



# CAPE COD COMMISSION

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Date: April 22, 1999

Applicant: TeleCorp PCS, Inc., represented by:  
Christopher McCarrier  
Entel Technologies, Inc.  
20 Industrial Park Drive  
Nashua, NH 03062

Project #: EX98045  
Project: Hayden Movers Monopole  
84 Industry Road  
Marstons Mills, MA

RE: Development of Regional Impact Exemption  
Cape Cod Commission Act, Section 12(k)

Lot/Parcel: Map 58, Parcel 29  
Land Court  
Certification #: C140250

Owner: Robert Hayden

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (the Commission) hereby denies the application of Telecorp PCS Inc., for a Development of Regional Impact (DRI) Exemption under Section 12(k) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for construction of a 75-foot tall monopole for a personal wireless communications facility at 84 Industry Road, Map 58, Parcel 29, Marstons Mills, MA. This decision is rendered pursuant to the vote of the Commission on April 22, 1999.

### PROJECT DESCRIPTION

The proposed project is located on Industry Road in Marstons Mills, approximately 1/2 mile northwest of the intersection of Route 149 and Route 28. The project involves the construction of a 75 foot monopole by TeleCorp PCS on a one-acre parcel that is largely cleared of vegetation. The monopole is proposed within a 900 square foot lease area (30 feet by 30 feet) in the northeast portion of the parcel and will carry 6 Telecorp antennas arrayed in three directions. A 6 foot high chain link fence is proposed surrounding the lease area, enclosing both the monopole and several equipment cabinets. Fourteen arborvitae shrubs, each 6 feet tall, are

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proposed as screening around the chain link fence. The proposed project also includes a 10 foot wide access and utility easement which runs parallel to the eastern border of the parcel, stretching from Industry Road to the lease area. Also proposed in conjunction with the project is the removal of an existing 55.8 foot wood telephone pole with a whip antenna, providing two-way radio communications for Hayden Building Movers, located on a nearby parcel approximately 360 feet to the west of the proposed lease area.

### JURISDICTION

The proposed project qualifies as a DRI under Section 3(i) of the DRI Enabling Regulations as construction of any wireless communication tower exceeding thirty-five feet in height from the natural grade of the site on which it is located but not including the reconstruction or replacement of an existing wireless communication tower on the same site, provided that the reconstruction or replacement does not exceed the height of the existing wireless communication tower by more than twenty feet. Said twenty feet shall be measured from the height of the existing wireless communication tower in existence on June 30, 1997. A jurisdictional determination was issued by the Cape Cod Commission on December 21, 1998, confirming that this project is subject to Commission review.

### PROCEDURAL HISTORY

The Commission received a jurisdictional determination request from Telecorp PCS, Inc., on October 29, 1998. The Commission determined that the project required DRI review under DRI thresholds contained in Section 3 of the Cape Cod Commission DRI enabling regulations on December 21, 1998. The Commission received a DRI Exemption request from Telecorp PCS, Inc., on February 4, 1999. Duly noticed public hearings were held on March 11, 1999 at Rooms 11 & 12 of the Superior Court House and March 25, 1999 in the Cape Cod Commission office. A subcommittee meeting was held on April 13, 1999 in the Cape Cod Commission office.

#### Materials Submitted for the Record:

- DRI Exemption application and supporting materials, dated January 27, 1999, received February 4, 1999.
- Survey Plan dated October 6, 1998 and Site Details Plan dated September 16, 1998, prepared by Atlantic Wireless, Atlantic Environmental Technologies, Inc., Sandwich, MA.
- NEPA Checklist for Hayden Land Development site, dated August 14, 1998, received November 27, 1998.
- Phase 1 Environmental Site Assessment for Hayden Land Development site, prepared for TeleCorp PCS, Inc., dated August 12, 1998, received November 27, 1998.
- Letter from Peter B. Morin to Sarah Korjeff re: DRI Exemption, dated November 25, 1998.
- Letter from Theodore Schilling to Ralph Crossen, Building Commissioner, re: Hayden Wireless Tower, dated June 17, 1998.
- Letter from Ralph Crossen, Building Commissioner, to Theodore Schilling re: use of existing structure, dated July 1, 1998.
- Letter from Sarah Korjeff to Christopher M. McCarrier re: DRI Exemption application, dated February 16, 1999.
- Memo from Sarah Korjeff to Subcommittee re: hearing schedule, dated February 17, 1999.
- Staff Report dated March 5, 1999.
- Memorandum to the Cape Cod Commission in support of the Application of TeleCorp PCS, Inc. for a DRI Exemption from Peter B. Morin, Esquire, undated, received March 11, 1999.
- Memo from Sarah Korjeff to Commission subcommittee and applicant re: conditions on wireless communications towers, dated March 23, 1999.

- Memo from Sarah Korjeff to Dorr Fox and Commission subcommittee re: DRI exemption request, dated March 25, 1999.
- Memorandum to the Cape Cod Commission in support of the Application of TeleCorp PCS, Inc. for a DRI Exemption from Peter B. Morin, Esquire, cover letter dated April 13, 1999, received April 14, 1999.

The application and notice of the public hearing relative thereto, the Commission's staff reports, and exhibits, minutes of the hearings and all submissions received in the course of the proceedings, including materials submitted on file JD#98045 and EX#98045 are incorporated into the record by reference.

#### TESTIMONY

At the March 11, 1999 public hearing, Peter Morin, attorney for TeleCorp, explained the proposal and stated that they had decided to locate their facility on the proposed parcel because it would be less visible. He stated that if they are not granted an exemption, TeleCorp will replace the existing 55 foot pole with a new pole that is 20 feet taller. Mr. Morin explained the variances that would be needed from the town and stated that the project would be reviewed by the Zoning Board of Appeals. Sarah Korjeff presented the staff report, noting that the project is not consistent with the Regional Policy Plan Minimum Performance Standard related to wireless facilities, and stating that the project is not consistent with several aspects of the Wireless Technical Bulletin. Ms. Korjeff stated that the disturbed nature of the proposed site would make the facility very visible from Route 28 and other vantage points. Mr. Morin stated his belief that the proposed site would minimize visual impacts and offered to consider conditions from the subcommittee that could be included in their submittal to the town.

At the March 25, 1999 public hearing, Mr. Morin suggested modifications to the project to make the subcommittee more comfortable with granting the proposal a DRI Exemption. He also disagreed with the concept of considering impacts on regional resources as a reason to deny a DRI exemption. Mr. Morin requested that the subcommittee approve the exemption request for the project and incorporate the conditions as part of the project, also recommending that the Barnstable Zoning Board of Appeals adopt them as conditions of their permit approval. Mr. Morin objected to the Commission's position on fall zones. The subcommittee expressed concern over granting an exemption for the project.

At the April 13, 1999 subcommittee meeting, the subcommittee reviewed a draft decision and recommended its approval and submission to the full Commission.

#### FINDINGS

The Subcommittee has considered TeleCorp PCS, Inc.'s application for a DRI Exemption regarding the proposed wireless communication facility in Marstons Mills, MA. Based upon consideration of such application, upon information presented at the public hearing and submitted for the record, the Commission makes the following findings subject to Section 12(k) of the Act:

1. The proposed project involves the construction of a 75-foot monopole by TeleCorp PCS on a one-acre parcel at 84 Industry Road in Marstons Mills. The monopole is proposed within a 900 square foot lease area (30 feet by 30 feet) in the northeast portion of the parcel. The monopole will carry 6 TeleCorp antennas arrayed in three directions. The lot on which the monopole is proposed is largely cleared of vegetation.

2. In conjunction with the proposed project, the applicant proposes to remove an existing 55.8 foot wood telephone pole with a whip antenna used by Hayden Building Movers, located on a separate parcel approximately 360 feet to the west of the proposed lease area.
3. The town of Barnstable currently does not have a bylaw which specifically addresses new wireless communications facilities. The proposed project would require approval from the Barnstable Zoning Board of Appeals for a height variance.
4. In response to public comment, the Capital Facilities section of the 1996 Regional Policy Plan called for a concerted regional planning effort to control wireless communication facilities in order to limit their potential detrimental impact on the visual character of the Cape. Regional Policy Plan Goal 4.3.2 was developed in response to this effort "to encourage the provision of adequate and appropriately-sited telecommunications facilities so as to promote economic development and preserve the quality of life and visual character of the Cape."
5. Regional Policy Plan Minimum Performance Standard 4.3.2.1 requires that "wherever feasible, new telecommunications facilities shall be required to co-locate with existing facilities in order to minimize their visual impacts." The proposed facility is designed for a single carrier.
6. The Commission's Wireless Technical Bulletin 97-001 was developed to address the potential visual impacts of wireless telecommunication facilities and how to avoid or minimize them. The proposed project is not consistent with design guidelines in the Wireless Technical Bulletin relating to location, camouflage, buffers, and equipment shelter design.
7. The Wireless Technical Bulletin states that when location on existing structures is not feasible, telecommunications facilities should be designed "...to be camouflaged to the greatest extent possible, including but not limited to use of compatible building materials and colors, screening, landscaping and placement within trees." In the case of single carrier facilities, the issue of camouflage is particularly important because of the potential for proliferation of these facilities. The proposed project is not effectively camouflaged, either through siting within heavily vegetated buffers which limit visibility to the structure, or through the use of innovative structure design which camouflages the facility. The proposed 14 arborvitae shrubs planted approximately 10 feet on center, as well as the lack of other vegetation or structures on the site, will not effectively screen the facility. The proposed project is significantly higher than the existing structures in the vicinity and is also significantly higher than the existing vegetation, which is approximately 30 to 40 feet in height.
8. Based on the existing state of vegetation and structures on the proposed parcel and on the parcel containing the existing 55.8 foot wood telephone pole, the proposed facility would not have greater visual impact if located on the site of the existing pole because the existing trees, landscaping, fencing and structure on the site would limit visual impacts. Such replacement of the existing structure with a structure no more than 20 feet higher does not require DRI review.
9. The proposed monopole will have significant visual impacts outside of the municipality of Barnstable because it will be visible from Route 28, a regional roadway as set forth in Cape Cod Commission Regional Policy Plan Minimum Performance Standard 4.1.1.2 and illustrated in the map entitled "Functional Classification of Cape Cod Highways" dated September 5, 1996..

10. Because of the regional nature of the telecommunications network, the proposed project's location may effect the location of other telecommunications facilities throughout the region for this carrier and for other licensed carriers and would thus have visual impacts on the region. Based on discussions with the Barnstable Planning Department staff, most of the region's licensed carriers have indicated a gap in their service in this general area and may seek a facility there in the future.

11. Removal of the existing 55.8 foot wood telephone pole and the nearby parcel will not substantially reduce the visual impact of the proposed project.

12. The issues of visual impact and community character are directly related to "the preservation of historical, cultural, archaeological, architectural, and recreational values" which are protected by Section 1(c) of the Act.

13. Through DRI review, the Commission could confirm whether there is potential for the proposed facility to co-locate with existing structures and, if not, the Commission could condition the project to make it appropriate to the site by requiring additional vegetative or structural screening and/or by requiring a facility that is more streamlined in nature. Through DRI review, the Commission could also require that the facility allow for co-location if appropriate.

#### CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes:

The location, character and environmental effects of the proposed construction of a 75-foot monopole for a wireless communications facility do not prevent its having significant impacts on the values and purposes protected by the Act outside of the community of Barnstable. This conclusion is supported by the findings described above.

The Commission hereby denies TeleCorp PCS, Inc., a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act, for the construction of a 75-foot tall monopole for a personal wireless communications facility at 84 Industry Road, Map 58, Parcel 29, Marstons Mills, MA, consistent with this decision.

For J. V. Chair  
Herbert Olsen, Chair

4/22/99  
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 22<sup>nd</sup> day of April 1999

Katharine L. Peters

Name, Notary Public

My commission expires:



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