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CAPE COD COMMISSION

Date:	September 30, 2010
To:	Michael P. Johnson Tower Resources Management, Inc. Site Acquisition Specialist
From:	Cape Cod Commission
Re:	Development of Regional Impact Cape Cod Commission Act, Sections 12 and 13
Applicant:	T-Mobile Northeast LLC 15 Commerce Way Norton, MA 02766
Project:	Provincetown Waste Treatment Telecommunications Monopole
Project #:	TR#10002
Book/Page:	Book 1450 Page 818

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions, the application of T-Mobile Northeast LLC, (the Applicant) represented by Michael P. Johnson (Site Acquisition Specialist), as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed ninety-two (92) foot telecommunications monopole with associated equipment to be located at 200 Route 6, Provincetown, MA. This decision is rendered pursuant to a vote of the Commission on September 30, 2010.

PROJECT DESCRIPTION

The project consists of the construction of a ninety-two (92) foot (Above Ground Level) monopole telecommunications tower (Tower) that will be situated within a thirty-nine (39) foot by forty-eight (48) foot fenced compound. The site is a disturbed area,

previously used as a burn dump, and more recently reclaimed to serve as the site of the Provincetown Wastewater Treatment Plant.

The Tower will be a monopole type and will have nine (9) panel antennas attached to it with associated cabling, which will run down inside the structure to equipment cabinets or shelters located inside the fenced compound. Utilities will be installed underground from an existing transformer on the property using an existing underground utility easement. The facility as proposed will provide co-location opportunities for up to three additional carriers.

PROCEDURAL HISTORY

The project was referred to the Commission on March 31, 2010 by the Provincetown Planning Board, through the Assistant Town Manager, David Gardner. In a letter dated April 1, 2010, the Applicant was informed that the Commission had received a DRI referral, and that the project qualified as a DRI. The DRI application was deemed to be substantially complete to proceed to a public hearing in a letter dated June 23, 2010. The Applicant's consultants filed application materials with the Commission on June 10, 2010, July 29, 2010, and other dates as shown in the *Materials Submitted for the Record* below.

In accordance with the Cape Cod Commission Act, the hearing period was opened by Hearing Officer on May 28, 2010. On August 2, 2010, a previously scheduled public hearing was continued by hearing officer to August 10, 2010. A site visit was conducted by commission staff and attended by the subcommittee, David Gardner (Assistant Town Manager), and the Applicant on June 20, 2010 to observe the balloon and crane test in order to gain an understanding of any potential visual impact the proposed Tower may have.

A duly noticed public hearing was held on the DRI application by an authorized subcommittee of the Commission on August 10, 2010 at 6:00 pm at the Provincetown Center for Coastal Studies. At this hearing, the subcommittee voted to leave the record open, and continue the public hearing to close by hearing officer to August 25, 2010 at 11:00 am at the Cape Cod Commission. On August 25, 2010 the hearing period was closed by hearing officer. A final and duly noticed public hearing was held on September 30, 2010 at 3:00 pm in the Assembly of Delegates Chamber in the First District Courthouse, Barnstable, MA.

A Subcommittee meeting was held immediately following the August 10, 2010 Public Hearing where the Subcommittee deliberated on the project and voted unanimously to direct staff to draft an approval (with conditions) decision. At the September 22, 2010 Subcommittee meeting, the Subcommittee reviewed the draft decision and voted unanimously to recommend approval of the draft decision and to forward the draft decision to the Cape Cod Commission for consideration at their public hearing on September 30, 2010 at 3:00pm in the Assembly of Delegates Chamber of the First District Courthouse.

A final Public Hearing was held before the full Cape Cod Commission on September 30, 2010. At the close of this hearing, the Commission voted unanimously to approve the project as a DRI, subject to conditions.

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below), the application and notices of public hearing relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record	
Materials from Cape Cod Commission	***Date Sent***
Letter from Marianna Sarkisyan (MS) to Michael Johnson (MJ) (Applicant's Site Acquisition Specialist) re: DRI notification	4/1/10
Email from David Maxson (DM) to MS re: attached estimate	6/9/10
Email from MS to MJ re: attached estimate from DM	
Email from DM to MS re: application completeness comments	6/15/10
Email from Andrea Adams to MS re: application completeness comments	6/15/10
Email from Paul Ruchinskas to MS re: application completeness	6/16/10
Email from Phil Dascombe to MS re: application completeness	6/17/10
Email from DM to MS re: deem application complete	6/18/10
Email from DM to MS re: propagation maps	6/18/10
Email from Sarah Korjeff to MS re: application completeness	6/21/10
Email from SK to MS re: view points for balloon test	6/24/10
Email from AA to MS re: Staff Report Comments	6/29/10
Letter from MS to MJ and David Gardner (DG) (Assistant Town Manager) re: public hearing date	6/23/10
Email from DM to Page Czepiga (PC) re: Staff Report Comments	8/3/10
Email from Phil Dascombe to MJ, PC re: visibility map	8/4/10
Staff Report	8/10/10
Memo from Phil Dascombe to Subcommittee re: visibility map	8/10/10
Email from PC to MJ re: MHC determination	8/23/10
Email from PC to Ed Pare (EP) (Attorney for Applicant), MJ, DG re: attached draft decision	9/14/10
Email from PC to EP, MJ, DG, DM re: 10/14/10 CCC meeting?	9/16/10
Email from DM to PC re: attached memo about GC17	9/19/10
Email from PC to EP, MJ, DG re: attached response from DM re: condition GC17	9/20/10
Email from DM to PC re: estimate of cost of noise study	9/22/10
Materials from Applicant	***Date Received***
Site Plans	12/15/09
Email from MJ to MS, DG re: crane/balloon test	6/3/10
Email from MJ to MS re: application filing	6/7/10
Email from Ed Pare (EP) (Attorney for Applicant) to MS re: retaining David Maxson	6/9/10
DRI application materials	6/10/10
Application filing fee	6/15/10
Email from EP to MS re: information for DM	6/16/10

Email from MJ to MS re: clarification about plants for buffering	6/17/10
Email from MJ to MS re: permit expiration for crane test	6/17/10
Email from MJ to MS re: attached comments from Sara Aiello about Hazardous and Solid Waste	6/20/10
Email from MJ to MS re: attached comments from Sara Aiello about plant materials and visibility map	6/20/10
Email from MJ to MS, DG re: sites for photosimulations	6/23/10
Email from MJ to MS re: attached RF parameter information	6/23/10
Site Plans	7/2/10
Coverage Maps	7/2/10
Letter from Sara Aiello (Aerial Spectrum) re: C&D waste	7/2/10
Supplemental DRI Application Material (Drive test data, photosims) submitted by hand from MJ	7/29/10
Email from MJ to MS re: final list of photosimulation locations	6/30/10
Email from MJ to MS re: balloon/crane test information	7/9/10
Email from MJ to PC re: attached map showing sites where photosimulations demonstrate visibility of proposed Tower	8/2/10
Email from MJ to PC re: NHESP letter	
Email from MJ to PC re: attached letter from D. Dufresne discussing visibility of tower during drive test/photosims	8/9/10
Email from EP to DG, PC, MJ re: proceed on 9/30/10 and modify later	9/16/10
Email from EP to DG, PC, MJ, DM re: 3 potential outcomes of MHC determination	9/16/10
Email from EP to PC, MJ, DG re: eliminating condition GC17	9/16/10
Email from EP to MJ, DG, DM re: attached written request to eliminate GC17	9/20/10
Materials from Local, State, Federal Agencies	***Date Received***
Email from DG to Commission staff re: attached bylaw related to telecommunication facilities	12/15/09
DRI Referral form	3/31/10
Letter from MHC to Sarah Korjeff re: receipt of PNF	4/29/10
Copy of PNF submitted to MHC	6/10/10
Invoice for bus used for site visit from Alma Walsh to MS	7/8/10
Email from DG to PC re: projects consistency with local bylaws and LCP	7/22/10
Letter from NHESP re: no 'take' of rare species from project (received as attachment from MJ)	8/2/10
Letter from MHC re: concerns related to visibility	9/1/10
Email from MJ with the following attachments: Letter detailing concerns of Provincetown's Historical Commission, Letter from MHC re: visibility concerns	9/2/10
Email from DG to PC, EP, MJ, Sharon Lynn, David Guertin re: Unipole and Board of Selectmen	9/16/10
Materials from General Public or Other	***Date Received***
Letter to R. Braun (Provincetown Building Commissioner) from J. Ciluzzi (Managing Director of Commercial Realty Advisors) re: alternative locations for project	12/11/10
Email from Celine Gandolfo re: bylaw concerns	8/10/10

TESTIMONY

August 10, 2010 Public Hearing

A public hearing was held at 6:00 pm on August 10, 2010 at the Provincetown Center for Coastal Studies.

Ms. Page Czepiga, Regulatory Officer for the Cape Cod Commission, presented the staff report. She gave a brief overview of the existing setting and proposed project, the Cape Cod Commission's jurisdiction and procedural history, staff analysis regarding Affordable Housing, Hazardous Waste, Solid Waste, Heritage Preservation and Community Character, and Natural Resources. She introduced David Maxson, Commission Consultant who gave an overview of his review of the project in the following areas: location, minimum height necessary, noise and RFE exposure, and documentation of a coverage problem. Ms. Czepiga then explained the findings the Subcommittee would need to make in order to recommend approval of the project to the full Commission.

Attorney Michael Dolan, counsel for the Applicant asked Dinesh Dasani (T-mobile consultant) to explain why the Fisherman's Wharf site was not adequate for co-location purposes.

Using coverage plots, Mr. Dasani explained that the site only provides coverage to Commercial Street and not Route 6 or the Airport, which the proposed Tower would do.

Mr. Michael Johnson (Site Acquisition Specialist for the Applicant) said they considered co-locating on the water tank, however that site is not available. He said the Town asked them not to use Pilgrim Monument and supports the proposed location. He explained how the sites for photosimulations were chosen and noted the Tower will be visible only from a few locations.

The Subcommittee asked questions of the Applicant and Commission staff regarding wetlands, erosion control, and the visibility of the Tower as it will compare to the existing tower in Truro.

Mr. Robert Anderson said he runs a business in Provincetown and that it is very difficult to do so without cell phone coverage. He spoke in support of the project.

A unanimous vote was made on the motion to continue the Public Hearing to August 15, 2010 to close the hearing period by hearing officer at 11:00 am at the Cape Cod Commission.

August 10, 2010 Subcommittee Meeting

A subcommittee meeting was held immediately following the public hearing on August 10, 2010 at the Provincetown Center for Coastal Studies.

The subcommittee made a motion that there are no suitable structures for co-location and that there is not a sufficient reason to pursue an alternate location for the proposed tower. The motion passed unanimously.

The subcommittee discussed the definition of 'camouflage' and made a motion that the proposed camouflage meets the definition of camouflage as defined by the Technical Bulletin and that the chosen site camouflages the proposed Tower so that there is no sufficient reason to pursue an alternate design. The motion passed unanimously.

The subcommittee made a motion that the proposed height of the tower maximizes co-location opportunities while limiting the height to prevent FAA air navigation lighting, which passed unanimously.

The subcommittee discussed monitoring requirements and noise, then made a motion that annual monitoring was not necessary and that the permittee shall submit an evaluation of compliance upon request instead. The motion passed unanimously.

The subcommittee had a discussion of the facts presented to them to document a 'coverage problem' and made a motion that they were sufficient to demonstrate that a 'coverage problem' exist, which passed unanimously.

The subcommittee discussed the fact that a small part of the wastewater treatment plant building is located within the fall zone for the proposed tower. The subcommittee discussed the definitions of business and institutional use and determined that the Wastewater Treatment Facility is a business use, as the Wastewater Treatment Facility provides a service (water treatment) to the town. The subcommittee made a motion that the Wastewater Treatment Facility is a business use, which passed unanimously.

The subcommittee discussed if a reduction in the fall zone is appropriate and if it would prevent the facility from being placed at a less desirable location on the site. The subcommittee determined that a reduction in the fall zone would both prevent the facility from being placed at a less desirable location and made a motion that a reduction in the fall zone of 50% is appropriate, which passed unanimously.

The subcommittee made a motion to condition the decision for the project's compliance , with MPS WM1.5, WM2.1, and HPCC2.11 and to waive the monitoring requirements, which passed unanimously.

The subcommittee made a motion that the project complies with the town's LCP and local zoning, which passed unanimously.

The subcommittee found the following to be probable benefits of the project: the project will improve the town's infrastructure and help to facilitate tourism by providing cell phone coverage (which would also benefit local businesses), increase public safety in the area, increase the reliability of coverage and accommodate many carriers as it is providing space for co-location. The subcommittee found that the previously mentioned probable benefits outweigh the potential probable detriment of the Tower's potential visual impairment of the skyline.

The subcommittee moved to direct staff to draft an approval (with conditions) decision, which passed unanimously. A unanimous vote was made on the motion to continue the public hearing to close by hearing officer on August 25, 2010 at 11:00 am at the Cape Cod Commission office.

<u>September 22, 2010 Subcommittee Meeting</u>
A subcommittee meeting was held on September 22, 2010 at the Cape Cod Commission.

Ms. Czepiga explained that there was recent correspondence from the Provincetown Historical Commission. She explained how the decision requires the Applicant to consult

with the Provincetown Historical Commission and the Massachusetts Historical Commission (MHC) and obtain a finding of no adverse impacts from MHC. She said the decision allows any changes to the site plan as a result of theses discussions to be processed as a modification to this decision.

She noted the Applicant requested the condition regarding noise and Radio Frequency Emissions be deleted or alternatively, the language proposed by Mr. Maxson be adopted. She explained small changes to Mr. Maxson's langue that staff is proposing. She reviewed the draft decision with the subcommittee and adopted the grammatical suggestions for the following conditions: HPCCC1, GC17, HPCCC4, GC12, HPCCC7, HWC3.

The subcommittee made a motion to recommend approval of the draft decision, as amended, and to forward the draft decision to the Cape Cod Commission for consideration at the September 30, 2010 meeting at 3:00 pm in the Assembly of Delegates Chamber in the First District Courthouse.

JURISDICTION

The development as proposed by T-Mobile Northeast LLC's project description qualifies as a DRI under Section 3(i)(1) of the DRI *Enabling Regulations* as the construction of a Wireless Communication Tower that exceeds 35 feet in overall height.

FINDINGS

The Commission has considered the application of T-Mobile Northeast LLC for the proposed telecommunications monopole and based on consideration of such application and upon the information presented at the public hearing(s) and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

General Findings

GF1. As the date of the first substantive public hearing was August 10, 2010, this project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in May 2010, and the requirements of Technical Bulletin 97-001 – *Guidelines for Development of Regional Impact Review of Wireless Communication Towers* (Technical Bulletin).

GF2. As of the date of this decision, the Town of Provincetown has a Commission certified Local Comprehensive Plan (LCP). As proposed, the project is consistent with Provincetown's Local Comprehensive Plan (PLCP) as confirmed by written testimony dated July 22, 2010 provided by David Gardner, Provincetown's Assistant Town Manager. The Commission adopts the written testimony of Mr. Gardner, and finds that project is consistent with the PLCP.

GF3. As provided in written testimony dated July 22, 2010 from David Gardner, which was presented to and considered by the Commission subcommittee at the public hearing on August 10, 2010, the project is consistent with the Town of Provincetown's local development by-laws. The Commission adopts the written testimony of Mr. Gardner, and finds the project is consistent with local development by-laws.

GF4. As the project is not located in a District of Critical Planning Concern, the Commission finds that the project can be considered to be consistent with this criteria.

GF5. The Commission finds that the probable benefits of the Project (increase in the area with cell phone service, increases ease of doing business in Provincetown, improvement in Town infrastructure, improvements in the reliability of service, the ability to co-locate for up to four carriers, the project facilitates tourism, and the increase in safety that comes with reliable cell phone service) outweigh the probable detriment of the potential visual impact on the skyline.

GF6. The proposed Project is a cellular/wireless communications monopole, 92 feet in height with horizontal antenna array mounts. The Project will be able to support a total of four carriers including T-Mobile and AT&T.

GF7. The Applicant has received a letter of support from AT&T dated May 18, 2010, which expresses its support for and intention to utilize the proposed tower if it is approved and constructed.

GF8. The proposed Project will be constructed in accordance with the following plans (Attached to this decision as Exhibit A and incorporated by reference):

- Erosion Control Plan (sheet EC-1) drawn by Aerial Spectrum and last revised June 28, 2010
- Survey Plan (sheet C-1) drawn by Aerial Spectrum and last revised June 28, 2010
- Detail Plan (sheet C-2) drawn by Aerial Spectrum and last revised June 28, 2010
- Ortho Plan (sheet C-3) drawn by Aerial Spectrum and last revised June 28, 2010
- Plan, Elevation, and notes (sheet Z-1) drawn by Aerial Spectrum and last revised June 28, 2010
- Equipment Layout and Details, (sheet Z-2) drawn by Aerial Spectrum and last revised June 28, 2010

GF9. Section IV. C of the Technical Bulletin states that the applicant shall submit documentation of the legal rights to install and use the proposed facility mount at the time of the application for DRI approval. The Applicant has signed a Site Lease Agreement (Agreement) with the Town of Provincetown for the use of a portion of the site identified as Lot 15, as shown on the Town Assessor's Map entitled "Property Map Index of Provincetown" and located on map entitled "Map 18-1" for the construction and operation of a wireless communications facility. The lease covers a period of 10 (ten) years, which would begin upon the earlier of the following:

a) the first month following the Applicant's notice to the Town that they have obtained all necessary permits and approvals, or
b) six (6) months following execution of this Agreement by both parties.

Upon the expiration of the Agreement, the Applicant shall remove the equipment installed on the site and to the extent reasonable, restore the portion of the site to its condition at the commencement of the Agreement.

GF10. According to testimony provided to and considered by the subcommittee at the August 10, 2010 public hearing by Michael Johnson, Site Acquisition Specialist, the proposed Project site was identified as a potential location for a wireless facility after an alternatives analysis of possible tower sites on existing structures and of available land in the town was completed.

GF11. David Maxson, of Broadcast Signal Lab, the Commission's consultant on this wireless facility project prepared a summary review of the proposed Project. He received copies of all materials from the Applicant and attended the site visit (during the balloon and crane test) on June 20, 2010, public hearings on August 10, 2010 and and September 30, 2010. His report analyzed the Applicant's proposal and supporting material and indicated that the coverage plots submitted by the Applicant are sufficient for demonstrating the lack of the Applicant's desired coverage levels in Provincetown. His report also states that the wireless facilities at the Provincetown wharf building are limited in their coverage to the north of the town waterfront due to terrain and the low height of the wharf building and that the proposed tower would extend coverage north toward the Provincetown Airport and west towards the beach areas in a more extensive way that the exiting wharf facilities do not. The Commission adopts this testimony and finds that the Tower will provide improved cellular phone service in Provincetown to T-Mobil,e and AT&T customers as well as to two additional co-locating carriers.

Tower Height

GF12. Part V, Sections A and B of the Technical Bulletin state that personal wireless service facilities should be no higher than 10 feet above the average height of buildings within 300 feet; that they should not exceed the height limits of the zoning district in which they are located unless they are totally camouflaged; and, that, if there are no residences within 300 feet, the facility should project no higher than 10 feet above the average tree canopy height. Section C of the Technical Bulletin allows wireless service facilities up to 150 feet in height where the Town has established a wireless facility overlay district and states that monopoles are the preferred type of mount for taller structures.

GF13. The Commission finds that the proposed 92 foot tower will extend more than 10 feet above the height of the adjacent buildings and tree canopy and that there are no residential structures within 300 feet. The Commission also finds that the Provincetown bylaw allows wireless service facilities to extend up to 150 feet, considerably higher than the proposed 92 foot tower. The Commission finds that the project is consistent with the tower height requirements as set forth in Part V of the Technical Bulletin in that the tower does not exceed the height limits of the zoning district, there are no residences within 300 feet of the tower, and the monopole and the monopole design is consistent with the recommendations for taller structures. The Commission further finds that the tower is the minimum necessary to provide sufficient coverage for its cellular network while providing adequate height for co-locators.

Setbacks/Fall Zones

GF14. The Technical Bulletin states that all personal wireless service facilities and their equipment shelters should comply with the building setback provisions of

the zoning district in which the facility is located. The project is located in a "Municipal" zone district which has no setback requirements and is also subject to the "Wireless Telecommunication Towers and Facilities" fall zone requirement which requires a setback from property lines equal to the height of the tower, plus 50 feet (142 feet). As the proposed site plan illustrates that the 142 foot fall zone is accommodated on site, the Commission finds the Project is consistent with the setback provisions of the local zoning district.

GF15. The Technical Bulletin also has a requirement for a fall zone that is equal to the height of the facility to any property line, dwelling, road, business, or institutional use and states the Commission may reduce this requirement by up to 50% if the Commission finds that a substantially better design will result from such a reduction. Based on the proposed site plans, the Commission finds that a small part of the Provincetown wastewater treatment plant building is located within this fall zone. The Commission finds that the Provincetown wastewater treatment plant can be considered a business use and that a 50% reduction in this fall zone is appropriate and therefore, the project is consistent with this standard.

Design Standards

GF16. The Technical Bulletin states that to the extent the facility extends above the height of the vegetation immediately surrounding it, the facility should be painted a light gray or light blue color to blend with the sky and clouds. The Applicant is proposing to leave the galvanized steel tower unpainted to allow it to weather to a light gray color over time. The Commission finds that this approach is consistent with the Technical Bulletin.

GF17. The Technical Bulletin requires the tower to be camouflaged if within an existing structure; or blocked from public views by structures; or a year-round landscape buffer. The Commission finds that the base of the tower is blocked from nearby public views from Route 6 by the adjacent properties tree growth and understory on the property. The Commission further finds that the chosen site camouflages the Tower's appearance to the maximum extent possible and that other design strategies are not necessary to camouflage the small portion of the Tower above the tree canopy.

GF18. The Technical Bulletin requires equipment shelters to be underground; designed with traditional Cape Cod architectural styles and use traditional materials; or be located behind an effective year-round landscape buffer and/or wooden fence. The application materials show the installation of three cabinets associated with the Applicant's facilities and future AT&T equipment shelters which will be designed with traditional Cape Cod styles and materials. Neither will be placed underground but all are contained within a chain-link fenced area at the base of the tower that matches the existing fence.

GF19. As the cabinets are located behind a chain-link fence and the depth of the existing vegetated buffer on the site provides excellent screening, the Commission finds that the fence style is consistent with the Technical Bulletin Guidance in this area as it is compatible with the current use of the site and existing fencing.

Historic Districts, Archaeological, and Natural Resources

GF20. The Technical Bulletin requires towers to be located outside historic districts unless they are entirely camouflaged. The Commission finds that the proposed project is not located within a historic district and is therefore consistent with the Technical Bulletin.

GF21. The subcommittee, Commission staff, and David Gardner, Assistant Town Manager, conducted a site visit at the time of the balloon and crane test (July 20, 2010) and have observed the extent of the Tower's visibility from locations around Provincetown. In addition, the Applicant has provided photosimulations of the Tower (generated from photos taken during the crane and balloon test) from several locations that were determined prior to the crane test in consultation with the town and Commission staff which were also reviewed and considered by the subcommittee. Based on the photosimulations and the site visit, the Commission finds that only distant views of the Tower appear to result from construction of the facility.

GF22. The Technical Bulletin recommends that the application should include both a "visibility map" that illustrates all locations at which the tower would be visible, and photosimulations taken at the time of the crane test that illustrate how the tower might appear when constructed to help the Commission determine if the proposed project will have a significant negative impact on scenic and historic resources. The Commission finds the evidence submitted by the Applicant in the letter dated August 9, 2010, experience from the site visit, and the buffering provided by the existing vegetation of the 92 foot tower are sufficient to be considered consistent with the "visibility map" requirement of the Technical Bulletin.

GF23. The Applicant provided a letter dated August 9, 2010 from Derek Dufresne of Aerial Spectrum that states of the 13 locations that photos were taken, only 5 locations had visibility of the balloons being flown. The letter explains of the 5 locations with visibility of the balloons, there were only 3 locations where more than just the top of the balloon could be seen (Provincetown Cemetery, Visitor Center Observation Deck on Race Point Road, and the intersection of Route 6 southbound and Race Point Road). The Commission adopts the written testimony of Derek Dufresne and finds that the Tower will have minimal visual impact on surrounding areas.

GF24. The Technical Bulletin states that personal wireless facilities should not be located within open areas that are visible from residential development, public roads, or recreational areas. Based on findings GF21 and GF23, the Commission finds that the tower will have minimal visual impacts due to the distance from which the viewer is observing the facility and that the tower is not located in a wide-open scenic area and benefits from the substantial vegetation surrounding the site that limit views from adjacent public and recreational areas.

GF25. The Commission adopts the verbal testimony of David Maxson, presented to and considered by the subcommittee at the August 10, 2010 public hearing and find that the proposed tower will be essentially inaudible at property lines and that the proposed facility is compliant with FCC requirements regarding the

environmental effects of its Radio Frequency Radiation (RFR) emissions. As such, the Commission finds that annual monitoring is not necessary.

Land Use

LUF1. Minimum Performance Standard (MPS) LU1.1 *(Development Location)* requires that development be consistent with the category of land use according to the Land Use Vision Map. The Town opted to map this area as a Resource Protection Area, however as the project has a relatively small disturbed area, and as the site is previously disturbed (as a capped burn dump) and will never support meaningful habitat (i.e. trees and shrubs may not be planted) the Commission finds that the project is consistent with this standard.

LUF2. MPS LU1.2 *(Compact Development)* requires nonresidential development to be clustered on the site and with adjacent uses to the maximum extent possible. The proposed project is located adjacent to an existing Water Treatment Facility and maximizes contiguous open space. Therefore, the Commission finds that the project is consistent with MPS LU1.2.

LUF3. MPS LU2.2 *(Co-location of Telecommunication Facilities)* requires telecommunications facilities to demonstrate the commitment of at least two co-locators into the design of the facility. The proposed Project will provide space for up to four co-locators, including T-Mobile and AT&T. The Commission finds the project is consistent with this standard.

Economic Development

EDF1. MPS ED4.1 *(Demonstrated Need & Public Benefit)* requires that development of infrastructure shall be in response to existing regional demand and shall improve the reliability and quality of services. Based on drive test data presented to and considered by the subcommittee at the August 10, 2010 public hearing by Dinesh Dasani (T-mobile consultant), the proposed Tower will increase cell phone coverage and reliability to large areas of Provincetown that currently have no coverage. Therefore, the Commission finds that the project is consistent with MPS ED4.1.

Water Resources

WRF1. MPS WR7.9 *(Best Management Practices during Construction)* requires construction Best Management Practices for erosion and sediment control to be specified on project plans. These practices are specified on the Erosion Control Plan (last revised June 28, 2010) and therefore, the Commission finds that the development complies with MPS WR7.9.

Natural Resources

Wetlands Protection

WETF1. MPS WET1.2 *(Wetland Buffers)* requires undisturbed buffer areas of at least 100 feet in width from the edge of wetland in order to protect their natural functions. The proposed project is located outside of the 100 foot buffer to wetlands, therefore the Commission finds that the project is consistent with MPS ED4.1.

Wildlife & Plant Habitat

WPHF1. WPH1.4 *(Rare Species)* states that DRIs within critical wildlife and plant habitat areas shall submit the development proposal to the Massachusetts Natural Heritage and Endangered Species Program (NHESP) for review and comment. The project site is located within a Significant Natural Resource Area (SNRA) due to the presence of mapped habitat for state listed endangered species. NHESP reviewed the proposal and determined the project will not result in a "take" of state-listed rare species. Therefore, the Commission finds that the project is consistent with MPS WPH1.4.

Open Space and Natural Resources

OSF1. MPS OS1.1 *(Clustering of Development)* states that development within a SNRA shall be clustered away from sensitive resources and maintain a continuous corridor to preserve interior wildlife habitat. The project is proposed adjacent to the Provincetown Wastewater Treatment Plant which maximizes contiguous open space. Therefore, the Commission finds that the project is consistent with MPS OS1.1.

OSF2. MPS OS1.3 *(Open Space Requirements)* requires DRIs to provide permanently restricted open space. The site was previously used as a burn dump that was capped and revegetated with natural grasses and currently serves as the site of the Provincetown Wastewater Treatment Plant. According to application materials, the maximum estimated disturbed area for the project is 9,890 square feet. As NHESP does not anticipate impacts to rare species and given the relatively small area of disturbance and previously disturbed nature of the site, the Commission finds that open space need not be provided for this project.

Waste Management

WMF1. The Commission finds that additional information is needed to address MPS WM1.5 *(Compliance with Massachusetts Hazardous Waste Regulations)*. Specifically, the Applicant must notify or register as a Hazardous Waste generator with the MA DEP, a plan is needed that addresses how the Hazardous Waste will be managed prior to disposal, and information should be provided on the registered, licensed company which will be disposing of the Hazardous Waste.

WMF2. The Commission finds that additional information is needed to address MPS WM2.1 *(Construction Waste)*. Specifically, the Applicant should provide a written plan regarding management of Construction and Demolition (C&D) waste generated by site preparation work which addresses the disposal of C&D waste and demonstrates how solid wastes and recyclable materials currently categorized by the MA DEP as a waste ban material will be handled, separated from C&D waste, and disposed of. The plan should also address the items listed in MPS WM2.2 *(C&D Waste Plan)*.

Affordable Housing

AHF1. As Per the guidance described in Technical Bulletin 10-001 *(Guidelines for Calculation of Mitigation for Developments of Regional Impact in "other" Category for Minimum Performance Standard AH3.1)*, the Commission finds

that the Project falls within the "other" category for the mitigation requirements of MPS AH3.1.

AHF2. As per the guidance described in Technical Bulletin 10-001, the Commission finds that as the Project will be creating fewer than the equivalent of three (3) full time jobs, the Applicant is not required to provide the Affordable Housing mitigation consistent with MPS AH3.1.

Heritage Preservation and Community Character

HPCCF1. The Commission finds that more information is needed to address MPS HPCC2.11 *(Exterior Lighting)*. Specifically, the Applicant (and each co-locator) should provide a copy of site plans and other technical information on exterior lighting to ensure its consistency with MPS HPCC2.11 and Technical Bulletin 95-001 *(DRI Guidance for Exterior Lighting Design)*.

HPCCF2. According to information provided by the Applicant, no lighting is required by the FAA for the 92 feet tower.

HPCCF3. MPS HPCC1.3 *(Archaeological Sites)* requires development to be configured to maintain and/or enhance archaeological sites. In addition, MPS HPCC1.1 requires preservation of the key features of an historic structure's setting. The Commission finds that Massachusetts Historical Commission (MHC) has not yet made a determination whether the proposed tower will affect significant archaeological resources. The Commission finds that a determination by MHC of no adverse impact is required prior to the issuance of a Building Permit for the project and prior to issuance of a Preliminary Certificate of Compliance from the Commission for the Project and that any changes to the site or building plans as a result of discussions with MHC and the local historic commission may be processed as a modification to this decision pursuant to Section 13 of the Commission's *Enabling Regulations*.

HPCCF4. MPS HPCC2.3 states that new development shall be sited and designed to avoid adverse visual impacts to scenic areas. The Applicant has submitted photosimulations which indicate there will be a minimal visual impact from the Tower as the extensive vegetation in the area obscures all but the very top of the tower in most cases. Based on this, the Commission finds that the project is consistent with HPCC2.3.

CONCLUSION

Based on the above findings, the Commission hereby concludes:

1. That the probable benefits of the proposed Project are greater than the probable detriments. This conclusion is supported by finding GF5.

2. That the proposed Project is consistent with the 2009 (as amended) Regional Policy Plan as conditioned below.

3. The proposed development, as described in the project description is consistent with Provincetown's Certified Local Comprehensive Plan and its local development by-laws/ordinances. These conclusions are supported by findings GF2 and GF3.

4. The Project is not located in a District of Critical Planning Concern and therefore can be considered to be consistent with this standard.

CONDITIONS

The Commission hereby approves, with conditions, the application of the T-Mobile Northeast LLC for the proposed Project located at 200 Route 6, Provincetown, MA provided the following conditions are met.

General Conditions

GC1. This decision is valid for 7 years and local development permits may be issued pursuant hereto for a period of 7 years from the date of this written decision.

GC2. The Applicant shall obtain all necessary Federal, state, and local permits for the proposed Project.

GC3. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, and remain in compliance herewith, shall be deemed cause to revoke or modify this decision.

GC4. No development work, as the term "development" is defined in the Cape Cod Commission Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

GC5. Prior to issuance of a Building Permit for any proposed "development" as defined by the Cape Cod Commission act and as approved herein, the Applicant shall submit final plans as approved by state, federal and local boards for review by Commission staff to determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those plans approved as part of this decision, the Commission shall require that the Applicant seek a modification to this decision in accordance with the Modifications Section for the Commission's *Enabling Regulations* in effect at the time the modification is sought.

GC6. All development shall be constructed in a manner consistent with the following plans and other information attached hereto as Exhibit A:

- Erosion Control Plan (sheet EC-1) drawn by Aerial Spectrum and last revised June 28, 2010
- Survey Plan (sheet C-1) drawn by Aerial Spectrum and last revised June 28, 2010
- Detail Plan (sheet C-2) drawn by Aerial Spectrum and last revised June 28, 2010
- Ortho Plan (sheet C-3) drawn by Aerial Spectrum and last revised June 28, 2010
- Plan, Elevation, and notes (sheet Z-1) drawn by Aerial Spectrum and last revised June 28, 2010
- Equipment Layout and Details, (sheet Z-2) drawn by Aerial Spectrum and last revised June 28, 2010

GC7. Any deviation during construction from the approved plans, including but not limited to changes to the design, location, lighting, landscaping, or other site work, shall require approval by the Cape Cod Commission through its modification process, pursuant to the Commission's *Enabling Regulations*. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans.

GC8. Prior to the issuance of a Building Permit for development, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a Building Permit have been met.

GC9. Prior to the first wireless carrier's installation on the monopole becoming operable for the cellular networks, the Applicant shall obtain a Final Certificate of Compliance from the Commission that states that all conditions pertaining to site work have been met. Such Certificate of Compliance shall not be issued unless all conditions pertaining to site work have been complied with.

GC10. Prior to each subsequent wireless carrier's installation on the monopole becoming operable for that company's cellular network, the Applicant and carrier company shall obtain a final Certificate of Compliance from the Commission that states that all conditions pertaining to each carrier's installation have been met. Such Certificates of Compliance shall not be issued unless all conditions have been complied with.

GC11. The Applicant shall provide written proof to the Commission that a copy of this decision has been provided to the general contractor(s) for each carrier/co-locator at least thirty (30) calendar days prior to commencement of construction.

GC12. The Applicant shall notify Commission staff in writing at least thirty (30) calendar days prior to its intent to seek each Preliminary and each Final Certificate of Compliance. Such notification shall include a list of key contact(s), along with their telephone numbers, mailing addresses, and email addresses, for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition, if needed, and inform the Applicant in writing of any deficiencies and corrections needed. The Commission has no obligation to issue any Certificate of Compliance unless and until all conditions are complied with or secured consistent with this decision.

GC13. The Applicant agrees to allow Commission staff to enter onto the property, which is the subject of this decision for the purpose of determining whether the conditions contained in this decision, including those linked to each Preliminary and Final Certificate of Compliance have been met.

GC14. If all required site work and/or landscape improvements are not complete at the time the Final Certificate of Compliance is sought from the Commission, any landscape improvements or site work which is incomplete may be subject to an escrow agreement of form and content satisfactory to Commission counsel in lieu of completion of said work as a modification to this decision per

the Commission's *Enabling Regulations*. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials, with the final determination of the cost of the required work to be approved by Commission staff. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. The check shall be payable to the Barnstable County Treasurer. Prior to the release of the escrow funds, the work must be reviewed and approved by Commission staff as completed as required by either this decision, or the terms of the escrow agreement. Any escrow agreement shall provide that all site work and/or landscape improvements shall be completed within six months of issuance of the Final Certificate of Compliance from the Commission that relates to the site work and/or landscape improvements for that project subpart, with the work approved by Commission staff prior to release of the escrow funds.

GC15. The Tower shall be no taller than 92 feet above ground level and shall be constructed of unpainted galvanized steel which shall be allowed to weather to gray over time.

GC16. No additional buildings or structures shall be constructed in the tower's fall zone as defined by the Technical Bulletin.

GC17. The Applicant shall submit an evaluation of noise and/or Radio Frequency Energy Exposure (by calculation or measurement as necessary) within thirty (30) days of a written request by the Cape Cod Commission staff. The Cape Cod Commission staff will make such a written request only when there is significant information indicating that the noise and/or Radio Frequency Energy Exposure generated by the facility has or may have changed in a manner that may exceed or closely approach the respective regulatory limits. The Commission shall identify the method to be employed to address the concern, consistent with good engineering practice. Any Radio Frequency Energy Exposure evaluation should be signed and certified by a qualified Radio Frequency engineer, stating that Radio Frequency Energy Exposure calculations and/or measurements are accurate and whether they show compliance with FCC Guidelines as specified in sub-section VI C (Radiofrequency Radiation Standards) of the Technical Bulletin. Any noise evaluation should be signed and certified by an engineer qualified to measure and evaluate acoustic noise in the environment, stating that the noise calculations/measurements are accurate and whether they are compliant with Commission requirements as specified in sub-section VI B (Noise Standards) of the Technical Bulletin.

Heritage Preservation and Community Character

HPCCC1. Prior to commencement of any site work, issuance of a Building Permit, and prior to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall consult with MHC and the local historic commission and receive a determination from MHC that the proposed Tower will not adversely affect significant historic or archaeological resources. Any changes to the site or building plans as a result of discussions with MHC and the local historic commission shall be processed as a modification to this decision pursuant to Section 13 of the Commission's *Enabling Regulations*.

HPCCC2. Prior to the request for a Preliminary Certificate of Compliance for each wireless carrier that is proposing an equipment shelter; the carrier shall submit elevation plans to Commission staff for review and approval to ensure compliance with the Technical Bulletin equipment shelter design guidelines which include the use of traditional Cape Cod styles and materials.

HPCCC3. Exterior lighting for the proposed project shall conform to the requirements of MPS HPCC2.11 and Technical Bulletin 97-001. This does not include any marker lighting that may be required by the Federal Aviation Administration to illuminate the facility as a hazard to air navigation.

HPCCC4. Prior to the issuance of a Building Permit for the development, and prior to issuance of a Preliminary Certificate of Compliance by the Commission that states that all conditions in this decision pertaining to issuance of a Building Permit have been met, the Applicant and any other co-locating carrier known at the time of the Building Permit shall provide for Commission staff review and approval a copy of site plans and other technical information such as manufacturer's fixture cut sheets which illustrate proposed exterior lighting for the site or each of the specific carriers' installations.

HPCCC5. Prior to issuance of a Final Certificate of Compliance for the site, for T-Mobile's installation, and for any co-locating carrier known at the time of the Building Permit, Commission staff shall conduct a site visit to verify that the exterior lighting design is consistent with MPS HPCC2.11 and Technical Bulletin 97-001.

HPCCC6. Prior to issuance of a Preliminary Certificate of Compliance by the Commission for each wireless carrier that is proposing an equipment shelter, and prior to each subsequent wireless carrier's installation on the monopole becoming operable for that company's cellular network, the carrier shall provide for Commission staff review and approval a copy of elevation plans, site plans and other technical information such as manufacturer's fixture cut sheets which illustrate proposed exterior lighting for the site or each of the specific carriers' installations.

HPCCC7. Prior to the request for a Final Certificate of Compliance for the site, for T-Mobile's installation, and for any co-locating carrier known at the time of the issuance of the Building Permit, the Applicant shall request and Commission staff shall conduct a site visit to verify that the exterior lighting design is consistent with MPS HPCC2.11 and Technical Bulletin 97-001.

HPCCC8. Commission staff may approve any change to or deviation from the approved exterior lighting design that is consistent with MPS HPCC2.11 and Technical Bulletin 97-001. If a change is made to the approved exterior lighting design, the Applicant or subsequent carriers shall submit information to Commission staff that allows Commission staff to make such a determination that the changed design is consistent with MPS HPCC2.11 and Technical Bulletin 97-001.

Solid Waste

SWC1. Prior to commencement of any site work, issuance of a Building Permit, and prior to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall provide for Commission staff review and approval a copy of a written plan to address management of construction and demolition waste generated by site preparation work which address the disposal of construction and demolition waste and demonstrates how solid wastes recyclable materials currently categorized by the Massachusetts Department of Environmental Protection as a waste ban material will be handled, separated from C&D and disposed of. Said plan shall also address the items required by MPS WM2.2.

Hazardous Waste

HWC1. Prior to issuance of a Building Permit, and prior to issuance of a Preliminary Certificate of Compliance by the Commission, the Applicant shall provide for Commission staff review and approval copy of final plans to be used to bid out construction of the cellular facility. Such plans shall show the proposed equipment installation for T-Mobile and any co-locating carrier known at the time of the Building Permit.

HWC2. Prior to issuance of a Final Certificate of Compliance by the Commission, and prior to each wireless carrier's installation on the monopole becoming operable for that company's cellular network, the carrier shall provide for Commission staff review and approval a copy of final plans to be used to construct the cellular facility.

HWC3. Prior to each wireless carrier's installation on the monopole becoming operable for that company's cellular network, and prior to issuance of a Final Certificate of Compliance by the Commission for that carrier's installation, any carrier which uses an equipment shelter shall provide to Commission staff for review and approval a signed contract with a registered, licensed company to dispose of Hazardous Waste. Commission staff may waive this requirement if a determination is made by Commission staff that the specific installation will not generate Hazardous Waste as defined by the 2009 (revised) Regional Policy Plan.

SIGNATURE LINE ON NEXT PAGE

SUMMARY

The Cape Cod Commission hereby approves with conditions the application of T-Mobile Northeast LLC for the telecommunications facility at 200 Route 6, Provincetown, MA as a DRI as outlined in this decision pursuant to Sections 12 and 13 of the Act, c. 716 of the Acts of 1989, as amended.

Royden Richardson — 09.30.2010

Royden Richardson, Commission Chair — Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss 9-30, 2010

Before me, the undersigned notary public, personally appeared Royden Richardson in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [ ] photographic identification with signature issued by a federal or state governmental agency, [ ] oath or affirmation of a credible witness, or [✓] personal knowledge of the undersigned.

Gail P. Hanley
Notary Public

My Commission Expires: 10.13.11