

TOWN OF PROVINCETOWN PLANNING BOARD

Special Permit Conditions
Nextel Communications of the Mid-Atlantic, Inc.
Wireless Communications Facility at 232-236R Bradford Street

The Planning Board hereby issues this Special Permit in accordance with the Judgment of the United States District Court, District of Massachusetts, entered on June 26, 2003 in the case of Nextel Communications of the Mid-Atlantic, Inc. d/b/a Nextel Communications v. Town of Provincetown, et al., Civil Action No. 02-11646 (a copy of which is attached hereto), and the agreement of Nextel to the within conditions. Except as set forth in the Judgment and herein, the Special Permit is subject to the provisions of the Zoning By-laws, Article 7. The following conditions shall apply to the Special Permit regarding the Town's Zoning By-laws, Sections 7110, 7130, and 7140. All By-Law provisions and conditions apply to any assignees and successors in interest of Nextel Communications of the Mid-Atlantic, Inc. ("Nextel").

By-Laws, §7110 – Monitoring

The Radio Frequency ("RF") Emissions monitoring protocol shall be as designated by the FCC, or applicable federal law (currently the OET Bulletin 65, as amended, together with the applicable guidelines, both of which have already been adopted by the Planning Board). Nextel agrees to have Mark Hutchins, or another suitable professional, upon the prior written approval of Nextel (which approval shall not be unreasonably upheld), to provide RF Emissions testing reports at Nextel's expense twice annually (on the six month anniversary date following the post-construction report described below), provided that the cost of any emissions testing done by the Town under this provision shall not exceed \$1,500 per test/report without the prior written approval of Nextel. This base year amount will be escalated annually by 2.5%. Nextel will provide the Planning Board with pre-construction and post-construction RF emissions readings in accordance with FCC standards and performed by Mark Hutchins, or other professional, at Nextel's expense, provided that all test readings and reports are performed within 30 days of written notice by Nextel to the Planning Board. Nextel must be copied on all of such RF emissions reports and retains the right to review and comment on their findings.

By-Laws, §7130 – Insurance/Indemnification

On April 1 of each year beginning April 1, 2004, Nextel will provide a copy of its standard Certificate of Insurance ("COI") to the Planning Board indicating that Nextel has and will continue to maintain commercially reasonable levels of insurance on its facility for the duration of its leasehold. The Town will not be named as an additional insured on that COI. The Planning Board acknowledges that Nextel has provided a copy of its COI in effect as of April 1, 2003.

With respect to indemnification, Nextel will not be required to "indemnify and hold harmless the Town of Provincetown, its elected and appointed officers, agents, and employees, from and against any and all claims, demands or causes of action whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys fees, liabilities, damages, orders, judgments or decrees sustained by the Town or any third party arising out of or by reason of, or resulting from the negligent acts, errors or omissions of each telecommunication facility operators, agents, or employees."

By-Laws, §7140 – Term of the Special Permit

The Special Permit shall be issued for 10 years, and shall be renewed for an additional 5 years upon a showing by Nextel that it has complied with all of the terms and conditions of this Special Permit. The overall length of Nextel's lease for the site is 15 years. Nextel agrees to keep the site in good repair and to provide written reports to the Planning Board on the following schedule: the 4th, 8th, 10th and 13th year anniversaries of the date that the site is operational, such reports shall address the physical condition of the facility and include a summary of the prior three years of RF emissions reports as generated by the Town's consultant. Such reports will be advisory only and not subject to any further approval by the Town. Within 90 days after the final expiration date of the Nextel lease, Nextel will remove its antennas from the cupola and its radio equipment from the leasehold.

198823

It was moved to adjourn the hearing of Nextel's requests at 7:10 PM.

Moved by: Barnet Adler

Seconded by: Howard Burchman

Vote: 4-0-0

Respectfully Submitted
Joel Glasser

Approved by: _____ on _____
Anne Howard, Chair (Date)