facility is located to bind Successors and assigns to allow the Town, after provision of advance notice in writing to the owner or owners, to enter onto the subject property to physically remove the facility in the event that Sprint fails to remove the facility in accordance with the requirements of this agreement.

17. Sprint shall post a bond with the Town of Sturbridge in the amount of $50,000 to cover the costs for removal of the wireless communications facility in the event the Town must remove the facility.

18. This Agreement for Decision shall be binding upon the successors and assigns of the parties hereto.

19. The parties agree that the provisions of this Agreement for Decision are not severable, and that if the Department of Telecommunications and Energy does not incorporate this Agreement in its entirety into its final Order in this proceeding, then either party may, at its sole discretion, within five (5) business days after receipt of the final Order of the D.T.E., notify the other Party that the Agreement is rescinded.

20. Within five (5) business days after the execution of this Agreement for Decision, the Parties shall jointly move that the D.T.E. enter an order to conclude the proceedings in Docket No. 98-102, which Order shall include, inter alia, a specific grant of an exemption from Sections 4.00, 4.41, 4.44, 4.61, 4.64, 4.71 - 4.79, Chapter 5 and Chapter 11 of the Sturbridge Zoning By-Law in accordance with the terms of this Agreement, as well as a specific finding that the proposed use of the land subject to this Agreement is reasonably necessary for the convenience or welfare of the public.

21. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

The Town of Sturbridge

By _____
Joel B. Bard, Its Attorney
Kopelman and Paige, P.C.
31 St. James Avenue
Boston, Massachusetts 02116

Sprint Spectrum L.P. d/b/a Sprint PCS

By: _____
Kenneth Ira Spigle, Its Attorney
246 Walnut Street
Newton, Massachusetts 02460

Dated: March 23, 1999