

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THE TOWNSHIP OF NORTHAMPTON

55 Township Road
Richboro, PA 18954

Plaintiff,

v.

ATC OUTDOOR DAS, LLC

116 Huntington Avenue, 11th Floor
Boston, MA 02116

Defendants.

Civil Action No. _____

ORDER FOR PRELIMINARY INJUNCTION

AND NOW, this _____ day of _____ 2012, upon consideration of Plaintiff the Township of Northampton's Petition for Preliminary Injunction, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Petition is **GRANTED** and that:

A. ATC Outdoor DAS, LLC is preliminarily enjoined and restrained from proceeding with the construction and installation of its DAS system, including its antennas, poles and related equipment until such time as ATC Outdoor DAS, LLC complies with the Telecommunications Facilities Ordinance and receives approval from the Township Zoning Hearing Board pursuant to the Ordinance.

B. Such other and further relief that this Court deems just and necessary under the circumstances.

BY THE COURT:

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THE TOWNSHIP OF NORTHAMPTON

55 Township Road
Richboro, PA 18954

Plaintiff,

Civil Action No. _____

v.

ATC OUTDOOR DAS, LLC

116 Huntington Avenue, 11th Floor
Boston, MA 02116

Defendants.

**THE TOWNSHIP OF NORTHAMPTON'S PETITION FOR
PRELIMINARY INJUNCTION AGAINST ATC OUTDOOR DAS, LLC**

And now, comes the Township of Northampton by and through its attorneys, Michael J. Savona, Esquire, Michael Yanoff, Esquire, and Daniel S. Cohen, Esquire and respectfully requests that this Honorable Court enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, and in support thereof, states as follows:

1. The Township of Northampton ("Township") seeks a Preliminary Injunction against ATC Outdoor DAS, LLC ("ATC"), which is necessary to prevent immediate and irreparable harm to the Township.

2. Township is a Pennsylvania Township of the Second Class, located in Bucks County Pennsylvania and within the Eastern District of Pennsylvania. The Township maintains its offices at 55 Township Road, Richboro, Pennsylvania 18954.

3. Defendant, ATC Outdoor DAS, LLC, is a Delaware limited liability company which is registered to do business in the Commonwealth of Pennsylvania, maintaining its principal place of business at 116 Huntington Avenue, 11th Floor, Boston, Massachusetts, 02116.

4. Township has filed a Complaint with this Honorable Court arising out of the attempt by ATC to install its DAS system, consisting of telecommunications facilities in the Township in violation of Township ordinances including, but not limited to the Township's Telecommunications Facilities Ordinance (§27-1123 of the Township Zoning Code) and the failure of ATC to obtain the zoning relief for the placement, construction and modification of telecommunication facilities within the Township. A true and correct copy of said Complaint is attached hereto, made a part hereof and as Exhibit "A".

5. Said Complaint seeks declaratory relief that:

A. ATC's DAS system, including its antennas, poles and related equipment, is subject to the Township's Zoning Ordinance and, specifically, the Telecommunications Facilities Ordinance contained therein; and

B. The Township's Telecommunications Facilities Ordinance is consistent with the Federal Telecommunications Act; and

C. ATC must comply with the Township Zoning Ordinance, including obtaining any necessary relief from the Zoning Hearing Board to obtain approval for its proposed DAS system.

6. Said Complaint also seeks permanent injunction relief prohibiting ATC from proceeding with the construction and installation of its DAS system, including its antennas, poles and related equipment, until such time as ATC complies with the Telecommunications Facilities Ordinance and receives approval from the Township pursuant to said Ordinance.

7. ATC has indicated that it has elected to continue with the installation and construction of its system, to wit, ATC proposes to install:

A. sixty (60) telecommunications facilities referred to as “nodes” in the Township, which consist of a wireless antenna and related telecommunications equipment and which varies in height from twenty-five (25) feet to forty (40) or more feet. Said nodes both receive and transmit radio frequency signals.

B. thirty-nine (39) miles of fiber optic cable, approximately thirty (30) miles above ground and nine (9) miles underground connecting the nodes to each other and to small buildings known as “hub sites”.

C. nodes on existing utility poles and on proposed new poles all within the public right of way, which poles are intended to support equipment which is used to transmit and receive radio frequency or telecommunication signals. Thirty-six (36) of the nodes are intended to be installed on existing utility poles and twenty (20) are to be installed on new poles to be constructed in the public right of way.

8. The Township, by and through its zoning officer, has issued a “Stop Work Order” directing ATC to cease and desist all further construction work, A true and correct copy of the “Stop Work Order” is attached hereto, made a part hereof and marked Exhibit “B”.

9. Further, the Township has notified ATC that the proposed placement of its facilities does not comply with applicable Township regulations. A true and correct copy of the letter dated May 15, 2012, is attached hereto, made a part hereof and marked Exhibit “C”.

10. Unless ATC is preliminarily enjoined, the Township will be immediately and irreparably harmed by the construction and installation of the telecommunications facilities.

11. ATC will not be harmed if it is enjoined in order to comply with the Township's zoning and other ordinance regulations, as any other citizen desiring to construct any building or facility within the Township would be required to do.

12. Greater injury will follow from denial of a preliminary injunction than from its issuance.

13. The preliminary injunctive relief sought by the Township will restore the status quo that existed prior to ATC's commencement of its work.

14. The Township is likely to succeed on the merits of its Complaint, as the telecommunications facilities proposed by ATC are facilities for the provision of commercial mobile services. These facilities are, therefore, personal wireless service facilities subject to the zoning authority of the Township and the Township has legal authority over the placement, construction and modification of such facilities pursuant to the Township's Telecommunications Facilities Ordinance and the Federal Telecommunications Act of 1996. 47 U.S.C. §332(c)(7)(A).

15. Balancing the equities in this case favors the issuance of a preliminary and permanent injunction against ATC.

WHEREFORE, Township of Northampton respectfully requests this Honorable Court grant the instant Petition and to enter an Order setting forth that:

A. ATC Outdoor DAS, LLC is preliminarily enjoined and restrained from proceeding with the construction and installation of its DAS system, including its antennas, poles and related equipment until such time as ATC Outdoor DAS, LLC complies with the Telecommunications Facilities Ordinance and receives approval from the Township Zoning Hearing Board pursuant to the Ordinance.

B. Such other and further relief that this Court deems just and necessary under the circumstances.

Respectfully submitted,

Michael J. Savona (Pa ID # 78076)
Michael Yanoff (Pa ID# 19384)
Solicitors, Northampton Township
FRIEDMAN, SCHUMAN, APPLEBAUM,
NEMEROFF & MCCAFFERY
101 Greenwood Avenue, Fifth Floor
Jenkintown, PA 19046
Tel.: (215) 635-7200

Daniel S. Cohen (Pa ID # 46166)
COHEN LAW GROUP
1000 Gamma Drive, Suite 305
Pittsburgh, PA 15238
Tel.: (412) 447-0130

Attorneys for Plaintiff Northampton Township

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Attorneys for Plaintiff Northampton Township

VERIFICATION

I, ROBERT M. PELLEGRINO, authorized agent for Northampton Township, verify that the statements made in the foregoing Petition for Preliminary Injunction are true and correct to the best of my knowledge, information and belief. I understand that if any of my statements herein are false, I am subject to the penalties set forth in 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: May 23, 2012



ROBERT M. PELLEGRINO
Township Manager
Northampton Township

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE TOWNSHIP OF NORTHAMPTON
55 Township Road
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Plaintiff,

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ATC OUTDOOR DAS, LLC
116 Huntington Avenue, 11th Floor
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Defendants.

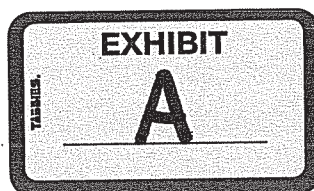
Civil Action No. _____

COMPLAINT

Plaintiff, the Township of Northampton (hereinafter referred to as the "Township") brings this action against defendant ATC Outdoor DAS, LLC ("hereinafter referred to as ATC") for declaratory and injunctive relief, and complains and alleges as follows:

PARTIES

1. Plaintiff Township is a Pennsylvania township of the Second Class, located in Bucks County, Pennsylvania. The Township maintains its offices at 55 Township Road, Richboro, Pennsylvania 18954.
2. Defendant ATC is a Delaware limited liability company which is registered to do business in the Commonwealth of Pennsylvania. ATC maintains its principal place of business at 116 Huntington Avenue, 11th Floor, Boston, Massachusetts 02116.



JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337 and 1367.

4. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2).

5. This case presents an actual controversy for which a remedy is provided pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

6. This case presents this Court with the application of the Federal Telecommunications Act of 1996, and specifically 47 U.S.C. § 332(c)(7)(A), which provides that local municipalities retain the right and authority to regulate the placement and construction of personal wireless service facilities, to distributed antenna systems (“DAS”) proposed to be located within the public rights-of-way of a local municipality by virtue of a decision of the Pennsylvania Public Utility Commission.

FACTUAL BACKGROUND

A. ATC’s Proposal to Install Telecommunications Facilities in the Township

7. On or about March 9, 2011, ATC submitted to the Township a Proposal for a Distributed Antenna System (“Proposal”). The Proposal stated that ATC “designs, builds, owns, operates and maintains complete Distributed Antenna Systems (“DAS”) solutions that allow telecommunications providers to deliver the coverage they need, while balancing community

aesthetic demands and municipal permitting requirements.” ATC’s Proposal to the Township is attached hereto as Exhibit A.

8. The Proposal requested that ATC be permitted to install 60 telecommunications facilities, referred to in the proposal as “nodes,” in the Township. *See Exhibit A at §II.* A node consists of a wireless antenna and related telecommunications equipment and varies in height, from 25 feet to 40 or more feet high. These nodes both receive and transmit radio frequency signals.

9. The nodes are connected to each other and to a small building, known as a “hub site”, by means of fiber optic cable. Specifically, 39 miles of fiber optic cable (approximately 30 miles above-ground and 9 miles underground) were proposed to be installed in the Township along with the nodes and the hub site. *See Exhibit A at §II.* ATC planned to build and maintain this telecommunications network as a “neutral host provider” for the wireless carrier T-Mobile.

10. ATC proposed to install the nodes on existing utility poles and on “proposed new poles, all within the public right-of-way.” *See Exhibit A at §II.* The poles proposed by ATC are structures intended to support equipment which is used to transmit and receive radio frequency or telecommunications signals.

11. ATC’s plan for 60 nodes was altered from the original Proposal such that it finally proposed to install a total of 56 nodes in the Township, of which 36 were to be installed on existing utility poles and 20 nodes were to be installed on new poles to be constructed in the public rights-of-way. ATC submitted permit applications for the node locations.

12. Of the 20 newly constructed poles, 8 were to be new wooden poles constructed in areas where existing wooden poles already exist and 12 were to be new fiberglass poles to be constructed in areas where no poles exist. . The new fiberglass poles are proposed to be constructed in residential subdivisions in which all above-ground utilities are prohibited under Township right-of-way regulations, as the Township formally prohibited the installation of any facilities above ground in those subdivisions as a part of its approvals of the final plans for each of these residential subdivisions pursuant to its authority under the Municipalities Planning Code, 53 P.S. § 10101 et seq., and the Township's Subdivision and Land Development Ordinance. In addition, the installation of the poles is prohibited under the Northampton Zoning Code, as the placement of telecommunications facilities and towers within residentially zoned areas is expressly prohibited under the Zoning Code.

B. ATC's Zoning Hearing Board Process for the Hub Shelter

13. By letter dated July 25, 2011, Michael T. Solomon, Director of Planning and Zoning for the Township, advised ATC that, among other deficiencies, "the proposed work identified previously is not related to a permitted use pursuant to Sections 140-58.5, 140-10, 140-13.1, 140-13.3, 140-14, 140-15, 140-16, 140-17, 140-20, 140-21, 140-21.1, 140-23, 140-35, 140-28, 140-36 and 140-36.1 of the Northampton Township Zoning Ordinance. You have the right to appeal to the Zoning Hearing Board." Mr. Solomon's July 25, 2011 letter is attached hereto as Exhibit B.

14. The section references in Mr. Solomon's July 25, 2011 letter are all derived from the Township's Zoning Code. Section 140-58.5 is the Telecommunications Facilities Ordinance contained within the Zoning Code. This Ordinance has since been recodified at Section 27-1123

of the Zoning Code. The other sections referenced in Mr. Solomon's letter refer to the residential zoning districts of the Township that would be impacted by the installation of ATC's telecommunications network. These sections were included in the letter because, among other requirements contained therein, the Telecommunications Facilities Ordinance states that "no telecommunications tower shall be located within 300 feet of a lot in residential use or a residential district boundary." Township Zoning Code, §27-1123.I(1).

15. Three days after the date of Mr. Solomon's letter, on or about July 28, 2011, ATC filed an appeal with the Township Zoning Hearing Board. The appeal, Case No. 2011-15, is attached hereto as Exhibit C. The appeal solely challenged the determination of the Zoning Officer that the installation of the proposed hub site at 10 Commerce Drive required approval by the Township as a land development plan, as defined under the Pennsylvania Municipalities Planning Code and the Northampton Township Zoning Ordinance and Subdivision and Land Development Ordinance. Specifically, the appeal requested approval "to allow the installation of one equipment shelter within the existing fenced compound as an accessory structure to the existing telecommunications facility on the Property." See Exhibit C, Attachment §4. The hub site was proposed to be approximately 11 feet x 30 feet with electrical service within an existing fenced compound. The reference to the "existing telecommunications facility" is to a separate cell tower that is located on the same parcel within the fenced compound. The separate cell tower is neither owned nor operated by ATC.

16. On or about October 24, 2011, the Township Zoning Hearing Board granted ATC's appeal for approval for the hub site. It found that the permitted use for that site is currently for a telecommunications facility, and that ATC's proposed use for a hub site is related to this permitted use and that land development plan approval was not required for ATC to install

the proposed hub site equipment. The Opinion of the Zoning Hearing Board is attached hereto as Exhibit D.

17. ATC did not then seek, and has not since sought, Northampton Zoning Hearing Board review of the Zoning Officer's determination that the installation of 56 wireless antennas and related equipment proposed to be installed in the Township, and the 20 new poles to be constructed in residential public rights-of-way and upon which the wireless antennas and related equipment were proposed to be installed, amounted to telecommunications facilities and towers which are prohibited by the Township Zoning Code. Further, ATC has not sought any approval from the Zoning Hearing Board which would permit the construction of telecommunications facilities in residentially zoned districts.

C. Litigation Regarding Township's Right-of-Way Ordinance

18. Almost immediately after receiving Zoning Hearing Board approval for the hub site, on or about October 25, 2011, ATC filed a Complaint against the Township in the Court of Common Pleas of Bucks County, Pennsylvania. The Complaint sought mandamus, declaratory judgment and injunctive relief. The case is docketed as *ATC Outdoor DAS, LLC v. Board of Supervisors of Northampton Township and Michael T. Solomon*, Bucks County CCP Docket No. 2011-09455. ATC's Complaint is attached hereto as Exhibit E.

19. The gravamen of the Complaint was that ATC and the DAS system proposed to be installed in the Township were exempt from the requirements of the Township's Right-of-Way Ordinance, formerly Chapter 106 of the Township Code and recently recodified as Chapter 21, §§301-311. ATC stated, *inter alia*, that the Pennsylvania Public Utilities Commission

("PUC") had granted ATC the classification of a "public utility" to act as a Competitive Access Provider in Pennsylvania. As such, ATC asserted that it fell within the exemptions set forth in Section 21-304.2 of the Right-of-Way Ordinance, specifically the exemption pertaining to the "conveyance of transmission of messages or communication by telephone or telegraph for the public." See Code Section 21-304.2.F. The Complaint was limited to the Township's Right-of-Way Ordinance. It did not address or even mention the Township's Zoning Code or the Township's Telecommunications Facilities Ordinance.

20. In conjunction with the Complaint, ATC filed a Motion for Peremptory Judgment. The Township submitted a Motion to Dismiss ATC's Motion for Peremptory Judgment and filed a Memorandum of Law in Support of the Motion to Dismiss.

21. On or about January 5, 2012 and following a hearing before the Common Pleas Court, Judge Wallace H. Bateman, Jr. ordered that the Township issue ATC an exemption from the Township's Right-of-Way Ordinance. Again, the Order does not address or even mention the Township's Zoning Code or its Telecommunications Facilities Ordinance. Judge Bateman's Order is attached hereto as Exhibit F.

22. Following the issuance of Judge Bateman's Order, the Township and ATC entered into discussions in an attempt to settle the litigation. These discussions resulted in a written settlement agreement dated January 27, 2012. The salient points of the settlement agreement are as follows. The Township agreed: 1) not to file any post-trial motions or appeals of Judge Bateman's Order; 2) to promptly process and issue all applicable permits to ATC; and 3) to assist ATC with "abutter issues" related to the installation of the DAS system. In return, ATC agreed: 1) to apply for all applicable permits; 2) to pay permit fees to the Township in the

amount of \$26,842 and an engineering escrow fee in the amount of \$5,000; and 3) to pay the Township \$100,000 for the Township to, among other things, “offset the administrative impact to the Township of updating Township files and records with details of the proposed DAS system...” The settlement agreement is attached hereto as Exhibit G.

23. The litigation between ATC and the Township was limited to one issue, namely the issue of whether the requirements of the Township’s Right-of-Way Ordinance applied to ATC and the installation of ATC’s DAS system. Neither ATC’s Complaint, the Township’s pleadings, Judge Bateman’s Order nor the settlement agreement entered between the parties addresses or discusses the applicability of the Township’s Telecommunications Facilities Ordinance or its Zoning Code.

D. The Issuance of a Permit and Subsequent “Stop Work” Order

24. Pursuant to the October 5, 2012 Order of Judge Bateman, and the terms of the Settlement Agreement reached by the parties, on or about February 13, 2012, the Township issued a permit to ATC to begin the construction and installation of the DAS system in the Township.

25. The permit issued to ATC for installation of the DAS system contained information which detailed the type of equipment to be installed generally, and a generic list of property addresses at which ATC was proposing to install equipment. However, the application did not contain any information which specifically detailed the nature of the equipment proposed to be installed at any specific location within the Township. In other words, ATC did not disclose its intent to install new telecommunications facilities or towers within specific residential communities as a part of its initial permit application.

26. Pursuant to the February 13, 2012 permit, ATC proceeded to install antennas on existing wooden utility poles in the Township. It also constructed eight new wooden poles in areas of the Township where wooden poles already existed and attached wireless antennas and related equipment to those poles.

27. During the installation and deployment of the facilities, ATC violated multiple permit requirements. ATC's violations included, but were not limited to, the following: 1) failure to coordinate its work schedule with the Township Engineer to insure timely inspection of right-of-way disturbance and restoration; 2) failure to disclose the exact locations of facilities to be installed, and the installation or proposed installation of facilities in locations not authorized by permit; 3) failure to maintain adequate public safety precautions as required by Township Code; and 4) failure to provide adequate proof of liability insurance as required by Township Code.

28. As a result of these violations, on or about May 15, 2012, Township Zoning Officer Michael Solomon issued a "Stop Work Order" directing ATC to cease and desist any and all further construction work. This Stop Work Order is attached hereto as Exhibit H.

29. In addition, and by separate letter dated May 15, 2012, the Township notified ATC that the proposed placement of its facilities did not comply with applicable Township regulations. Specifically, the letter states that ATC "intends to install new telecommunications facilities, and particularly towers and related equipment, within residential subdivisions wherein such installations are prohibited under the terms and conditions of the Northampton Township Zoning Code." The letter also noted that the proposed locations of the telecommunications

facilities are in residential subdivisions wherein the Township has prohibited the installation of any facilities above ground. This letter is attached hereto as Exhibit I.

E. The Township's Telecommunications Facilities Ordinance

30. Section 27-1123 of the Township's Zoning Code is entitled "Telecommunications Facilities." Subsection I (1) of the Telecommunications Facilities Ordinance, entitled "Sole Use on a Lot", states as follows:

A telecommunications facility is permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements for the applicable zoning district; provided, however, that **no telecommunications tower shall be located within 300 feet of a lot in residential use or a residential district boundary.**

Township Zoning Code §27-1123.I (1) (emphasis added). The Ordinance also includes other applicable requirements, including but not limited to, the requirements that telecommunications facilities be screened by hedges and that they comply with all applicable standards of the American National Standards Institute (ANSI).

31. The term "telecommunications facilities" is defined in the Zoning Code as "the equipment and structures involved in receiving or transmitting telecommunications or radio signals." The term "tower" is defined in the Code as "a structure that is intended to support equipment used to transmit and/or receive telecommunications or radio signals, including monopoles and lattice construction steel structures." Township Zoning Code §27-201.4

32. The components of the DAS system proposed to be installed by ATC in the Township clearly constitute “telecommunications facilities” as defined in the Telecommunications Facilities Ordinance. As described in more detail above, the system includes 56 wireless antennas, 20 new poles to support the wireless antennas, and approximately 39 miles of fiber optic cable. The purpose of these facilities is to receive and send radio frequency or telecommunications signals. All of the facilities constitute “equipment and structures involved in receiving or transmitting telecommunications or radio signals.”

33. In addition, the 20 new poles proposed to be installed by ATC constitute “towers” as defined in the Ordinance. Each pole supports an antenna, a control box and other equipment, and is attached to fiber optic cable. There can be no doubt that the 20 new poles are “structures intended to support equipment used to transmit and/or receive telecommunications or radio signals.”

34. ATC’s proposed locations for the newly constructed poles are all within districts defined by the Township as residential use districts. Consequently, all of the poles are prohibited by Section 27-1123.I (1) of the Telecommunications Facilities Ordinance, which proscribes telecommunications towers within 300 feet of a residential district boundary.

F. The Telecommunications Act of 1996

35. The Township’s Telecommunications Facilities Ordinance and the Township’s actions with respect to ATC pursuant to the Ordinance fall squarely within the Township’s legal authority under federal and state law. With respect to federal law, the Ordinance is fully consistent with the Telecommunications Act of 1996. While a major purpose of the Act was to

promote competition in the telecommunications industry, the Act also expressly recognizes and preserves the fundamental zoning authority of municipalities.

36. Section 332(c)(7) of the Act is entitled “Preservation of Local Zoning Authority.”

Subsection (A), entitled “General Authority”, states as follows:

Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction and modification of personal wireless service facilities.

47 U.S.C. §332(c)(7)(A). In the Act, the term “personal wireless services” is defined as “commercial mobile services, unlicensed services and common carrier wireless exchange services.” 47 U.S.C. §332(c)(7)(C)(i). The term “personal wireless service facilities” is defined as “facilities for the provision of personal wireless services.” 47 U.S.C. §332(c)(7)(C)(ii).

37. ATC’s DAS system consists of facilities for the provision of commercial mobile services. These facilities are, therefore, personal wireless service facilities subject to the zoning authority of the Township. The Township has legal authority over the placement, construction and modification of such facilities pursuant to its Telecommunications Facilities Ordinance and the federal Telecommunications Act.

G. ATC Has Neither Sought Nor Received Zoning Hearing Board Approval for its Proposed Telecommunications Facilities

38. The very first response by the Township to ATC’s proposal to install a DAS system, on July 25, 2011, stated that the proposed work “is not related to a permitted use”

pursuant to the Township's Telecommunications Facilities Ordinance, and further stated that ATC had the "right to appeal to the Zoning Hearing Board." *See*, Michael Solomon Letter to ATC dated July 25, 2011, attached hereto as Exhibit B.

39. While the approval process became diverted by litigation in the Court of Common Pleas regarding the Township's Right-of-Way Ordinance, an ordinance which was only tangentially related to the installation of the proposed ATC DAS system, this procedural detour does not alter the fact that ATC's proposed DAS system is governed by the Telecommunications Facilities Ordinance and that ATC neither sought nor received approval for the DAS system pursuant to that Ordinance. But for ATC's appeal to the Zoning Hearing Board related to solely to a small shelter known as a hub site, ATC has not made any appeal to the Zoning Hearing Board for the numerous antennas and poles comprising its telecommunications facilities and towers.

40. As discussed above, these telecommunications facilities and towers are regulated by the Township's Telecommunications Facilities Ordinance and by the federal Telecommunications Act.

COUNT I – DECLARATORY RELIEF

41. The Township incorporates herein paragraphs 1-37 of this Complaint as if the same were fully set forth herein.

42. The elements of the DAS system proposed to be installed by ATC in the Township clearly constitute "telecommunications facilities" as defined in the Township's

Telecommunications Facilities Ordinance. In addition, the 20 new poles proposed to be installed by ATC as part of its DAS system clearly constitute “towers” as defined in the Ordinance.

43. Section 27-1123.I(1) of the Telecommunications Facilities Ordinance proscribes telecommunications towers within 300 feet of a residential district boundary. Given that the 20 new poles are proposed to be installed by ATC in residential districts within the Township, the Telecommunications Facilities Ordinance prohibits the installation of the poles in the proposed locations.

44. In addition, Section 332(c)(7) of the federal Telecommunications Act preserves the legal authority of local governments regarding the placement, construction and modification of personal wireless facilities. 47 U.S.C. §332(c)(7)(A).

45. The DAS system proposed by ATC is subject to local government authority regarding its placement, construction and modification, and specifically, is subject to regulation under the Northampton Township Zoning Ordinance and the Telecommunications Facilities provisions thereof, as provided under 47 U.S.C. §332(c)(7)(A).

46. The only legal means by which ATC may obtain approval for its DAS system proposed to be located in the Township is to appeal to the Township Zoning Hearing Board, pursuant to § 27-1402.3 of the Northampton Township Zoning Ordinance and § 909.1(a) of the Municipalities Planning Code, 53 P.S. § 10909.1(a). ATC has failed to make any such appeal to the Zoning Hearing Board for its numerous antennas and poles comprising its telecommunications facilities and towers.

WHEREFORE, the Township respectfully requests that this Court: (i) enter a declaratory judgment that ATC’s DAS system, including its antennas, poles and related equipment, is subject to the Township’s Zoning Ordinance, and specifically the Telecommunications Facilities

Ordinance contained therein; and (ii) enter a declaratory judgment that the Township's Telecommunications Facilities Ordinance is consistent with the Federal Telecommunications Act; and (iii) enter a declaratory judgment that ATC must comply with the Township Zoning Ordinance, including obtaining any necessary relief from the Zoning Hearing Board to obtain approval for its proposed DAS system.

COUNT II – INJUNCTIVE RELIEF

47. The Township incorporates herein paragraphs 1-42 of this Complaint as if the same were fully set forth herein.

48. ATC's proposed DAS system, including its antennas, poles and related equipment, is governed by the Township's Telecommunications Facilities Ordinance.


49. On July 25, 2011, the Township sent ATC a letter stating that its proposed work related to the DAS system "is not related to a permitted use" pursuant to the Township's Telecommunications Facilities Ordinance, and further stated that ATC had the "right to appeal to the Zoning Hearing Board."

50. Section 332(c)(7) of the federal Telecommunications Act preserves the legal authority of local governments regarding the placement, construction and modification of personal wireless facilities. 47 U.S.C. §332(c)(7)(A).

51. Except for ATC's appeal and decision by the Zoning Hearing Board related solely to a its hub site, to date ATC has failed to make any appeal to the Zoning Hearing Board for the numerous antennas and poles comprising its telecommunications facilities and towers.

WHEREFORE, the Township respectfully requests that this Court enter an Order granting a permanent injunction prohibiting ATC from proceeding with the construction and installation of its DAS system, including its antennas, poles and related equipment, until such time as ATC complies with the Telecommunications Facilities Ordinance and receives approval from the Township Zoning Hearing Board pursuant to the Ordinance.

Respectfully submitted,



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Attorneys for Plaintiff Northampton Township

Dated: May 23, 2012

VERIFICATION

I, ROBERT M. PELLEGRINO, authorized agent for Northampton Township, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that if any of my statements herein are false, I am subject to the penalties set forth in 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: May 23, 2012



ROBERT M. PELLEGRINO
Township Manager
Northampton Township

PROPOSAL FOR A DISTRIBUTED ANTENNA SYSTEM

**American Tower Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518**

**Prepared by: David Callender
American Tower Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518**

March 9, 2011



TABLE OF CONTENTS

**PROPOSAL to the Northampton Township
For a Distributed Antenna System**

**American Tower Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518**

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ATC OUTDOOR DAS

March 9, 2011

Northampton Township
Northampton Township Complex
55 Township Road
Richboro, PA 18954

I. Background

ATC Outdoor DAS, LLC ("ATC ODAS") designs, builds, owns, operates and maintains complete Distributed Antenna Systems ("DAS") solutions that allow telecommunication providers to deliver the coverage they need, while balancing community aesthetic demands and municipal permitting requirements. DAS is a fiber-fed network that relies upon a series of antennas installed atop existing or proposed poles in the right of way to provide a localized solution for mobile devices. Such a network allows users to move seamlessly from DAS to towers or rooftops.

Since 2001, American Tower Corporation ("ATC"), parent company of ATC ODAS, has been designing and deploying DAS solutions to meet the needs of our customers. ATC has diverse experience working closely with telecommunication providers in planning, designing and redesigning their networks for optimum coverage and capacity. ATC ODAS utilizes DAS systems when zoning regulations, permitting restrictions, or space limitations preclude the construction of a tower. The DAS network can deliver increased coverage and capacity for multiple telecommunication carriers with minimal impact on the community.

II. The Northampton Distributed Antenna System

The DAS proposed by ATC ODAS, located within and near the Township of Northampton, Pennsylvania, consists of one hub and 71 nodes, all connected by a combination of underground and aboveground fiber optic cabling ("Northampton DAS"). ATC ODAS proposes to locate 60 of the 71 nodes in Northampton. The nodes will be located on existing utility poles owned by Philadelphia Electric Company ("PECO"), Verizon (ILEC), and/or Comcast. ATC ODAS is also looking to locate some nodes on existing street lights or on proposed new poles, all within the public right-of-way. The nodes will be connected to each other and the hub by fiber optic lines located within the public right-of-way.



ATC OUTDOOR DAS

ATC ODAS proposes to locate the hub, which will consist primarily of DAS operating equipment, within an existing ATC tower site. This space will provide 1000 square feet which is needed to shelter the operating equipment for multiple carrier customers.

Currently, the Northampton DAS calls for running approximately 30.0 miles of fiber optic cabling aboveground, and approximately 9.0 miles is proposed to be placed underground.

III. Conclusion

As a premier telecommunications infrastructure provider with more than 34,000 sites in nine countries, ATC recognizes the importance of keeping communities and their residents connected. The Northampton DAS will deliver increased coverage and capacity for multiple carriers with minimal impact to your community.

Additionally, the Northampton DAS will preserve and increase the amenities of Northampton by developing a reliable local telecommunications infrastructure that will help support the security of instant communication, such as calling 911. ATC ODAS may work with the community to customize the design of the Northampton DAS to best suit the needs of the township. The Northampton DAS will promote and conserve the convenience, safety and general welfare of the citizens of Northampton by enhancing telecommunication services within the township and by providing a strong, secure infrastructure to protect and serve your community.

Very truly yours,


David Callender



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA. 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 22, 2008

A-2008-2072972

JOHN C DODGE ESQUIRE
BRIAN A NIXON ESQUIRE
1919 PENNSYLVANIA AVE NW
SUITE 200
WASHINGTON DC 20006

Application of ATC Outdoor DAS, LLC for approval to offer, render, furnish
or supply telecommunication services as a Competitive Access Provider to the public in the
Commonwealth of Pennsylvania.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on December 18, 2008 adopted
an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

Encls
Cert. Mail
MH

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 18, 2008

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Application of ATC Outdoor DAS, LLC for approval
to offer, render, furnish or supply telecommunication
services as a Competitive Access Provider to the
Public in the Commonwealth of Pennsylvania.

A-2008-2072972

ORDER

BY THE COMMISSION:

On September 11, 2008, ATC Outdoor DAS, LLC (Applicant or ATC Outdoor) filed an Application seeking a Certificate of Public Convenience pursuant to the Telecommunications Act of 1996, 47 U.S.C. § § 201, *et seq.*, (TA-96) and to Chapter 11 of the Public Utility Code (Code) (66 Pa. C.S. § 1101, *et seq.*) evidencing authority to operate as a Competitive Access Provider (CAP) throughout the Commonwealth of Pennsylvania. The Applicant was granted provisional authority pursuant to our Secretarial Letter dated November 6, 2008, to provide the proposed CAP services pursuant to its proposed tariff during the pendency of the application process.

The Applicant is a Delaware Limited Liability Company with its principal place of business at 116 Huntington Ave., Eleventh Floor, Boston, MA 02116, phone (617) 375-7500, fax (617) 375-7575. Correspondence to resolve complaints may be

directed to either David Peirce in Cary, North Carolina, at (919) 466-6665 or Janae Walker Bronson in Woburn, Massachusetts, at (781) 926-4545. The Applicant complied with 15 Pa. C.S. § 8981, relating to a Foreign Limited Liability Company. The Applicant's registered office provider is CT Corporation System, 116 Pine St., Suite 320 Harrisburg, PA 17101. The Applicant will not be using a fictitious name. The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing.

The Applicant complied with notice requirements set forth in our Application form by serving a copy of its application upon the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of the Attorney General. No protests were filed. No hearings were held.

ATC Outdoor has affiliates doing business in Pennsylvania; however, none of ATC Outdoor's subsidiaries are jurisdictional public utilities. The Applicant's service is charged at the applicable rates set forth in their tariff. ATC Outdoor will provide facilities-based non-switched local transport services, through a combination of its own facilities and facilities to be leased from a variety of telecommunications carriers, to customers throughout the Commonwealth of Pennsylvania. ATC Outdoor's services will be both intrastate and interstate. One service will rely on a technical platform known as a "Distributed Antenna System," or "DAS." A DAS consists of the following: Base Station Hotel, Optical Conversion equipment, Remote Nodes and Access Points. Also, ATC Outdoor plans to provide Radio Frequency ("RF") or optical transport and backhaul services for voice and data providers. The services will be provided on a monthly basis and will be available twenty-four (24) hours per day and seven (7) days per week. At this time, however, ATC Outdoor does not intend to furnish traditional residential or business local telephone services or switched, interexchange telephone service.

The Applicant has demonstrated that it is financially capable of providing telecommunication services as a CAP. We conclude that the Applicant meets the requirements for certification as a CAP,¹ consistent with this Order.

Premised upon our review of the Application and the proposed tariff, and consistent with our Orders, the Code, our Regulations and the TA-96, we conclude that the Applicant's proposed services do not raise concerns at this time regarding safety, adequacy, reliability, or privacy. We note, however, deficiencies in the proposed tariff. See Appendix A. We shall direct the Applicant to revise its tariff in accordance with the changes noted in Appendix A of this Order.² The Applicant shall, thereafter, file its Initial Tariff reflecting the requested changes on or before sixty (60) days from the date of entry of this Order. Copies of the Initial Tariff shall also be served upon the same entities receiving service of the original Application. If the time required for such resolution and filing exceeds sixty (60) days, the Applicant may request an extension of an additional sixty (60) days with the Commission's Secretary. Thus, if the Initial Tariff is not filed within 60 days (120 days including the extension) of the entry of this Order, the Application will be dismissed and the authority granted herein will be revoked without further Commission Order. To the extent that the proposed tariff contains rates, the Initial Tariff may become effective on one (1) day's notice from the date upon which it is filed and served.

We note that the Commission will only approve tariff provisions regarding limitation of liability consistent with law. The Commission does not have jurisdiction to determine liability or award monetary damages. Any tariff provisions contained in the Initial Tariff regarding limitation of liability found to be inconsistent with any applicable

¹ CAP authority may not be used to access the Public Switched Network or toll calling. If a utility with CAP authority wishes to provide access to the Public Switched Network or to provide local or IXC (intraLATA or interLATA) calling services to its customers, the utility must also have been granted CLEC and/or IXC authority by this Commission.

laws, rules and regulations will be deemed inoperative and superseded. Any claim against the public utility and/or public utility's customer regarding liability outside the limited scope of the tariff must be filed in court for determination of liability and monetary damages.

Conclusion

Accordingly, we shall grant the Application. Upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued evidencing the Applicant's authority to provide services as a CAP in the Commonwealth of Pennsylvania, consistent with this Order and our decisions in such other proceedings; **THEREFORE,**

IT IS ORDERED:

1. That the Application of ATC Outdoor DAS, LLC at Docket No. A-2008-2072972, for authority to operate as a Competitive Access Provider throughout the Commonwealth of Pennsylvania is granted, consistent with this Order.
2. That the Applicant shall comply with all the provisions of the Public Utility Code, as now exist or as may be hereafter amended, and with all pertinent rules, regulations, and Orders of this Commission, now in effect or as may be prescribed by this Commission.
3. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right to the Applicant.

² Regardless of the review process, any tariff provision(s) inconsistent with the provisions of the Code, the TA-96, or our Regulations or Orders will be deemed inoperative and superseded. (52 Pa. Code § 64.213).

4. That the Applicant maintain accurate accounting records that segment its Competitive Access Provider revenues in the state.

5. That in accordance with Commission Orders entered October 5, 2005 at M-00041857 and on August 21, 2006 at L-00050176, the applicant shall follow the reporting requirements outlined at the following website:
http://www.puc.state.pa.us/telecom/docs/Reporting_Requirements021308.doc

6. That the Applicant shall file such affiliated interest agreements as may be necessary relative to any transactions with affiliates within 30 days of this Order.

7. That the Applicant shall file its Initial Tariff consistent with the requisite changes noted in Appendix A of this Order, within sixty (60) days after the date of entry of this Order. **The Applicant is directed to identify any changes made to the proposed Initial Tariff that are in addition to the changes noted in Appendix A.** The Applicant shall serve copies of its Initial Tariff on each entity receiving a copy of the original Application. The Initial Tariff may become effective on or after one (1) day's notice from the date upon which it is filed and served.

8. That the Competitive Access Provider tariff shall reflect on its face that it is a "Competitive Access Provider Tariff." Changes and/or additions made to the approved, filed tariff shall be made in the form of supplements, consecutively numbered in the order of their filing dates, and the tariff designation shall be in the following manner: Supplement No. ___ to Tariff Telephone Pa. P.U.C. No. ___.

9. That the Applicant shall add its Pennsylvania tariff to its website. If the Applicant does not maintain a website, the Commission will host its tariff on the Commission's website.

a. Within 30 days of the filing of its Initial Tariff, the Applicant shall add the tariff to its website and mark it "Pending."

b. Within 30 days of receipt of its Certificate of Public Convenience, the Applicant shall make any required modifications to the tariff on its website and remove the "Pending" notation. Thereafter the Applicant will continually update the website whenever any supplemental revisions to the tariff are approved by the Commission such that the website tariff is a true and accurate representation of its tariff on file with the Commission.

c. The Applicant shall contact Cyndi Page (717-787-5722; cypage@state.pa.us) of the Commission's Communications Office, to create a link from the Commission's website to the Applicant's website. If the Applicant does not maintain a website, the Applicant shall contact Cyndi Page to have its tariff added to the Commission's website and to update the tariff upon subsequent approval of supplemental revisions to the tariff.

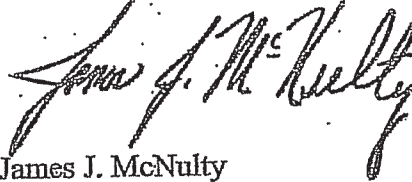
10. That upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Competitive Access Provider within the Commonwealth of Pennsylvania, consistent with this Order.

11. That in the event that the Applicant has not, on or before sixty (60) days (120 days including an approved extension) from the date of entry of this Order, complied with the requirements set forth herein, the Application at Docket No. A-2008-2072972 will be dismissed and the authority granted herein revoked without further Commission Order.

12. That if the Applicant plans to cease doing business within the Commonwealth of Pennsylvania, it shall request authority from the Commission for permission prior to ceasing.

13. That a copy of this Order be served on the Department of Revenue,
Bureau of Corporation Tax.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 18, 2008

ORDER ENTERED: DEC 22 2008

APPENDIX A

ATC Outdoor DAS, LLC
Docket No. A-2008-2072972
Proposed tariff for
Competitive Access Provider

The proposed tariff contains certain deficiencies that must be addressed by the Applicant before the tariffs can be approved and the Certificate of Public Convenience issued. **The Applicant must submit a copy of this Appendix with its revised compliance tariff. On that copy please note the page/sheet of the compliance tariff where the required revision is located for each item below.**

1. Correct title to read:

ATC Outdoor DAS, LLC
Competitive Access Provider Carrier
Regulations and Schedule of Charges

2. Title Page: need to add territory to which tariff applies (Throughout Commonwealth of Pennsylvania).
3. Original sheet No.'s 20-24, Section 4, Explanation of Terms: This should be at the beginning of tariff. Preferably the first section. Rename to read Definitions Section. All terms in the Definitions Section must appear somewhere in the tariff. However, the following terms do not appear elsewhere and must therefore be removed from the Definitions Section: LATA, Link, Local Service, Resale of Service, Sharing and Telephone Call.
4. Revise Table of Contents pursuant to changes made in revised tariff.
5. Original Sheet No. 1, Check Sheet: There are 29 original sheets. The tariff has a total of 26 original sheets. Revise Check Sheet and delete sheets 27-29.
6. Original Sheet No. 4, Explanation of Symbols: only include 3 symbols: (C) To signify change, (D) To signify decrease in rate and (I) To signify increase in rate. Exclude all other symbols
7. All pages should contain an issued and effective date.

8. Missing: The company did not provide a page for future revisions, typically labeled "List of Modifications" as per 52 Pa. Code § 53.21 (10) and 52 Pa. Code § 53.21. This page should be right after the Table of Contents.
9. Missing: company did not provide page explaining the Tariff Format. This page should be preferably inserted right after Table of Contents. The Table of Contents should then reference this page. Use sample tariff Format provided in Appendix B.
10. All Pages: State the utility's authority (e.g. Competitive Access Provider) as per ordering paragraph.

TARIFF FORMAT

A. Page Numbering – Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the Tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.

B. Page Revision Numbers – Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Pennsylvania Public Utility Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Because of various suspension periods, deferrals, etc., the most current page number on file with the Pennsylvania Public Utility Commission is not always the Tariff page in effect. Consult the Check Sheet for the page currently in effect.

C. Paragraph Numbering Sequence – There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2.

2.1.

2.1.1.

2.1.1.A.

2.1.1.A.1.

2.1.1.A.1.(a).

2.1.1.A.1.(a).I.

2.1.1.A.1.(a).I.(i).

2.1.1.A.1.(a).I.(i).(1).

D. Check Sheets – When a Tariff filing is made with the Pennsylvania Public Utility Commission, an updated Check Sheet accompanies the Tariff filing. The Check Sheet lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc., remain the same, just revised revision levels on some pages). The Tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Pennsylvania Public Utility Commission.

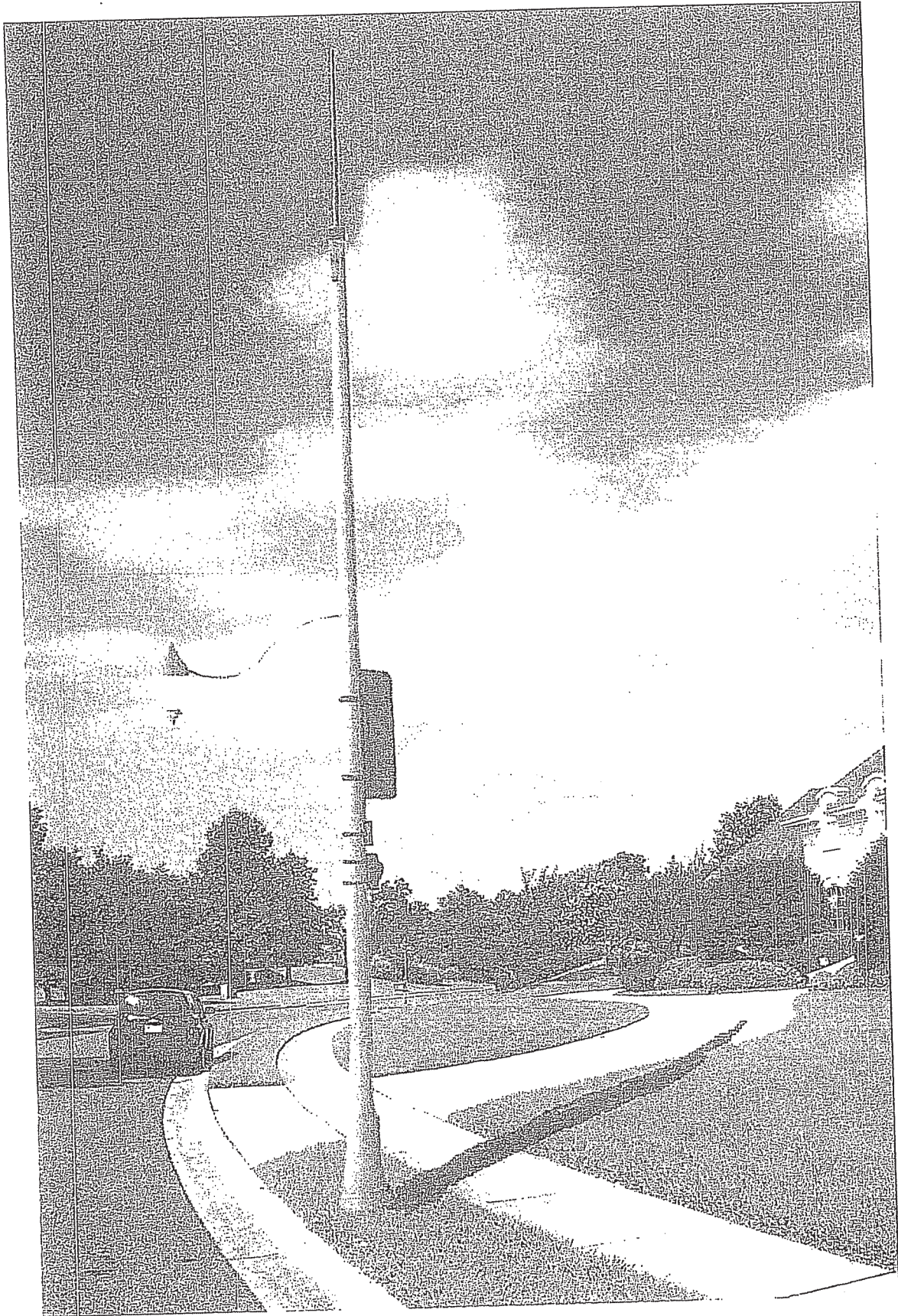


PROPOSED
ANTENNAS

PROPOSED
EQUIPMENT

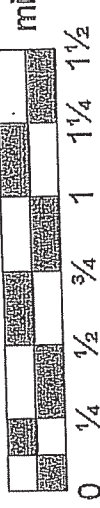
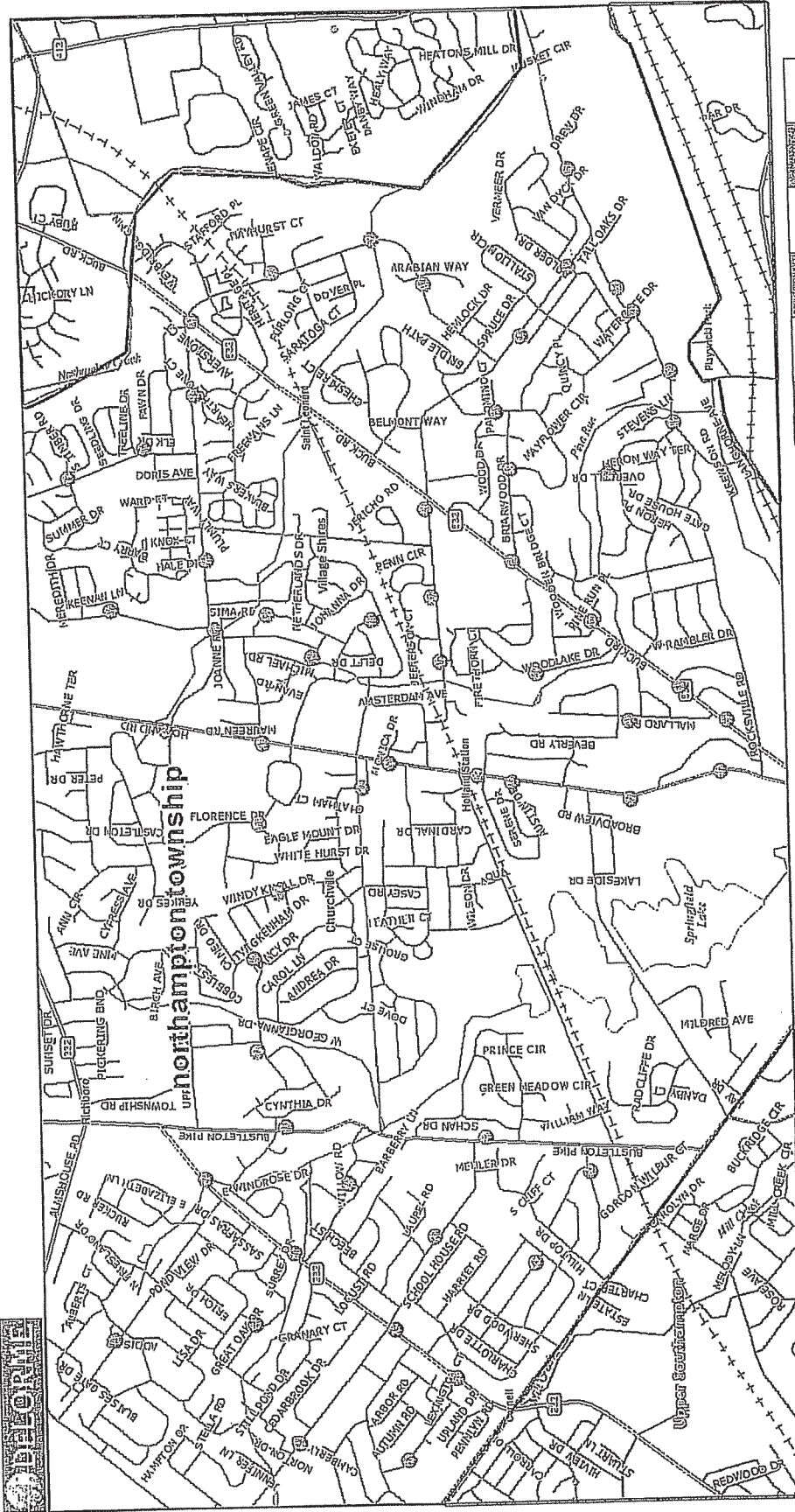
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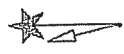


Node #	Latitude	Longitude	Address Description	Address	City	State	Zip Code	Municipality
183	40.21372	-75.02661	Across from 276 TANYARD, Corner of WENDY	353 TANYARD RD	RICHBORO	PA	18954	NORTHAMPTON
188	40.20339	-75.03457	693 NEW RD	271 NEW RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
189	40.19786	-75.02632	259 SECOND ST PIKE	193 STHY 232	SOUTHAMPTON	PA	18966	NORTHAMPTON
190	40.20853	-75.01500	Front of the WAWA Food Market, 750 SECOND ST PIKE	688 STHY 232	RICHBORO	PA	18954	NORTHAMPTON
191	40.20353	-75.02060	Just West of WILLOW GREEN on SECOND ST PIKE	399 STHY 232	RICHBORO	PA	18954	NORTHAMPTON
192	40.20573	-75.02578	Corner GREAT OAK DR & WOODLAND DR, side of GREAT OAK DR	70 GREAT OAK DR	SOUTHAMPTON	PA	18966	NORTHAMPTON
193	40.20388	-75.01139	BUSTLETON PIKE & TANYARD, South of ANTHONY DR, side of 671 BUSTLETON PIKE	685 BUSTLETON PIKE	CHURCHVILLE	PA	18954	NORTHAMPTON
194	40.20021	-75.01543	57 WILLOW RD	14 WILLOW RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
195	40.19530	-75.01921	173 NEW RD	777 NEW RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
196	40.19724	-75.03599	41 FOXWOOD RD, front of 56 BOXWOOD	56 BOXWOOD RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
197	40.19438	-75.03018	Across from 123 SECOND ST PIKE	80 STHY 232	SOUTHAMPTON	PA	18966	NORTHAMPTON
198	40.18981	-75.02155	159 STRATFORD DR	123 STRATFORD DR	SOUTHAMPTON	PA	18966	NORTHAMPTON
199	40.19239	-75.01254	402 BUSTLETON PIKE, front of 347 BUSTLETON PIKE	342 BUSTLETON PIKE	SOUTHAMPTON	PA	18966	NORTHAMPTON
208	40.18654	-75.01508	50 VALLEY DR	82 VALLEY DR	SOUTHAMPTON	PA	18966	NORTHAMPTON
213	40.21543	-74.96324	Side of 5 SOUTH TIMBER	341 SAINT LEONARDS RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
214	40.21994	-74.96948	1153-332 STATE HWY, across from 1039	1161 STHY 332	SOUTHAMPTON	PA	18966	NORTHAMPTON
216	40.21305	-74.97309	Across from XFMR on ROCKWAY & KEENAN LN	(No street address available)	CHURCHVILLE	PA	18966	NORTHAMPTON
218	40.21101	-74.96118	0.00000	199 SAINT LEONARDS RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
219	40.20807	-74.95721	DOE RUN DR & MIDDLE HOLLAND, across street from 571 MIDDLE HOLLAND RD	578 MIDDLE HOLLAND RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
220	40.20806	-74.95146	BUCK RD & MIDDLE HOLLAND RD	1078 STHY 532	VILLAGE SHIRES	PA	18966	NORTHAMPTON
221	40.20339	-74.94837	side of 123 SIGNAL HILL RD, corner of SIGNAL HILL & STONEYFORD RD	528 STONEYFORD RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
222	40.20739	-74.97435	JODI RD & MIDDLE HOLLAND RD	248 MIDDLE HOLLAND RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
223	40.20759	-74.96950	Across the street from corner @ LIBERTY DR on HOLLAND RD	374 MIDDLE HOLLAND RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
224	40.19775	-74.94595	Btwn 184 & 198 STONEYFORD RD	360 STONEYFORD RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
225	40.19479	-74.94937	167 STONEYFORD RD	185 STONEYFORD RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
226	40.18937	-74.95284	PEPPERELL DR & HOLLAND RD, 975 EAST HOLLAND RD	951 E HOLLAND RD	FEASTERVILLE TREVOSSE	PA	19053	NORTHAMPTON
228	40.18395	-74.94987	1176 BRIDGETOWN PIKE	445 BRIDGETOWN PIKE	FEASTERVILLE TREVOSSE	PA	19053	NORTHAMPTON
229	40.18642	-74.94112	Front of 1408 BRIDGETOWN PIKE	711 BRIDGETOWN PIKE	FEASTERVILLE TREVOSSE	PA	19053	NORTHAMPTON
230	40.18666	-74.94819	Corner of E. HOLLAND & POLDER DR, 7 POLDER DR	3 POLDER DR	FEASTERVILLE TREVOSSE	PA	19053	NORTHAMPTON

Node #	Latitude	Longitude	Address Description	Address	City	State	Zip Code	Municipality
231	40.18767	-74.93433	Next to Driveway at 1614 BRIDGETOWN PIKE	913 BRIDGETOWN PIKE	FEASTERVILLE TREVOSÉ	PA	19053	NORTHAMPTON
236	40.19489	-74.96584	Opposite 1050 BUCK RD	475 E HOLLAND RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
237	40.19024	-74.96982	BUCK RD & BRIARWOOD DR (Side of #7 BRAIRWOOD DR)	1363 STHY 532	SOUTHAMPTON	PA	18966	NORTHAMPTON
238	40.18108	-74.95616	277 BRIDGETOWN PIKE, Front of 978	243 BRIDGETOWN PIKE	FEASTERVILLE TREVOSÉ	PA	19053	NORTHAMPTON
239	40.18074	-74.95983	Across from 871 BRIDGETOWN PIKE RD	129 BRIDGETOWN PIKE	FEASTERVILLE TREVOSÉ	PA	19053	NORTHAMPTON
240	40.18581	-74.97430	Slide of 10 PINE RUN DR	1431 STHY 532	SOUTHAMPTON	PA	18966	NORTHAMPTON
241	40.18453	-74.96333	Slide of 121 BROOKSIDE DR	OVERHILL DR (No street address available)	SOUTHAMPTON	PA	18966	NORTHAMPTON
242	40.19028	-74.96304	Side of 119 BRIARWOOD DR	96 BRIARWOOD DR	SOUTHAMPTON	PA	18966	NORTHAMPTON
243	40.21005	-74.98187	Corner of HOLLAND & UPPER HOLLAND; NW Corner of Intersection	595 UPPER HOLLAND RD	RICHBORO	PA	18954	NORTHAMPTON
244	40.20435	-74.97361	Side of 145 TULIP RD	143 TULIP RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
245	40.19827	-74.97372	Side of 123 DUTCH DR	163 DUTCH DR	VILLAGE SHIRES	PA	18966	NORTHAMPTON
246	40.20465	-74.98284	Side of 1120 HOLLAND RD	1166 HOLLAND RD	CHURCHVILLE	PA	18966	NORTHAMPTON
247	40.20169	-74.97663	Utility easement side of 80 DAVID RD	75 DAVID RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
248	40.19761	-74.98449	944 HOLLAND RD, HOLLAND RD & MONICA	944 HOLLAND RD	CHURCHVILLE	PA	18966	NORTHAMPTON
250	40.19462	-74.97226	331 E HOLLAND RD (Rear of 28 GRANT AVE)	317 E HOLLAND RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
251	40.20495	-74.98893	Front of 54 ELSA WAY, 54 FLORENCE	49 FLORENCE DR	CHURCHVILLE	PA	18954	NORTHAMPTON
252	40.19928	-74.98627	579 LOWER HOLLAND RD, OPP of 593 LOWER HOLLAND RD	648 LOWER HOLLAND RD	CHURCHVILLE	PA	18966	NORTHAMPTON
254	40.20515	-75.00538	Corner of TORRESDALE DR & West LYNFORD RD, Front of 58 TORRESDALE	145 W LYNFORD RD	CHURCHVILLE	PA	18954	NORTHAMPTON
255	40.20522	-74.99887	Side of 91 W. LYNFORD RD	LYNFORD RD (No street address available)	CHURCHVILLE	PA	18954	NORTHAMPTON
256	40.20408	-74.99402	Opposite of 34 WINDY KNOLL DR	102 WINDY KNOLL DR	CHURCHVILLE	PA	18954	NORTHAMPTON
260	40.19260	-74.98559	Across from 827 HOLLAND RD	788 HOLLAND RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
262	40.19044	-74.98590	672 HOLLAND RD (Between 707 & 715 HOLLAND)	721 HOLLAND RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
263	40.18916	-74.97809	Side of 205 WOODLAKE DR	155 WOODLAKE DR	SOUTHAMPTON	PA	18966	NORTHAMPTON
264	40.18095	-74.97922	Side of 8 TWIST DR	1507 STHY 532	SOUTHAMPTON	PA	18966	NORTHAMPTON
265	40.17834	-74.98196	377 BUCK RD	1545 STHY 532	SOUTHAMPTON	PA	18966	NORTHAMPTON
266	40.18377	-74.98742	479 HOLLAND RD	578 HOLLAND RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
267	40.18362	-74.98159	Side of 140 MALLARD RD	130 MALLARD RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
268	40.17846	-74.98552	357 HOLLAND RD	417 HOLLAND RD	SOUTHAMPTON	PA	18966	NORTHAMPTON
270	40.19095	-74.95872	Side of 84 PONDEROSA	109 PONDEROSA DR	SOUTHAMPTON	PA	18966	NORTHAMPTON
271	40.19436	-74.97707	Next to 223 E. HOLLAND DR @ PINE VIEW DR	213 E HOLLAND RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
419	40.18295	-74.95166	WATERGATE & BRIDGETOWN PIKE, SW of 148 WATERGATE	386 BRIDGETOWN PIKE	FEASTERVILLE TREVOSÉ	PA	19053	NORTHAMPTON



Data Zoom 12-6



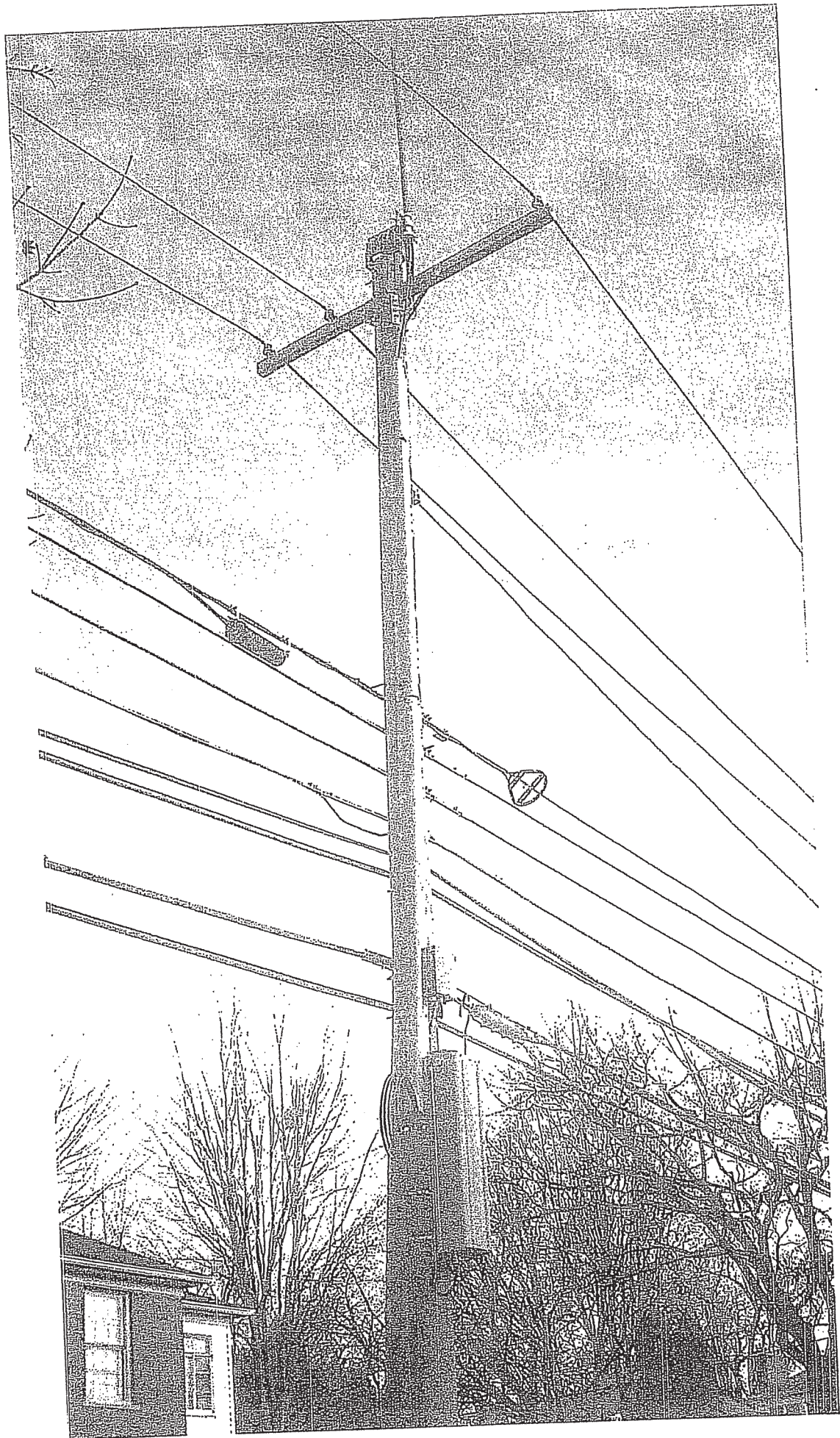
MN (12.3° W)



Data use subject to license.

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www.delorme.com



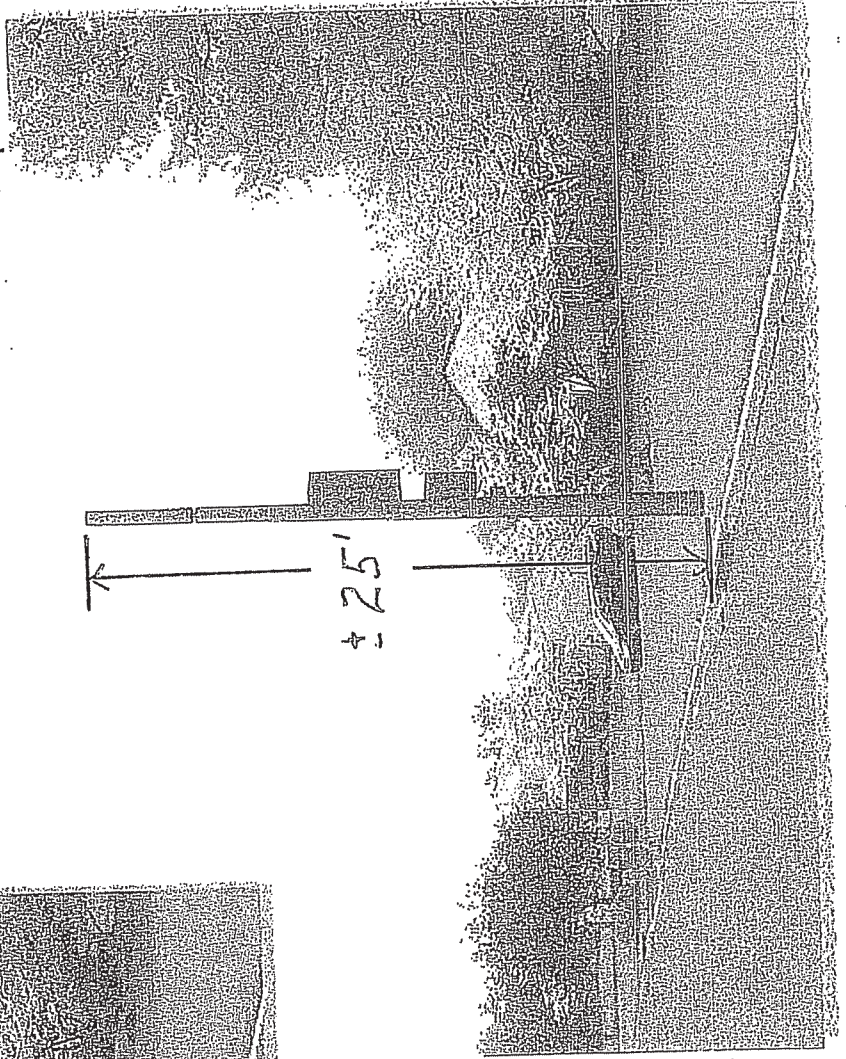
Existing



ATC OUTDOOR DAS

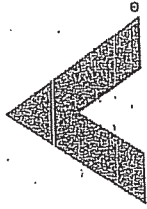
ATC outdoor DAS, LLC

Proposed



Sample
Node

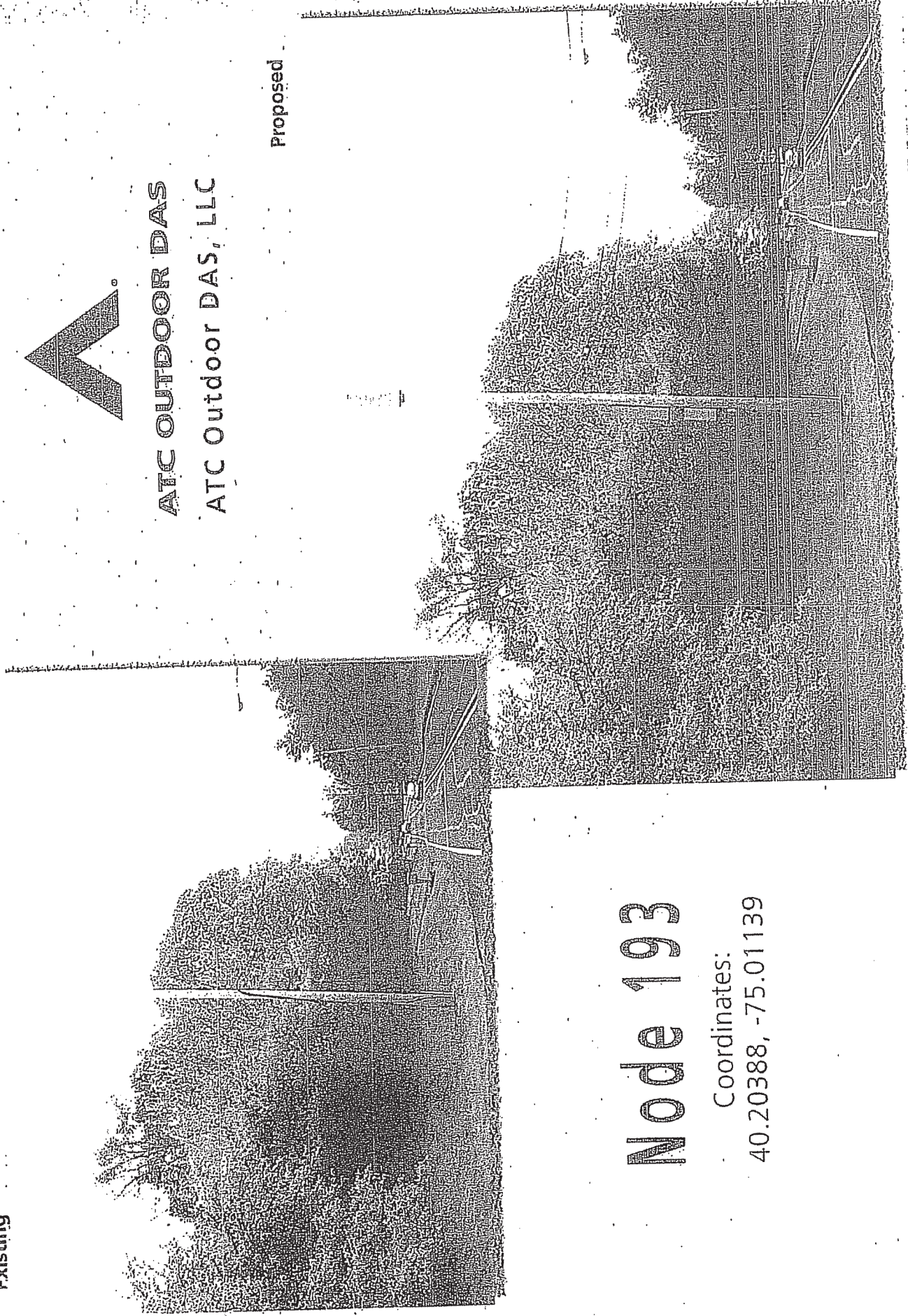
Existing



ATC OUTDOOR DAS

ATC Outdoor DAS, LLC

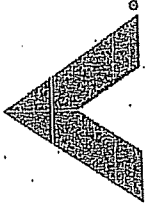
Proposed



Node 193

Coordinates:
40.20388, -75.01139

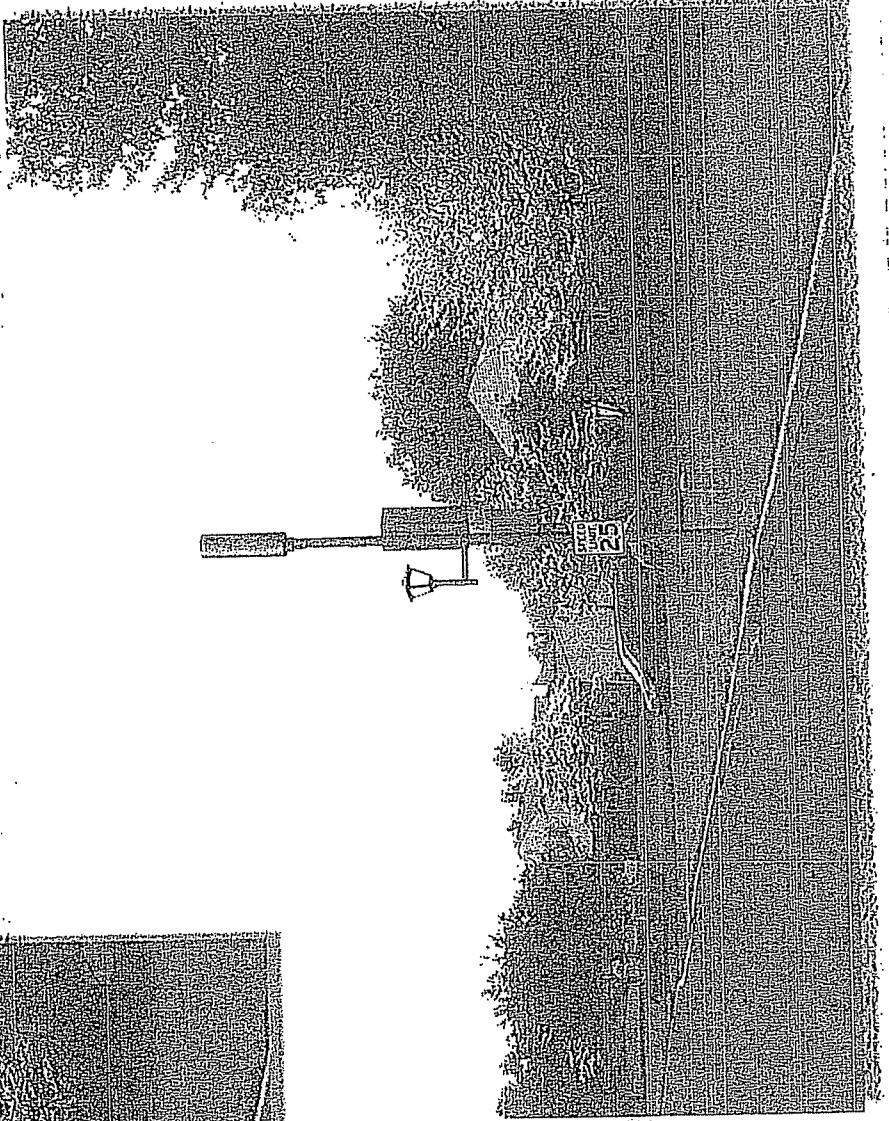
Existing



ATC OUTDOOR DAS

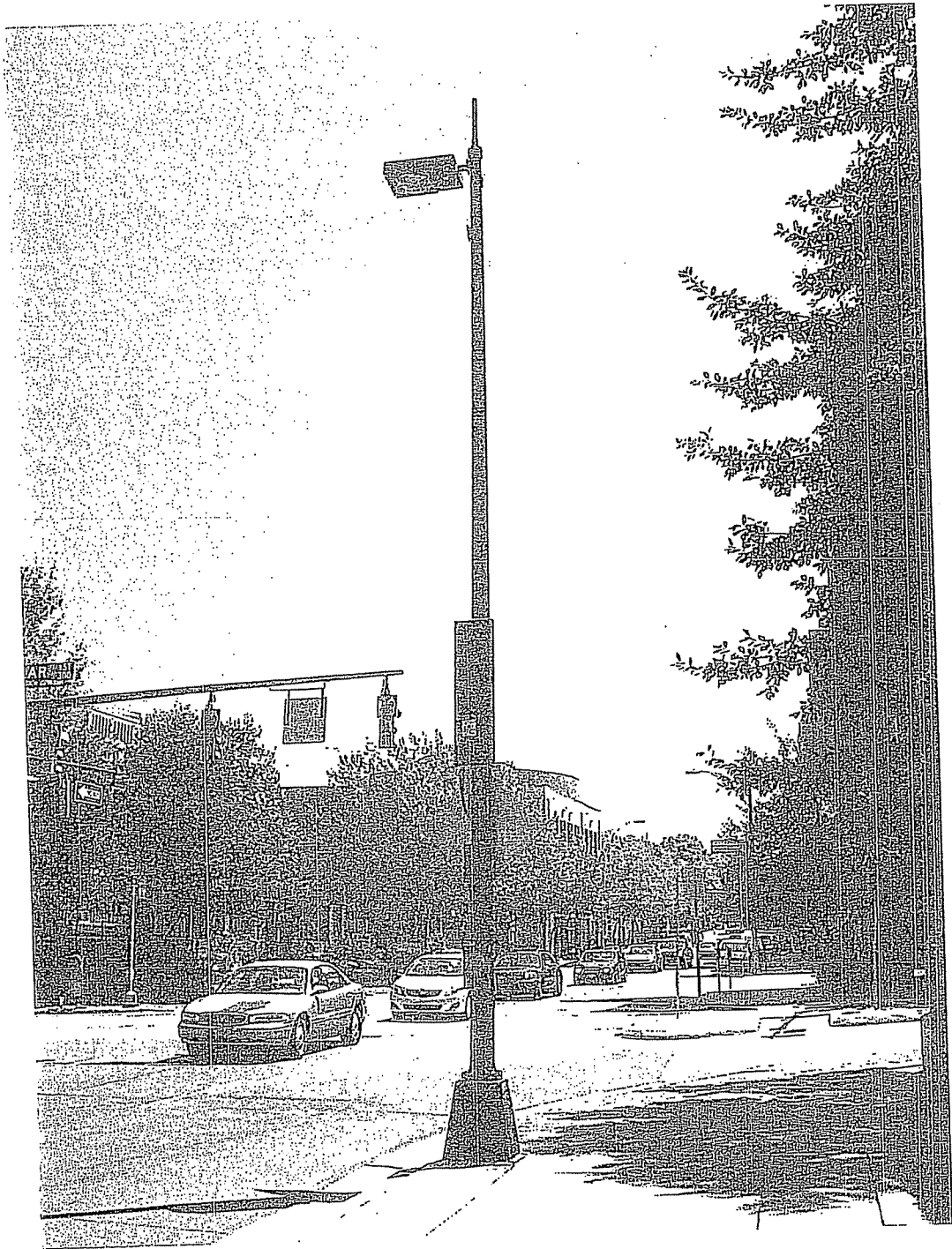
ATC Outdoor DAS, LLC

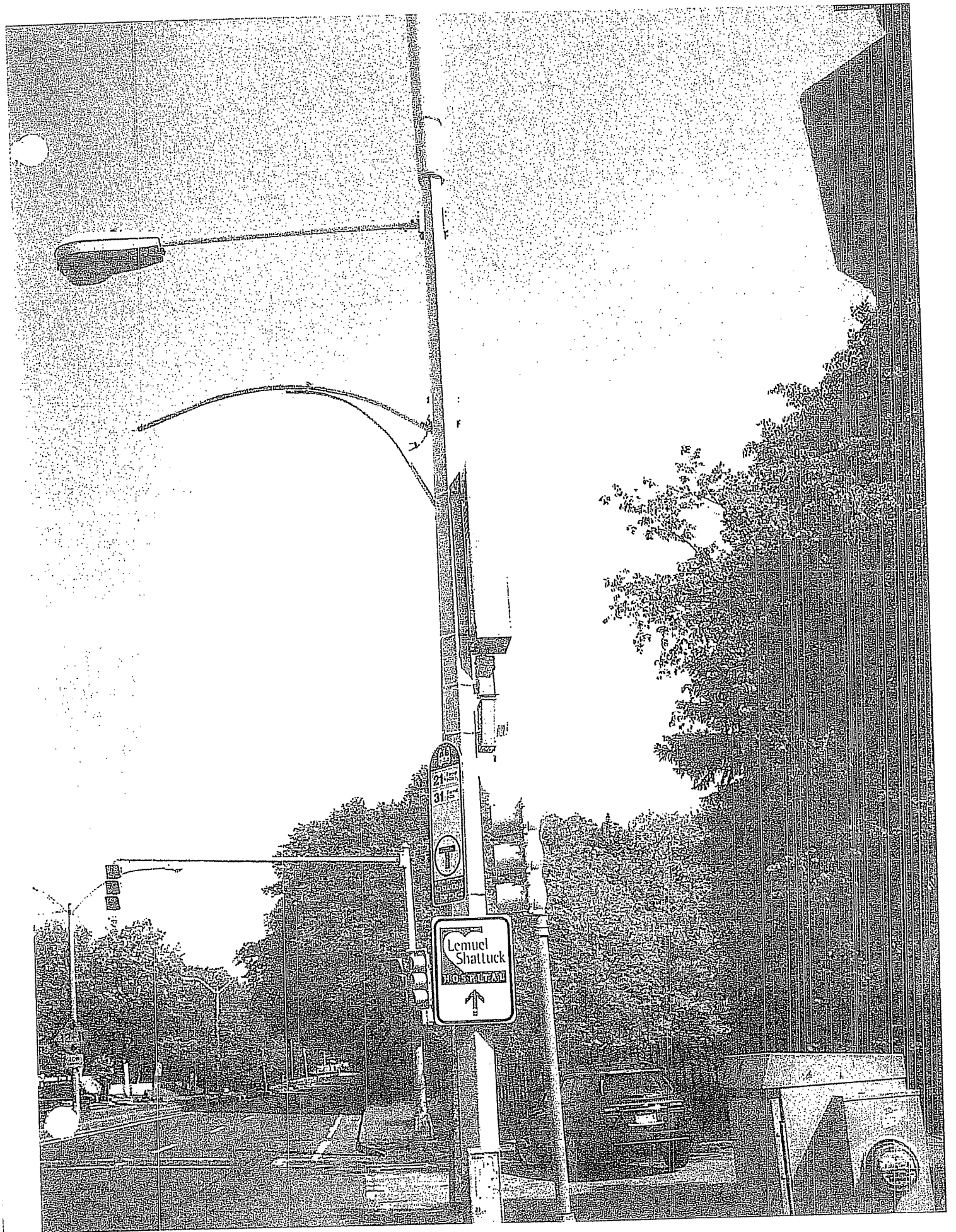
Proposed



Node 254

Coordinates:
40.20515, -75.00538

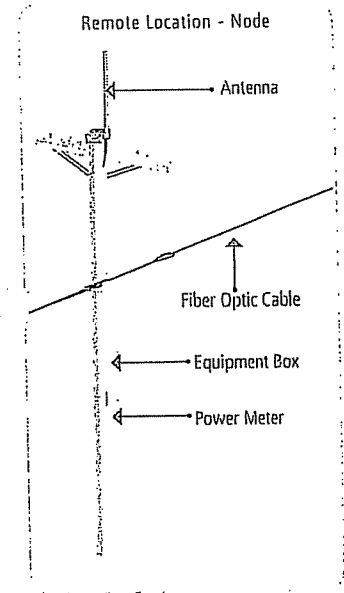
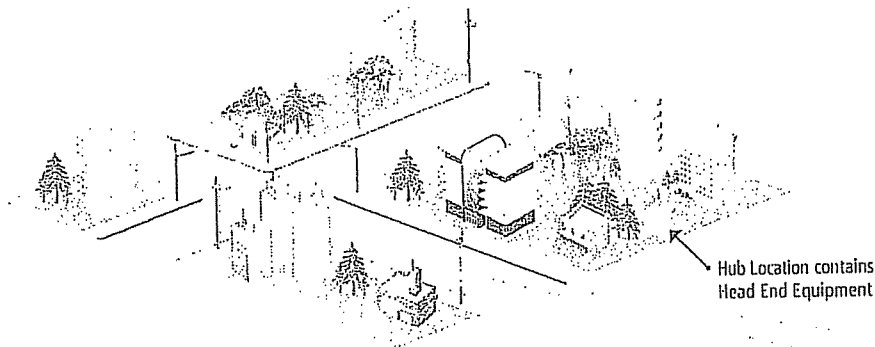




Outdoor DAS

An outdoor DAS transmits a wireless signal in a similar way as an in-building system. The DAS includes nodes that are strategically placed on existing utility poles, street lights, traffic signals and other structures every half to three-quarter mile within the coverage area. The nodes connect to a hub via fiber optic cable. The hub contains American Tower's head-end equipment and the service provider's Base Transceiver Station (BTS).

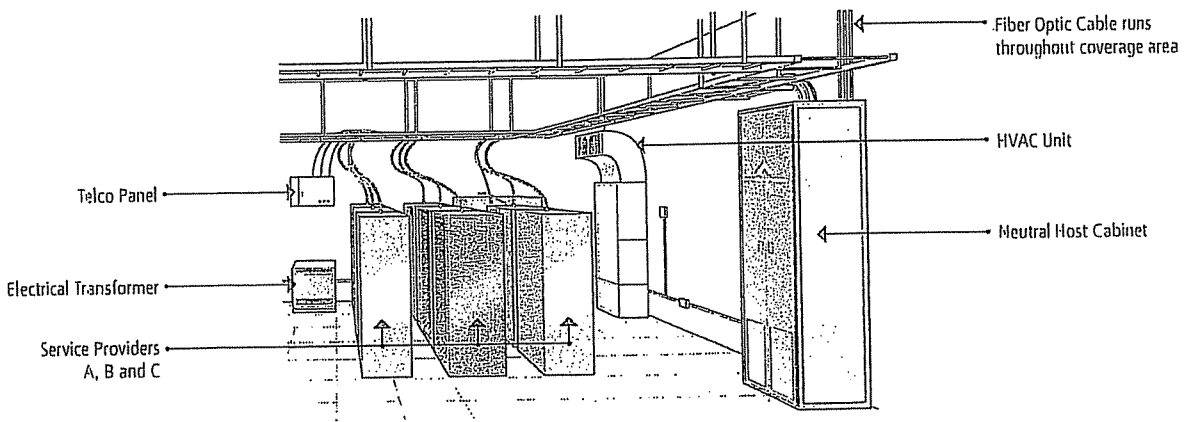
Typical Outdoor DAS Installation



1. The user's RF signal is received by the antenna on the node.
2. The signal is transmitted via the coaxial cable to the node's equipment box, which contains the amplifier and RF to light converter.
3. The fiber optic cable connects from the equipment box (either underground or aerial) to the hub.
4. The head-end equipment at the hub site converts optical back to RF and sends the RF signal through the coaxial cable to the service provider's BTS.
5. Calls are then routed through the service provider's Public Switched Telephone Network (PSTN) and transmitted via the landline network or back out through the DAS equipment.

Hub – In-Building & Outdoor Systems

This diagram is a sample design for an American Tower DAS hub. It shows equipment for three major wireless service providers, as well as the American Tower neutral host cabinet, HVAC unit, Telco panel and electrical transformer. You can see the coaxial cable connecting the service provider equipment to the neutral host cabinet, as well as the fiber optic cable that flows from the neutral host cabinet to transmit wireless signal throughout the coverage area.





Township of Northampton

NORTHAMPTON TOWNSHIP COMPLEX • 55 Township Road, Richboro, Pennsylvania 18954-1592
Township Administration - (215) 557-6800 • Fax: (215) 557-1251

July 25, 2011

ATC Outdoor DAS
10 Presidential Way
Woburn, MA 01801
ATTN: David Callender

RE: ATC Outdoor DAS LLC Permit Applications:

1. 11 New Pole Installations – Various Locations on Plans
2. 16 Various Locations on Plans – Installation of Telecommunications Equipment and Antennas on Existing Poles
3. 17 Various Locations on Plans – Installation of Telecommunications Equipment and Antennas on Existing Poles
4. Various Pole Locations – Installation of Aerial Fiber Optic Cable
5. Mt. Pleasant Drive and Woodland Drive – Installation of Conduit and Hand Holes
6. Middle Holland Road and Rock Way - Installation of Conduit and Hand Holes
7. Bridgetown Pike, E. Heron Road, Buckshire Drive and Brookside Drive - Installation of Conduit and Hand Holes
8. Ponderosa Drive and Briarwood Drive - Installation of Conduit and Hand Holes
9. Rosemary Drive, Loretta Circle, Elsa Way and Florence Drive - Installation of Conduit and Hand Holes
10. E. Holland Road, Pine View Drive, Forrest Drive and Woodlake Drive - Installation of Conduit and Hand Holes
11. Upper Holland Road, Torresdale Drive, Lynford Road and Windy Knoll Drive - Installation of Conduit and Hand Holes
12. Rotterdam Road W., Michael Road, David Road, Lempa Road, Tulip Road and Dutch Drive - Installation of Conduit and Hand Holes

Dear David:

Please be advised that the aforementioned permit applications are administratively incomplete because the submitted permit fees are incorrect and all appropriate permit applications have not been submitted.



**Township of
Northampton**

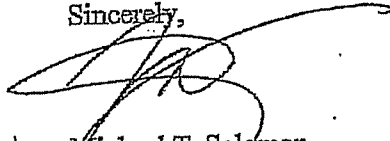
David Callender
July 25, 2011
Page Two

In addition, the proposed work identified previously is not related to a permitted use pursuant to Sections 140-58.5, 140-10, 140-13.1, 140-13.3, 140-14, 140-15, 140-16, 140-17, 140-20, 140-21, 140-21.1, 140-23, 140-35, 140-28, 140-36, and 140-36.1 of the Northampton Township Zoning Ordinance.

You have the right to appeal to the Zoning Hearing Board.

Feel free to contact me if you have any questions.

Sincerely,

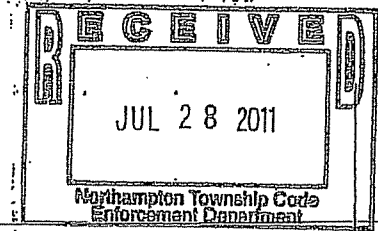


Michael T. Solomon
Director of Planning and Zoning

MTS/tms

cc: Robert Pellegrino, Township Manager
Barbara Kirk, Township Solicitor

Via U.S. Regular Mail and
Certified Mail No. 7006 2760 0003 5677 1922
Return Receipt Requested



ZONING HEARING BOARD
OF
NORTHAMPTON TOWNSHIP

The original and 7 copies of this Application, including all plans and drawings, must be submitted to the Zoning Officer together with the Application fee.

CASE NUMBER: 2011-15 (to be assigned by Township)

1. Name of Appellant/Applicant: SEE ATTACHED.

Address of Applicant: _____

Address (subject of Application): 40 Commerce Drive Lyndland, PA 18974

Telephone Number: _____ E-Mail: _____

Owner: N&V Poli Affiliates, LLP

Address: 3902 SHELLEY RD. HUNTINGDON VALLEY, PA 19006
Box 3195, Maple Glen, PA 19002 N.P.

Attorney: John A. VanLuvanee, Esquire - Eastburn and Gray, PC

Address: 60 East Court Street, P.O. Box 1389, Doylestown, PA 18901

2. The undersigned hereby: (check applicable item or items)

(a) appeals from the action of the Zoning Officer _____

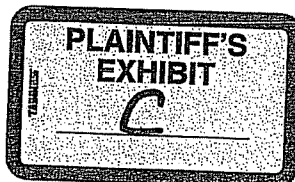
(b) _____ requests a special exception

(c) _____ requests a variance

(d) _____ challenges the validity of a zoning ordinance or map

If applicant is not the owner, state applicant's authority to title interest to bring this

application: (equitable owner, agent, lessee, etc.): Lessee



3. Description of the premises involved (attach plan of the lot and the improvements both erected and proposed): See attached.

Tax Parcel No.: 31-1-1-1 Date of present deed: 03/19/2003

Present zoning classification: I-1 Lot size: 2.106 acres

Present use: Telecommunications facility.

Proposed use: Same as above (expansion of existing facility)

Nature of improvements existing: approved telecommunication facility, including a one-story equipment building and 112-foot high monopole with antennas.

4. Use in case of an appeal from the action of the Zoning Officer:

(a) The action taken was: refusal to consider permit application/zoning ordinance interpretation.

(b) The date the action was taken was: June 29, 2011

(c) The foregoing action was in error because: See attached.

5. Use for request for a special exception n/a

(a) Nature of special exception sought is: _____

(b) The special exception is requested under:

Article _____ Section _____ Subsection _____

of the Northampton Township Zoning Ordinance (if more than one exception is requested, list ordinance references for each exception and state the nature of the exception): _____

6. Use for request for a variance n/a

(a) Nature of variance sought is: _____

The variance is from: Article _____ Section _____ Subsection _____

of the Northampton Township Zoning Ordinance (if more than one variance is requested, list ordinance references for each request and state the nature of the variance):

7. Use in case of a challenge to the validity of a zoning ordinance or map n/a

(a) The ordinance or map challenged is as follows: _____

(b) The challenge is ripe for decision because: _____

(c) The ordinance challenged is invalid because: _____

8. Has there been any previous zoning appeal, variance, or special exception for this property? Yes _____ No XX

If yes, please indicate the date thereof and nature of relief granted: _____

SUBSCRIBED AND SWORN TO AND PERSONALLY APPEARED BEFORE ME THIS 20th DAY OF July 2011
Jean M. Curran
NOTARY PUBLIC
COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Lorie S. Shaley, Notary Public
Lower Southampton Twp., Bucks County
My Commission Expires Dec. 2, 2012
Member, Pennsylvania Association of Notaries

ATC Outdoor DAS LLC
[Signature]
APPLICANT

Norma V. Schior
Margaret Robinson
Senior Counsel
OWNER N&V Poli Affiliates, LLP

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BUCKS


The undersigned, being duly sworn according to law, deposes and says that he is the above-named applicant, that he is authorized to and does take this Affidavit on behalf of the owner, and that the foregoing facts are true and correct to the best of his knowledge.

ATC Outdoor DAS LLC
[Signature]
APPLICANT

Sworn to and Subscribed
before me this 26th day
of July, 2011

Margaret Robinson
Senior Counsel

Jean M. Curran
NOTARY PUBLIC

 JEAN M. CURRAN
Notary Public, Commonwealth of Massachusetts
My Commission Expires January 24, 2014

Northampton Township Zoning Hearing Board
Application of ATC Outdoor DAS

1. Applicant:

ATC Outdoor DAS LLC
400 Regency Forest Drive
Cary, NC 27518
484-942-6339

3. Premises involved: The parcel of property is currently improved with a telecommunications facility comprised of a communications tower and related infrastructure within a fenced compound.

4.(c) The action of the zoning officer was in error because:

Applicant submitted an Application for Plan Examination and Building Permit to Northampton Township to allow the installation of one equipment shelter within the existing fenced compound as an accessory structure to the existing telecommunications facility on the Property. Conditional use approval and final land development approval was granted in 1997 to permit the telecommunications facilities which currently exist on the Property. A copy of the approval letter dated July 16, 1997 is attached hereto.

In response to the Application, the Township Zoning Officer issued a letter dated June 29, 2011 ("Denial Letter"), stating that the Application was not reviewed as a result of Applicants' failure to obtain land development approval for the proposed activity. The Denial Letter further stated that the proposed structure "[is] not related to a permitted use," citing the provisions of the Zoning Ordinance which are identified in the letter. The Denial Letter is attached hereto.

The Zoning Officer erred as a matter of law in determining that land development approval is required for the addition of one (1) equipment shelter within the existing facility. Tu-Way Tower Co. v. Zoning Hearing Board of the


Township of Salisbury, 688 A.2d 744 (Pa.Cmwlth. 1997). For the Board's convenience, a copy of the Tu-Way Tower decision is attached hereto.

The Zoning Officer erred as a matter of law in determining that the installation of the proposed accessory structure constitutes a land use which requires zoning approval. The Zoning Officer further erred as a matter of law and fact in concluding that the proposed use of the accessory structure is not related to a permitted use. See July 16, 1997 letter.

Please call Bruce Hoffmaster at 484-942-6339 with any questions, when fee is determined, and when permit is ready for pick-up.

APPLICATION FOR PLAN EXAMINATION AND BUILDING PERMIT

IMPORTANT - Applicant to complete all items in sections: I, II, III, IV, and IX.

I. LOCATION OF BUILDING	AT (LOCATION) <u>10 Commerce Drive (Commerce Dr. + Jacksonville Rd)</u> ZONING DISTRICT <u>E-1</u> <small>(NO.) (STREET)</small> BETWEEN _____ AND _____ <small>(CROSS STREET) (CROSS STREET)</small> SUBDIVISION _____ LOT _____ BLOCK _____ <small>(LOT SIZE)</small>	NO STREET																		
II. TYPE AND COST OF BUILDING - All applicants complete Parts A - D																				
A. TYPE OF IMPROVEMENT 1 <input type="checkbox"/> New building 2 <input type="checkbox"/> Addition (If residential, enter number of new housing units added, if any, in Part D, 13) 3 <input checked="" type="checkbox"/> Alteration (See 2 above) 4 <input type="checkbox"/> Repair, replacement 5 <input type="checkbox"/> Wrecking (If multifamily residential, enter number of units in building in Part D, 13) 6 <input type="checkbox"/> Moving (relocation) 7 <input type="checkbox"/> Foundation only	D. PROPOSED USE - For "Wrecking" most recent use <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Residential 12 <input type="checkbox"/> One family 13 <input type="checkbox"/> Two or more family - Enter number of units _____ 14 <input type="checkbox"/> Transient hotel, motel, or dormitory - Enter number of units _____ 15 <input type="checkbox"/> Garage 16 <input type="checkbox"/> Carport 17 <input type="checkbox"/> Other - Specify _____ </td> <td style="width: 50%; vertical-align: top;"> Nonresidential 18 <input type="checkbox"/> Amusement, recreational 19 <input type="checkbox"/> Church, other religious 20 <input type="checkbox"/> Industrial 21 <input type="checkbox"/> Parking garage 22 <input type="checkbox"/> Service station, repair garage 23 <input type="checkbox"/> Hospital, institutional 24 <input type="checkbox"/> Office, bank, professional 25 <input type="checkbox"/> Public utility 26 <input type="checkbox"/> School; library, other educational 27 <input type="checkbox"/> Stores, mercantile 28 <input checked="" type="checkbox"/> Tanks, towers 29 <input checked="" type="checkbox"/> Other - Specify <u>Add ground equipment only. No tower work</u> </td> </tr> </table>	Residential 12 <input type="checkbox"/> One family 13 <input type="checkbox"/> Two or more family - Enter number of units _____ 14 <input type="checkbox"/> Transient hotel, motel, or dormitory - Enter number of units _____ 15 <input type="checkbox"/> Garage 16 <input type="checkbox"/> Carport 17 <input type="checkbox"/> Other - Specify _____	Nonresidential 18 <input type="checkbox"/> Amusement, recreational 19 <input type="checkbox"/> Church, other religious 20 <input type="checkbox"/> Industrial 21 <input type="checkbox"/> Parking garage 22 <input type="checkbox"/> Service station, repair garage 23 <input type="checkbox"/> Hospital, institutional 24 <input type="checkbox"/> Office, bank, professional 25 <input type="checkbox"/> Public utility 26 <input type="checkbox"/> School; library, other educational 27 <input type="checkbox"/> Stores, mercantile 28 <input checked="" type="checkbox"/> Tanks, towers 29 <input checked="" type="checkbox"/> Other - Specify <u>Add ground equipment only. No tower work</u>																	
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B. OWNERSHIP 8 <input checked="" type="checkbox"/> Private (Individual, corporation, nonprofit institution, etc.) 9 <input type="checkbox"/> Public (Federal, State, or local government)	C. COST <table style="width: 100%;"> <tr> <td style="width: 60%;">10. Cost of improvement.....</td> <td style="width: 10%;">(Omit cents)</td> <td style="width: 30%;">Nonresidential - Describe in detail proposed use of buildings, e.g., food processing plant, machine shop, laundry building at hospital, elementary school, secondary school, college, parochial school, parking garage for apartment store, rental office building, office building at industrial plant. If use of existing building is being changed, enter proposed use.</td> </tr> <tr> <td>To be installed but not included in the above cost</td> <td></td> <td></td> </tr> <tr> <td>a. Electrical.....</td> <td>\$ 15,000</td> <td rowspan="4"><u>Install an 11x30' shelter with a 200 AMP service within the existing fenced compound. No tower work.</u></td> </tr> <tr> <td>b. Plumbing.....</td> <td>8,000</td> </tr> <tr> <td>c. Heating, air conditioning.....</td> <td></td> </tr> <tr> <td>d. Other (elevator, etc.).....</td> <td></td> </tr> <tr> <td>11. TOTAL COST OF IMPROVEMENT</td> <td>\$23,000</td> <td></td> </tr> </table>		10. Cost of improvement.....	(Omit cents)	Nonresidential - Describe in detail proposed use of buildings, e.g., food processing plant, machine shop, laundry building at hospital, elementary school, secondary school, college, parochial school, parking garage for apartment store, rental office building, office building at industrial plant. If use of existing building is being changed, enter proposed use.	To be installed but not included in the above cost			a. Electrical.....	\$ 15,000	<u>Install an 11x30' shelter with a 200 AMP service within the existing fenced compound. No tower work.</u>	b. Plumbing.....	8,000	c. Heating, air conditioning.....		d. Other (elevator, etc.).....		11. TOTAL COST OF IMPROVEMENT	\$23,000	
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c. Heating, air conditioning.....																				
d. Other (elevator, etc.).....																				
11. TOTAL COST OF IMPROVEMENT	\$23,000																			
III. SELECTED CHARACTERISTICS OF BUILDING - For new buildings and additions, complete Parts E - L; for wrecking, complete only Part J, for all others skip to IV.																				
E. PRINCIPAL TYPE OF FRAME 30 <input type="checkbox"/> Masonry (wall bearing) 31 <input type="checkbox"/> Wood frame 32 <input type="checkbox"/> Structural steel 33 <input type="checkbox"/> Reinforced concrete 34 <input type="checkbox"/> Other - Specify _____	G. TYPE OF SEWAGE DISPOSAL 40 <input type="checkbox"/> Public or private company 41 <input type="checkbox"/> Private (septic tank, etc.) H. TYPE OF WATER SUPPLY 42 <input type="checkbox"/> Public or private company 43 <input type="checkbox"/> Private (well, cistern)	J. DIMENSIONS 48. Number of stories..... 49. Total square foot of floor area,..... Dave Talley Project Manager Philadelphia Market 11 Strickland Court Newark, DE 19702 302.533.6099 Office 302.220.6415 Mobile 770.952.4999 Fax david.talley@americantower.com																		
F. PRINCIPAL TYPE OF HEATING FUEL 35 <input type="checkbox"/> Gas 36 <input type="checkbox"/> Oil 37 <input type="checkbox"/> Electricity 38 <input type="checkbox"/> Coal 39 <input type="checkbox"/> Other - Specify _____	I. TYPE OF MECHANICAL Will there be central air conditioning? 44 <input type="checkbox"/> Yes 45 <input type="checkbox"/> No Will there be an elevator? 46 <input type="checkbox"/> Yes 47 <input type="checkbox"/> No																			

IV. IDENTIFICATION - To be completed by all applicants

Name		Mailing address - Number, street, city, and State	ZIP code	Tel. No.
1. Owner or Lessee	ATC Outdoor-DAS LLC	400 Regency Forest Drive Cary, NC 27518		484-942-6339
2. Contractor	Magnesi+Sons	105 Edgewood Avenue Folsom, PA 19033	Builder's License No.	
3. Architect or Engineer	American Tower Structural Engineering	8505 Freepoint Parkway, Suite 135 Irving, TX 75063		972-999-8900

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and we agree to conform to all applicable laws of this jurisdiction.

Signature of applicant: David Zales Address: 11 Strickland Ct. Application date: 4-15-11

DO NOT WRITE BELOW THIS LINE

V. PLAN REVIEW RECORD - For office use

Plans Review Required	Check	Plan Review Fee	Date Plans Started	By	Date Plans Approved	By	Notes
BUILDING		\$					
PLUMBING		\$					
MECHANICAL		\$					
ELECTRICAL		\$					
OTHER		\$					

VI. ADDITIONAL PERMITS REQUIRED OR OTHER JURISDICTION APPROVALS

Permit or Approval	Check	Date Obtained	Number	By	Permit or Approval	Check	Date Obtained	Number	By
BOILER					PLUMBING				
CURB OR SIDEWALK CUT					ROOFING				
ELEVATOR					SEWER				
ELECTRICAL					SIGN OR BILLBOARD				
FURNACE					STREET GRADES				
GRADING					USE OF PUBLIC AREAS				
OIL BURNER					WRECKING				
OTHER					OTHER				

VII. VALIDATION

Building: 475.00 Mechanical: 0 Plumbing: 0 Electrical: 125.00 Compliance: 100.00 PERMIT FEE TOTAL: \$958.00 + \$500.00 Escrow	Review: 254.00 4.00 Review: 258.00	FOR DEPARTMENT USE ONLY Use Group _____ Fire Grading _____ Live Loading _____ Occupancy Load _____
by: _____		TITLE _____



Township of Northampton

NORTHAMPTON TOWNSHIP COMPLEX • 55 Township Road, Richboro, Pennsylvania 18954-1592
Township Administration - (215) 357-8800 • Fax: (215) 357-1251

VIA CERTIFIED & FIRST CLASS MAIL

June 29, 2011

Attn: David Callender
ATC Outdoor DAS
10 Presidential Way
Woburn, MA 01801

RE: **ATC Outdoor DAS LLC Permit Application**
T-Mobile Northeast LLC Permit Application
10 Commerce Drive (Commerce Drive and Jacksonville Road)

Dear David:

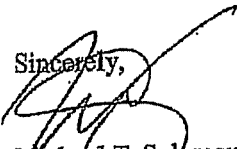
In follow-up to your June 27, 2011 correspondence, please be advised that the aforementioned permit applications were never formally considered for review because you did not receive land development approval in accordance with the requirements of the Pennsylvania Municipalities Planning Code. Land development approval is required prior to building permit submission.

In addition, based on our discussions, the proposed use of these ground cabinets and shelters is not related to a permitted use pursuant to Sections 140-58.5, 140-10, 140-13.1, 140-13.3, 140-14, 140-15, 140-16, 140-17, 140-20, 140-21, 140-21.1, 140-23, 140-35, 140-28, 140-36, and 140-36.1 of the Northampton Township Zoning Ordinance.

You have the right to appeal to the Zoning Hearing Board.

Feel free to contact me if you have any questions.

Sincerely,


Michael T. Solomon
Director of Planning and Zoning

David Callender

Page 2

Cc: File
Bob Pellegrino, Twp. Manager
Barbara Kirk, Township Solicitor

THIS INDENTURE Made

the 17th day of MARCH in the year of our Lord Two Thousand and
Three (2003)

Between

Vincent J. Poli, Trustee of the Vincent J. Poli Trust dated January 21, 1998 and Norma A. Poli, Trustee of the Norma A. Poli, Trustee dated January 21, 1998 each as a tenant in common as to an undivided one-half share (hereinafter called the Grantors), of the one part and N. & V. Poli Affiliates, L.L.P., a Delaware Limited Partnership organized under the laws of the state of Delaware with Certificate of Limited Liability Partnership being filed on November 7, 2001 with the Office of the Secretary of State of Delaware (hereinafter called the Grantee), of the other part.

Witnesseth That the said Grantors

For and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto them well and truly paid by the said Grantee, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained and sold, released and confirmed, and by these presents do grant, bargain and sell, release and confirm unto the said Grantee, its heirs and assigns, all the following lot.
SITUATE in the Township of Northampton, County of Bucks and State of Pennsylvania, marked and designated as Lot No. 1, section One (1) as shown on the Final Plan of Cherokee Industrial Park, Jacksonville Road, LR09042 and Commerce Drive, Northampton Township, Bucks County, Pennsylvania, prepared by Tri-State Engineers and Land Surveyors, Inc., 801 West Street Road, Feasterville, Pennsylvania and recorded in the Office of the Recorder of Deeds at Doylestown, Pennsylvania in Plan Book 121, Page 15 and since revised June 3, 1976 bounded and described as follows:

Beginning at a point a corner of Lot 1 on the northwesterly side of Jacksonville Road in line of lands of John J. and Virginia J. Camerlingo; thence along line of lands of the said John J. and Virginia J. Camerlingo from said point N 52 17' 30" E 312.88 feet to a point a corner of the rear property line of Lots 1 and 3; thence along said point of property line of Lots 1 and 3 southwesterly S 43 28' 00" S 525.60 feet to a point of a corner of said property line on the easterly side of Commerce Drive; thence from this said point on the easterly side S 36 02' 00" E of Lot 1 and also a point a corner of the property driveway entrance from Commerce Drive of Lot 1 and also a point a corner of the property line of Lots 1 and 2; thence 3 N 43 28' 00" E 281.59 feet to a point a corner of the end of said 30.51 feet width driveway adjoining line of lot 2; thence from said point a corner S 46 32' 00" E 285.00 feet on the property line of Lots 1 and 2 to a point a corner on the

BK3556 PG0469

northwesterly side of Jacksonville Road; thence from said point N 43 28' 00" E, 89.31 feet to a point of tangency; thence continuing along the said Lot 1 at said point of tangency to the left having a radius of 4960.00 feet for the arc distance of 191.70 feet to the point and place of beginning. 2. 0032 acres.

BEING the same premises which Vincent Poli and Norma Poli, his wife, by Deed dated January 21, 1998 and recorded in the Office of the Recorder of Deeds of Bucks County in Deed Book 1532 p. 1161 on February 11, 1998 granted and conveyed to Vincent J. Poli, Trustee of the Vincent J. Poli Trust dated January 21, 1998 and Norma A. Poli, Trustee of the Norma A. Poli Trust dated January 21, 1998 each as Tenants in Common as to an undivided one-half share.

UNDER AND SUBJECT to conditions and restrictions set forth to a recorded Community Sewer System Agreement of Lot Nos. 1, 2, 3 and 4 in the Office of Recorder of Deeds, Bucks County in Doylestown dated February 13, 1981 in Deed Book 2415 page 926 and Plan Book 205 page 43 for Exhibit.

Also Under and Subject to right of way to Philadelphia Electric Company and to Bell Telephone Company of Pennsylvania.

Tax Parcel No. 31-001-001-001

Together with all and singular the said lot or piece of ground with the improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of

The said grantors, as well at law as in equity, of in, and to the same.

To have and to hold the said lot or piece of ground described with the improvements thereon erected, with the hereditaments and premises hereby granted or mentioned and intended so to be, with they appurtenances, unto the said Grantee, its heirs and assigns, to and for the only proper use and behhof of the said Grantee, its heirs and assigns forever. Under and subject as aforesaid.

AND the said Grantors for themselves, their heirs and assigns that they the said Grantors and their heirs and assigns, by these presents, that they the said Grantors and their heirs, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said Grantors, their heirs and assigns, against them the said Grantors and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by, from or under her, him, them or any of them, shall and will subject as aforesaid

BK 3556 PG 0470

WARRANT and forever DEFEND

IN WITNESS WHEREOF, the party of the first part has hereunto set their hand and seal
Dated the day and year first above written.

Vincent J. Poli (SEAL)
Vincent J. Poli, Trustee of The Vincent J. Poli
Trust Dated January 21, 1998

Norma A. Poli (SEAL)
Norma A. Poli, Trustee of the Norma A. Poli
Trust Dated January 21, 1998

DEED

TO

Premises:

I hereby certify that the address of
the above-named Grantee is :

Lot 1 Section 1
Cherokee Industrial Park
Jacksonville Road & Commerce Drive
Northampton Township, Bucks Co., PA

On behalf of the Grantee:

GERARD J. WOODS, P.C.
P.O. Box 3195
Maple Glen, PA 19002

COMMONWEALTH OF PENNSYLVANIA

ss

COUNTY OF MONTGOMERY

On this the 19th March, 2003, before me, a Notary Public for the Commonwealth of
Pennsylvania, the undersigned Officer, personally appeared Norma A Poli and Vincent J.
Poli, known to be the persons whose name is subscribed to the within instrument, and
acknowledged that they executed the same for the purposes therein contained.

I hereunto set my hand and official seal.

Gerard J. Woods
NOTARY PUBLIC

NOTARIAL SEAL
GERALD J. WOODS, Notary Public
Abington Twp., Montgomery County
My Commission Expires March 23, 2004

BK 3556 PG 0471

2007 SEP -2 PM 1:33

170177

RECEIVED RECORDS
JULY 2007 PA

SFP-2 03

Edward P. Blalock

#	170177
09-02-03 07:20C004	214764
PA TRAN TAX	\$2577.01
NHPTN TWP	\$1288.50
CUNCL RCK SD	\$1288.51



5.18

BK.3556.P00472



Township of Northampton

NORTHAMPTON TOWNSHIP COMPLEX • 55 Township Road, Richboro, Pennsylvania 18954-1592
Township Administration - (215) 357-6800 • Fax: (215) 357-1251

SUPERVISORS

William J. Benner
Chairman

Peter F. Palonina
Vice Chairman

George F. Komalchak
Treasurer

James E. Kinney
Secretary

Thomas A. Zinner

RETURN RECEIPT REQUESTED
CERTIFIED RECEIPT Z 284 617 757

July 16, 1997

AWACS, Inc./Comcast
480 E. Swedenford Road
Wayne, PA 19087

RE: Approval With Conditions
AWACS, Inc./Comcast Conditional Use Application
and Land Development Application

Dear Sir/Madam:

I am pleased to inform you that your application for conditional use and land development was approved (contingent upon your willingness to revise the plans and/or application to comply with the conditions imposed by the Board of Supervisors) at their meeting of July 9, 1997. Your formal notice of approval with conditions is enclosed. Please review this document carefully. Acceptance of this approval with conditions requires the execution of this document and its return within 10 days of its receipt.

Very truly yours,

D. Bruce Townsend
Township Manager

DBT:cam

c: William Benner
Vincent and Norna Poli
Betzwood Associates
Northampton Township Engineer
Northampton Township Planning Commission
Bucks County Planning Commission
N.B.C.M.A.

PLAN APPROVAL WITH CONDITIONS

Application of AWACS, INC.

Date of Application February 24, 1997

Plan dated _____, last revised June 1997

AWACS - CONDITIONAL USE AND LAND DEVELOPMENT APPLICATION

On July 9, 1997, the Board of Supervisors of Northampton Township approved the above identified application with the following conditions. Acceptance of this approval with conditions shall be accomplished by properly executing and returning this document to the Township within ten (10) days of its receipt. A failure to accept this approval with conditions in a timely manner will automatically result in a rescission of this approval in accordance with Section 118-10(a) (4) (b) of the Northampton Township Code.

Conditions of Subdivision and/or Land Development Approval:

1. All fees relating to this application as a conditional use, land development and subdivision should be submitted to the satisfaction of the Township Administration.
2. The land development plan should be revised to show additional deciduous landscaping in addition to the evergreen trees already proposed, to the satisfaction of the Township Engineer.
3. The plan should be revised to indicate that the tower has been approved under the condition that a collocation is to be utilized by AWACS for both NEXTEL as well as Bell Atlantic.

The undersigned applicant(s) hereby accepts and approves the approval with conditions of this application by the Board of Supervisors of Northampton Township as set forth above. By the signature(s) affixed below the undersigned certifies that he/she is the applicant(s) or is an authorized representative or agent of the applicant and possesses full authority to sign hereto.

Neil Arballo (Agent, Awacs, Inc.,
 Applicant (a/b/a Comcast
 610 995 5934)

Applicant

By signature affixed above, the applicant(s) acknowledge receipt of the instant decision of the Board of Supervisors this _____ day of _____, 19 _____

PDF
Original Image of 688 A.2d 744 (PDF)

KeyCite Yellow Flag - Negative Treatment
Distinguished by Upper Southampton Tp. v. Upper Southampton
Township Zoning Hearing Bd., Pa.Cmwlt., October 18, 2005

688 A.2d 744
Commonwealth Court of Pennsylvania.

TU-WAY TOWER CO., Appellant,
v.
ZONING HEARING BOARD OF the TOWNSHIP
OF SALISBURY and Township of Salisbury.

Submitted Dec. 9, 1996. Decided Jan. 21, 1997.

Communications tower owner appealed zoning hearing board's denial of its application to extend height of tower, or to build new towers and accessory electronics building. The Common Pleas Court, Lehigh County, No. 95-C-0031, Wallitsch, J., affirmed. Owner appealed. The Commonwealth Court, No. 411 C.D.1996, Colins, President Judge, held that: (1) proposed extension or building of new towers did not constitute subdivision or development, so as to be exempt from pending ordinance doctrine, and (2) board did not abuse its discretion in finding that tower was communication tower, as opposed to television/FM broadcast tower, under zoning ordinance limiting tower heights.

Affirmed.

West Headnotes (5)

1 Zoning and Planning
⇒ Change of regulations as affecting right
Under pending ordinance doctrine, building permit may be refused if at time of application there is pending an amendment to zoning ordinance which would prohibit use of land for which permit is sought.

3 Cases that cite this headnote

2 Zoning and Planning
⇒ Telecommunications towers and facilities
Variance applicant's proposed extension of height of communications tower, or building of new communications towers together with accessory electronics building, did not constitute

"subdivision," so as to be exempt from pending ordinance doctrine. 53 P.S. §§ 10107, 10603(c)(2.1).

4 Cases that cite this headnote

3 Zoning and Planning
⇒ Telecommunications towers and facilities
Variance applicant's proposed extension of height of communications tower, or building of new communications towers together with accessory electronics building, did not constitute "land development," so as to be exempt from pending ordinance doctrine, where township did not require land development plans for initial construction of tower or for its current proposals. 53 P.S. §§ 10107, 10603(c)(2.1).

8 Cases that cite this headnote

4 Zoning and Planning
⇒ Telecommunications towers and facilities
Zoning board did not abuse its discretion in finding that tower was "communication tower," as opposed to "television/FM broadcast tower," under zoning ordinance limiting tower heights, where board accepted thorough testimony of township's expert that broadcasts from tower were intended for general public use, as opposed to private commercial use. Salisbury Township, Pa., Zoning Ordinance.

3 Cases that cite this headnote

5 Zoning and Planning
⇒ Evidence
Zoning and Planning
⇒ Credibility determinations
Zoning board, as fact finder, is ultimate judge of credibility and resolves all conflicts of evidence.

1 Cases that cite this headnote

Attorneys and Law Firms

*745 Kevin Frank Danyi, Bethlehem, for appellant.

Victor F. Cavacini, Allentown, for appellee, Zoning Hearing Board of Salisbury Township.

Maria C. Mullane, Allentown, for appellee, Township of Salisbury.

Before COLINS, President Judge, DOYLE, J., and LORD, Senior Judge.

Opinion

COLINS, President Judge.

Tu-Way Tower Co. (Tu-Way) appeals the order of the Court of Common Pleas of Lehigh County (common pleas court) affirming the decision of the Zoning Hearing Board of Salisbury Township (Board) denying Tu-Way's application for a special exception or variance to extend the height of its communications tower by 200 feet and/or to erect two new 200-foot communications towers and accessory buildings. We affirm.

Tu-Way owns twelve acres of land located on a mountain top in Salisbury Township (Township). In 1990, Tu-Way received a special exception to construct, and did in fact construct, a 200-foot communications tower upon this land with an unattended accessory building housing electronics equipment. In 1994, Tu-Way filed with the Board two applications for a special exception or, in the alternative, for a variance to (1) add an additional 200 feet to the height of its tower and (2) erect two additional 200-foot communications towers together with unmanned accessory electronics buildings.

Prior to Tu-way's applications, however, the Township had given public notice of its intention to amend provisions of the Township's Zoning Ordinance (Ordinance) affecting communications towers. In fact, a public meeting was held by the Township Planning Commission, and a public hearing was scheduled on the proposed changes prior to Tu-Way's applications. The Township enacted amendments to the Ordinance concerning communications towers shortly after Tu-Way's applications were filed (hereinafter, said amendments shall be referred to as the "New Ordinance").

The New Ordinance differs from the prior Ordinance provisions (Old Ordinance) in one respect material to this case: it increased the setback requirements for a communications tower to the full height of the tower. The Old Ordinance required that the setback for a communications tower be only one-half of the height of the tower. Tu-Way's first application for a special exception proposed a 400-foot

tower with setbacks of 222 feet on one side and 202 feet on the other.

*746 1 The Board denied Tu-Way's applications for several reasons relevant to this appeal. First, it determined that Tu-Way's proposal to increase the height of its tower would not be in conformance with the setback requirements of the New Ordinance. The Board applied the New Ordinance rather than the Old under the "pending ordinance doctrine," which provides, generally, that "a building permit may be refused if at the time of application there is pending an amendment to the zoning ordinance which would prohibit the use of the land for which the permit is sought." *Marinari v. Zoning Hearing Board of New Hanover Township*, 90 Pa.Cmwlth. 601, 496 A.2d 121, 123 (1985), *petition for allowance of appeal denied*, 520 Pa. 621, 554 A.2d 512 (1989).

Second, the Board determined that Tu-Way's proposed 400-foot tower was a "communication or microwave tower" as defined by the Ordinance and not a "television/FM broadcast tower" as argued by Tu-Way. Both the Old and New Ordinances limit the height of communications or microwave towers to 200 feet; a television/FM broadcast tower may reach the height of 700 feet.

Third, the Board found that Tu-Way failed to meet a provision of the New Ordinance that requires that an applicant who proposes to construct a new tower demonstrate that existing towers owned by the applicant (or any affiliate or subsidiary) "cannot reasonably accommodate the telecommunications equipment planned for the proposed tower, the intent being to maximize the use of existing towers." Section 402.16.j of the New Ordinance. A somewhat similar provision was found in the Old Ordinance, and the Board found that Tu-Way would have failed to meet the requirements under the Old Ordinance also. In part, these findings were based upon Tu-Way's own evidence, which showed that there remains some space on its existing tower to accommodate new uses.

The common pleas court affirmed the Board's denial of a special exception and/or variance. Although several other issues were raised and argued before the Board and the common pleas court, Tu-Way, on appeal to this Court, presents only the following three issues: (1) whether Tu-Way's proposal, to extend its tower by 200 feet and/or add two additional 200-foot towers with accessory buildings, constitutes "land development" under the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §§ 10101-11202, and under the Township Ordinance; (2) assuming Tu-

Way's proposal constitutes "land development," whether the pending ordinance doctrine is applicable to Tu-Way's application; and (3) whether Tu-Way's tower can be considered a television/FM broadcast tower allowing for a height greater than 200 feet. In a zoning appeal where the common pleas court takes no additional evidence, our scope of review is limited to determining whether the zoning hearing board manifestly abused its discretion or committed an error of law. *Valley View Civic Association v. Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d 637 (1983). A zoning hearing board abuses its discretion when its findings are not supported by substantial evidence. *Id.*

Although Tu-Way presents three issues before us, it does not directly address the basic issue presented in this case: whether the Board erred by denying Tu-Way's applications for a special exception and/or variance. Nothing in Tu-Way's brief indicates that it is challenging the Board's determination regarding the denial of a variance. The three issues it raises touch upon the Board's denial of a special exception to increase the height of the tower and perhaps to erect two new towers. Tu-Way, however, does not challenge the Board's finding that there remains space on its existing tower for new business, which would prohibit the grant of a special exception under both the New and Old Ordinances. Therefore, even if we were to decide in Tu-way's favor under the three issues it raises, we would still be without a basis to reverse the Board. Assuming, however, that Tu-Way proposes to branch into new business in excess of its current capacity, we shall briefly address the issues raised by Tu-Way and explain why we do not believe the Board erred or abused its discretion with respect to them.

Tu-Way's initial argument, that its proposal constitutes a land development or subdivision under the MPC and Ordinance, is significant *747 under the facts of this case because of the provisions of Section 603(c)(2.1) of the MPC, 53 P.S. § 10603(c)(2.1):

(2.1) when an application for ... a special exception ... is filed with the zoning hearing board ... and the subject matter of such application would ultimately constitute either a 'land development' as defined in section 107 [53 P.S. § 10107] or a 'subdivision' as defined in section 107, no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed....

Thus, if Tu-Way's proposal constitutes either land development or a subdivision under the MPC, then the pending ordinance doctrine does not apply, and Tu-Way's applications are to be reviewed under the provisions of the Old Ordinance, which, among other things, provides for shorter setback requirements.

Section 107 of the MPC, 53 P.S. § 10107, defines "land development" and "subdivision" as follows:

"Land development," any of the following activities:

(1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:

(i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or

(ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.

(2) A subdivision of land.

(3) Development in accordance with section 503(1.1) [not applicable to this case].

"Subdivision," the division or redivision of a lot, tract or parcel of land....

2 We agree with the Board and common pleas court that Tu-Way's proposal does not fall under either of these definitions. First, it is very clear that Tu-Way is not proposing the division or redivision of a piece of land; therefore, Tu-Way is not proposing a subdivision.

3 Second, Tu-Way is not proposing the development of its land with residential or nonresidential buildings. The fact that Tu-Way wishes to construct buildings accessory to its proposed towers does not raise its proposal to a level of land development. Tu-Way did not come before the Board to develop its land with residential or commercial buildings but, rather, to extend a tower or erect additional towers, activities which are not defined as land development under the MPC. Tu-Way concedes that the Township did not require land development plans for Tu-Way's initial construction of its tower and accessory building or for its current proposals. As

the common pleas court concluded, the Township Ordinance requires only that Tu-Way apply for a special exception for that which it proposes. In *Kirk v. Smay*, 28 Pa.Cmwlth. 13, 367 A.2d 760 (1976), this Court determined that the proposed construction of a single medical office building on the grounds of a completed shopping center did not rise to the level of land development as defined in the MPC. Here, the proposal to construct accessory buildings on a developed piece of land likewise does not rise to the level of land development.

Third, Tu-Way's argument that its proposal is land development because it plans to divide "space" on its tower among "lessees" is similarly unpersuasive. Again, the Ordinance does not require land division approval for that which Tu-Way proposes. Further, Tu-Way does not propose the leasing of any realty by other parties. Finally, the Board and common pleas court did not err by characterizing Tu-Way's conveyance of antenna space on its tower as a license rather than a lease. Tu-way's efforts to declare the definition of "land development" in Section 107 of the MPC ambiguous so as to force an interpretation favorable to Tu-Way is undercut *748 by the fact that this definition is not ambiguous as applied to the facts of this case. Tu-Way's strained interpretation of "land development" does not fall within the language of the MPC.

Because Tu-Way's proposals do not constitute land development or a subdivision, the Board's application of the pending ordinance doctrine is not foreclosed by Section 603(c)(2.1) of the MPC. Tu-Way does not raise any other argument against the application of the pending ordinance doctrine in this case except for the savings provisions of Section 603(c)(2.1), and we see nothing in the record that indicates that the Board incorrectly applied the provisions of

the New Ordinance to Tu-Way's applications for a special exception.

4 5 Further, we find that the Board did not err or abuse its discretion in finding that Tu-Way's existing tower is a communications tower under the Ordinance as opposed to a television/FM broadcast tower. Both Tu-Way and the Township presented expert testimony regarding this issue. The Township's expert explained how Tu-Way's use and proposed use of the tower are distinct from television/FM broadcasts, most notably because such broadcasts are intended for general public use as opposed to private commercial use, such as a trucking company that desires to communicate only with its truck operators. *See* N.T., October 25, 1994, pp. 113-17. Tu-Way's expert testified that Tu-Way's proposed communications equipment for the tower covers frequencies previously used with television broadcasts (and for this reason is analogous to television broadcasts), but with the intent that this equipment be used for private or "for fee" users. The Board, as the fact finder, is the ultimate judge of credibility and resolves all conflicts of evidence. *Constantino v. Zoning Hearing Board of the Borough of Forest Hills*, 152 Pa.Cmwlth. 258, 618 A.2d 1193 (1992). Here, the Board accepted the thorough testimony of the Township's witness, and there is nothing in the record to suggest that the Board abused its discretion by so doing.

Accordingly, the order of the common pleas court is affirmed.

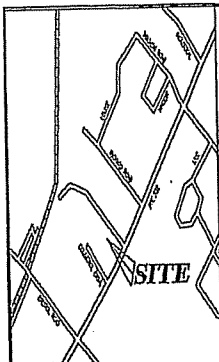
ORDER

AND NOW, this 21st day of January, 1997, the order of the Court of Common Pleas of Lehigh County in the above-captioned matter is **AFFIRMED**.

End of Document

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WARRINGTON/JAMISON PA-0170



VICINITY MAP

THE VALUES AS SHOWN ON THIS DRAWING WERE DERIVED FROM THE INFORMATION AVAILABLE. THIS IS NOT A BOUNDARY SURVEY. THE CLIENTS RESPONSIBILITY TO VERIFY THE LOCATION OF ALL UTILITIES (UNDERGROUND OR NOT) AND PROTECT AND MARK THEM AS NECESSARY.

SHEET 2 of 3

AS-BUILT SURVEY

Date 04/19/01

Drawn By C.R.S.

Approved By J.A.A.

Drawn No. P01029

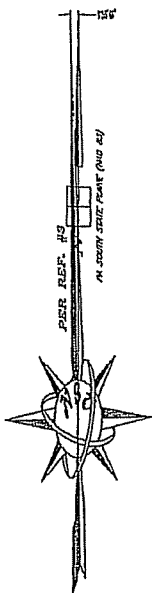
Project No. P01029

REVISIONS

DESCRIPTION:	DATE:
PER COMMENTS	01/20/01
REVISE DATUM	10/20/01

Work Coordinated by:

BASC NATIONAL, INC.
 100 WILSON STREET
 WARRINGTON, PA 18981
 TELEPHONE (610) 577-7411 FAX (610) 577-7411



COMMERCE DRIVE
 (ASPHALT DRIVE, 40' WIDE, 6' HIGH CURB, 6' HIGH SIDEWALK)

JACKSONVILLE ROAD
 (ASPHALT DRIVE, 40' WIDE, 6' HIGH CURB, 6' HIGH SIDEWALK)

GRAPHIC SCALE



(IN FEET)
 1 inch = 50 ft.

LEGEND

---U--- EXISTING UTILITY	---M--- EXISTING MOUND
---S--- EXISTING SURFACE	---A--- APPROX. LOC. UNDERGROUND GAS LINE
---T--- EXIST. TOP OF CURB ELEVATION	---P--- APPROX. LOC. UNDERGROUND WATER LINE
---E--- EXIST. EXTER. ELEVATION	---L--- APPROX. LOC. UNDERGROUND TEL. LINE
---X--- APPROX.	---+--- VALVE POLE
---M--- UTILITY MARK	---#--- WATER MARK
---O--- EXISTING WALL	---@--- TELE. MARK ELEVATION

PARENT TRACT DETAIL
 (THIS IS NOT A BOUNDARY SURVEY)
 (SCALE 1" = 50')

Prepared For:
SPECTRASITE COMMUNICATIONS
 100 REGENCY FOREST DRIVE, SUITE 400
 CARY, NC. 27511

Project Location
 NORTHAMPTON, PENNSYLVANIA

Project Address
 40 COMMERCE DRIVE

Site Name
 WARRINGTON/JAMISON

SpectraSite Number
 PA-0170

I HEREBY CERTIFY THAT THIS SURVEY HAS BEEN PERFORMED IN THE FIELD UNDER MY SUPERVISION AND TO THE BEST OF MY KNOWLEDGE, BELIEF, AND INFORMATION, THAT THIS SURVEY HAS BEEN PERFORMED IN ACCORDANCE WITH CURRENTLY ADOPTED ACCURACY STANDARDS. THAT THE PROPERTY LINES AND RELATIONSHIP OF BOUNDARIES AND THEIR CONNECTIONS TO THE PROPERTY LINES AND THE LAND INDICATED HEREON IS CORRECT, AND THAT THERE ARE NO ENCUMBRANCES OR EASEMENTS OR STRUCTURES ON SAID LAND EXCEPT AS SHOWN ON THIS PLAN.

DATE: 10/30/01

RAYMOND P. [Signature]
 PENNSYLVANIA PROFESSIONAL LAND SURVEYOR - No. 10000

Transmittals
 1547 W. Birch Street
 Suite 119
 Quakertown, PA 17351
 (610) 513-6535

Site Survey
 301 Second Avenue
 Suite 6A
 Oriskany, NY 13771
 (518) 811-5283

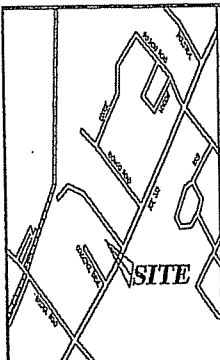
NorthStar Technology, Inc.
 Land Surveying • Computer Mapping • GIS Services • Technical Assistance

PARENT TRACT DETAIL
SPECTRASITE COMMUNICATIONS

40 COMMERCE DRIVE
 PART OF PARCEL 31-1-1-1
 NORTHAMPTON TOWNSHIP
 BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA

ISSUED	DATE	BY	PROJECT	DRAWN BY	CHECKED BY	SCALE	SHEET NO.
3-16-01	4-19-01	J.A.A.	1-57	CRS	J.A.A.	2 OF 3	

WARRINGTON/JAMISON PA-0170



VICINITY MAP

ELEVATION DATUM
 ALL ELEVATIONS ARE BASED ON USCGA6 DATUM (MAY 1988).
 GROUND ELEVATION: 263.80 (ANSL)
 STRUCTURE HEIGHT: 147.12 FT. (ASL)
 ELEVATION AT TOP OF TOWER: 410.92 (ANSL)
 ELEVATION OF HIGHEST POINT: 414.57 (ANSL)

CELL ANTENNA ARRAY #1
 TOP OF ANTENNA: 414.57 (ANSL)
 BOTTOM OF ANTENNA: 410.59 (ANSL)
 MOUNT POINT: 409.98 (ANSL)

CELL ANTENNA ARRAY #2
 TOP OF ANTENNA: 398.42 (ANSL)
 BOTTOM OF ANTENNA: 394.72 (ANSL)
 MOUNT POINT: 396.00 (ANSL)

LATITUDE & LONGITUDE

LATITUDE AND LONGITUDE OF EXISTING TOWER IS BASED ON NAD 1983.

LATITUDE: N 40° 12' 54.0"
 LONGITUDE: W 75° 03' 47.3"

BASIS OF BEARINGS: PER D.B. 1532, PG. 1161 & PA SOUTH STATE PLANE GRID (H4083).

NOTES:

1. PROPERTY OWNER AS SHOWN ON MAPS 31-1-1-1 IS IDENTIFIED AS THE OWNER BY MAPS OF BUCKS COUNTY, PENNSYLVANIA, COMMISSION OF PENNSYLVANIA.
2. WORK PERFORMED ON 04/19/01.
3. THE PLAN IS BASED ON INFORMATION PROVIDED BY A SURVEY PERFORMED IN THE FIELD BY WARRINGTON/JAMISON, INC. AND OTHER RELEVANT DATA. AS LATER DISCOVERED, THE SURVEY WAS PERFORMED BY THE SURVEYOR OF A FIRM OTHER.
4. LOCATIONS OF ALL INTERFERING UTILITIES ARE INDICATED ON THIS PLAN BY DOTTED LINES. THESE UTILITIES INCLUDE POWER, WATER, GAS, AND TELEPHONE LINES. THE LOCATION OF ALL UTILITIES IS BASED ON THE DATA PROVIDED BY THE UTILITY COMPANIES. THE SURVEYOR HAS MADE REASONABLE ATTEMPTS TO LOCATE ALL UTILITIES AND HAS INDICATED THEIR LOCATION ON THIS PLAN.
5. THIS SURVEY MAY BE SUBJECT TO INTERFERING UTILITIES AND/OR OBSTRUCTIONS, WHICH ARE NOT SHOWN.
6. THE LOCATION OF ANY INTERFERING UTILITIES, IF ANY, HAS BEEN CHECKED AT THE TIME OF THIS SURVEY.
7. DIMENSIONS ARE GIVEN UNLESS OTHERWISE NOTED BY THIS SURVEYOR.
8. PROPERTY IS LOCATED IN BLOCK 1000, TOWNSHIP 1 N, RANGE 10 E, COUNTY OF BUCKS, PENNSYLVANIA.
9. ACCESS TO THE WORK AREA FROM THE PUBLIC ROAD IS THROUGH A DRIVEWAY 6' BY 10' IN WIDTH, 10' IN DEPTH, AND 10' IN WIDTH. THE LOCATION OF ACCESS AND USE OF THE DRIVEWAY SHALL BE PROVIDED BY THE UTILITY COMPANIES AT THE TIME OF THIS SURVEY.
10. THIS SURVEY IS THE WORK PRODUCT OF THE SURVEYOR AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE SURVEYOR.

REFERENCES:

1. THE OFFICE RECORDS OF BUCKS COUNTY, PENNSYLVANIA, COMMISSION OF PENNSYLVANIA.
2. THE OFFICE RECORDS OF BUCKS COUNTY, PENNSYLVANIA, COMMISSION OF PENNSYLVANIA, MAPS 31-1-1-1.
3. THE OFFICE RECORDS OF BUCKS COUNTY, PENNSYLVANIA, COMMISSION OF PENNSYLVANIA, MAPS 31-1-1-1.

THE UTILITIES AS SHOWN ON THIS DRAWING WERE PROVIDED FROM THE INFORMATION AVAILABLE. THIS IS NOT A GUARANTEE AND IS NOT TO BE USED AS A BASIS FOR LIABILITY. THE CLIENTS RESPONSIBILITY IS TO VERIFY THE LOCATION OF ALL UTILITIES (PNEUMATIC SURVEY OR NOT) AND PROTECT SAID UTILITIES FROM ANY DAMAGE.

SHEET 3 of 3

AS-BUILT SURVEY

Date: 04/19/01

Drawn By: C.R.S.

Approved By: J.A.A.

Drawn No.: PD1029

PROJ. NO.: PD1029

REVISIONS	
DESCRIPTION	DATE
PER COMMENTS	01/20/01
REVISE DATUM	10/20/01

Work Coordinated by:

BASC NATIONAL LLC
 HIGHWAY 28 STREET
 WARRINGTON, PA 18981
 TELEPHONE 717.451.1111 FAX 717.451.1111

PROFESSIONAL CERTIFICATION

I, **RAYMOND P. FLETCHER**, IN PERSON OR BY DEPUTY, DO HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE SURVEY WAS MADE ON THE FIELD UNDER MY PERSONAL SUPERVISION AND THAT THIS IS A TRUE, CORRECT REPRESENTATION OF THE DATA AS TAKEN AT THE TIME OF THE SURVEY, AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF PENNSYLVANIA. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY OF ANY KIND FOR THE DATA OR SURVEY. I AM PROVIDING THIS INFORMATION FOR YOUR INFORMATION ONLY. I AM NOT PROVIDING ANY GUARANTEE OR WARRANTY OF ANY KIND FOR THE DATA OR SURVEY.

(1) I CERTIFY THAT THE LOCATION AND CHARACTER OF ALL UTILITIES, POWER, WATER, GAS, AND TELEPHONE LINES, AND OTHER UTILITIES AS SHOWN ON THIS PLAN ARE BASED ON THE DATA PROVIDED BY THE UTILITY COMPANIES AND THAT I HAVE MADE REASONABLE ATTEMPTS TO LOCATE ALL UTILITIES AND INDICATE THEIR LOCATION ON THIS PLAN.

(2) I CERTIFY AS SHOWN ON THIS PLAN THAT NO INTERFERING UTILITIES OR OBSTRUCTIONS, WHICH ARE NOT SHOWN, ARE PRESENT.

(3) I CERTIFY AS SHOWN ON THIS PLAN THAT THE LOCATION OF ALL UTILITIES, POWER, WATER, GAS, AND TELEPHONE LINES, AND OTHER UTILITIES AS SHOWN ON THIS PLAN ARE BASED ON THE DATA PROVIDED BY THE UTILITY COMPANIES AND THAT I HAVE MADE REASONABLE ATTEMPTS TO LOCATE ALL UTILITIES AND INDICATE THEIR LOCATION ON THIS PLAN.

(4) I CERTIFY AS SHOWN ON THIS PLAN THAT THE LOCATION OF ALL UTILITIES, POWER, WATER, GAS, AND TELEPHONE LINES, AND OTHER UTILITIES AS SHOWN ON THIS PLAN ARE BASED ON THE DATA PROVIDED BY THE UTILITY COMPANIES AND THAT I HAVE MADE REASONABLE ATTEMPTS TO LOCATE ALL UTILITIES AND INDICATE THEIR LOCATION ON THIS PLAN.

(5) I CERTIFY AS SHOWN ON THIS PLAN THAT THE LOCATION OF ALL UTILITIES, POWER, WATER, GAS, AND TELEPHONE LINES, AND OTHER UTILITIES AS SHOWN ON THIS PLAN ARE BASED ON THE DATA PROVIDED BY THE UTILITY COMPANIES AND THAT I HAVE MADE REASONABLE ATTEMPTS TO LOCATE ALL UTILITIES AND INDICATE THEIR LOCATION ON THIS PLAN.

RAYMOND P. FLETCHER
 10/30/01
 SURVEYOR

FIELD AND BOUNDARY SURVEY
 DATE: 04/19/01
 PROJECT: WARRINGTON/JAMISON
 BUCKS COUNTY, PENNSYLVANIA

CONDUCTED AS A PART OF THE SURVEY FOR THE INSTALLATION OF CELL ANTENNAS AT THE INTERSECTION OF WARRINGTON AND JAMISON ROADS. THE SURVEY WAS PERFORMED BY THE SURVEYOR OF A FIRM OTHER.

THIS SURVEY IS THE WORK PRODUCT OF THE SURVEYOR AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE SURVEYOR.

1. SURVEY IS BASED ON INFORMATION PROVIDED BY A SURVEY PERFORMED IN THE FIELD BY WARRINGTON/JAMISON, INC. AND OTHER RELEVANT DATA. AS LATER DISCOVERED, THE SURVEY WAS PERFORMED BY THE SURVEYOR OF A FIRM OTHER.

2. SURVEY IS BASED ON INFORMATION PROVIDED BY A SURVEY PERFORMED IN THE FIELD BY WARRINGTON/JAMISON, INC. AND OTHER RELEVANT DATA. AS LATER DISCOVERED, THE SURVEY WAS PERFORMED BY THE SURVEYOR OF A FIRM OTHER.

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04/19/01 OR DATE HERE

FIELD AND BOUNDARY SURVEY
 DATE: 04/19/01
 PROJECT: WARRINGTON/JAMISON
 BUCKS COUNTY, PENNSYLVANIA

CONDUCTED AS A PART OF THE SURVEY FOR THE INSTALLATION OF CELL ANTENNAS AT THE INTERSECTION OF WARRINGTON AND JAMISON ROADS. THE SURVEY WAS PERFORMED BY THE SURVEYOR OF A FIRM OTHER.

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04/19/01 OR DATE HERE

Prepared For:

SPECTRASITE COMMUNICATIONS
 100 REGENCY FOREST DRIVE, SUITE 400
 CARY, NC 27511

Project Location
 NORTHAMPTON, PENNSYLVANIA

Project Address
 40 COMMERCE DRIVE

Site Name
 WARRINGTON/JAMISON

SpectraSite Number
 PA-0170

I HEREBY CERTIFY THAT THIS SURVEY HAS BEEN PERFORMED IN THE FIELD UNDER MY SUPERVISION AND TO THE BEST OF MY KNOWLEDGE, BELIEF, AND INFORMATION, THAT THIS SURVEY HAS BEEN PERFORMED IN ACCORDANCE WITH CURRENTLY APPLICABLE PROFESSIONAL STANDARDS AND THAT THE SURVEYOR HAS MADE REASONABLE ATTEMPTS TO LOCATE ALL UTILITIES AND INDICATE THEIR LOCATION ON THIS PLAN.

THE OFFICERS SHOWING THE SIGNATURES ON THIS SURVEY ARE NOT PROVIDING ANY GUARANTEE OR WARRANTY OF ANY KIND FOR THE DATA OR SURVEY.

RAYMOND P. FLETCHER
 10/30/01
 SURVEYOR

NorthStar Technology, Inc.
 Land Surveying • Computer Mapping • GIS Services • Technical Animation

PARTIAL BOUNDARY AND TOPOGRAPHIC SURVEY
SPECTRASITE COMMUNICATIONS
 40 COMMERCE DRIVE
 PART OF PARCEL 31-1-1-1
 NORTHAMPTON TOWNSHIP
 BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA

PROJECT NO.	DATE	SCALE	PLotted IN	CREATED BY	CHECKED BY	COPY NO.
PA-0170	4-19-01	1"=20'	POWER	C.R.S.	J.A.A.	3 OF 3

ZONING HEARING BOARD OF NORTHEAMPTON TOWNSHIP

NO. 2011-15

APPEAL OF ATC Outdoor DAS LLC.

OPINION

This is Appeal No. 2011-15 of ATC Outdoor DAS LLC. The property involved in the application is known as 40 Commerce Drive, Ivyland, PA 18974 and as TMP #31-1-1-1. Applicant desires to install one equipment shelter within the existing fenced compound as an accessory structure to the existing telecommunications facility on the property. Applicant appeals from the decision of the Director of Planning and Zoning dated June 29, 2011. Applicant asserts that no land development is required for its proposed use, that the proposed accessory structure is related to a permitted use, that the Zoning Officer should have considered Applicant's permit application and that the installation of the accessory structure does not require zoning approval. Applicant further seeks an interpretation of the zoning ordinances in support of its assertions. Applicant seeks an interpretation of the following ordinances: 140-58.5, 140-10, 140-13.1, 140-13.3, 140-14 through 17, 140-20, 140-21, 140-21.1, 140-23, 140-35, 140-28, 140-36 and 140-36.1 and such other ordinances as may relate to Applicant's proposed use. The property is zoned I-1 Planned Industrial/Office District.

FINDINGS OF FACT

1. Legal notice of the hearing was given as required by the Zoning Hearing Board's rules, the Zoning Ordinance and the Municipal Planning Code.
2. The application concerns property known as 40 Commerce Drive, Ivyland, PA 18974 (the "Property"). The Property's tax parcel number is 31-1-1-1.



3. Applicant has standing to make this application to the Board. Applicant is a lessee and the owner signed the application.
4. The property is zoned R-1 I-1 Planned Industrial/Office District.
5. The Property's size is approximately 2.106 acres.
6. The Property currently has on it an approved telecommunication facility that includes three one story equipment buildings and a 112 foot high monopole with antennas.
7. On July 9, 1997, the Board of Supervisors approved a conditional use and a land development plan so that the Property may be used as set forth in paragraph 6.
8. Applicant is in the business of deploying and constructing telecommunication facilities.
9. The Pennsylvania Utility Commission ("PUC") approved Applicant as a wireless access provider in 2008 (see Exhibit A5).
10. The existing equipment buildings and monopole are surrounded by a fence.
11. The surface area of the fenced in area consists of pressure packed gravel.
12. Applicant leases the whole fenced in compound from the owner of the Property and owns the monopole. Applicant has leases with AT&T, Verizon and Sprint for them to make use of the site.
13. Applicant desires to erect an unmanned equipment shelter within the fenced in area. The shelter would be 11 feet by 30 feet.
14. Applicant desires the new shelter for its DAS (Distributive Antenna System). A DAS system consists of small antennas and/or nodes that are located off site on telephone poles, street lamps and other structures. These antennas and/or nodes will

provide more coverage and capacity for the telecommunication companies' wireless services and reduce the need for additional towers to provide wireless services.

15. The same carriers that lease from Applicant on the Property may use Applicant's DAS system.

16. Applicant requires the new shelter to house the equipment needed for its DAS system. Applicant intends that this site will be a hub for its DAS system.

17. The DAS system will not be connected to the monopole.

18. The DAS system is a telecommunications system. Other telecommunication companies will make a physical connection between their equipment and the DAS system.

19. There was no opposition to the Applicant's application.

20. Applicant applied for a permit to construct the new shelter and the permit was not reviewed by the Township for the reasons set forth in the Director of Planning and Zoning's letter dated June 29, 2011 (see Exhibit A-4).

21. Applicant timely appealed the Zoning Officer's decision.

DISCUSSION

The Zoning Officer in his June 29, 2011 letter to Applicant (see Exhibit A-4) stated that he did not review Applicant's building permit application because he concluded: (1) that land development approval was required prior to the issuance of a building permit; and (2) that Applicant's proposed use was not related to a permitted use.

"Land Development" is defined in the Municipalities Planning Code ("MPC"), title 53 P.S. §10107, and in the Northampton Township Zoning Code, section 140-8. In regard to the facts of this case, there are no significant differences between the definitions.

The Pennsylvania Supreme Court in Upper Southampton Tp. v. Upper Southampton Zoning Hearing Board, 594 Pa. 58, 934 A.2d 1162 (2007) reviewed the definition of Land Development under the MPC. In so doing, the Court reviewed and approved the rationale of the Commonwealth Court in two cases, Tu-Way Tower Co. v. Zoning Hearing Board of the Township of Salisbury, 688 A.2d 744 (1997) (“Tu-Way”) and Marshall Tp. Zoning Hearing Board, 717 A.2d 1 (1998) (“Marshall”). The Supreme Court stated that the Applicant in Tu-Way wanted to construct “buildings accessory to its proposed towers” and that the Applicant in Marshall wanted to “replace an existing light pole located on a parking lot with a larger light pole and antenna and to construct five equipment cabinets at the base of the pole.” Upper Southampton Tp. v. Upper Southampton Zoning Hearing Board, 934 A.2d 1162, 1169 (2007). The Supreme Court stated that the:

common thread in these decisions is that the proposed use of the land did not include the construction of residential or commercial buildings. Thus, *Tu-Way* and *Marshall Township* comport with our plain reading of the statute to refer to the development of land involving the construction of residences or buildings that give rise to concerns regarding the provision of municipal services such as water management, streets, public convenience and the like. *Id.*, 934 A.2d at 1169.

In this case, Applicant proposed to place its equipment shelter on pressure packed stone, an impervious surface under the Zoning Code. Further, there was no testimony that any municipal services would be implicated by the construction of the shelter. Therefore, based on the Supreme Court’s rationale, the Zoning Hearing Board determined that Applicant’s proposal does not involve land development.

The permitted use for the Property is as a telecommunication facility for Applicant’s wireless services. Applicant’s proposal is directly related to its telecommunication and wireless services. Therefore, the Board finds that the Applicant’s proposed use is related to a permitted use.

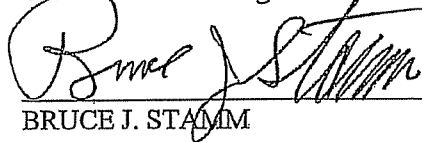
ORDER

AND NOW, this 24th day of October, 2011, the application is granted. All costs of these proceedings to be borne by Applicant.

ZONING HEARING BOARD OF
NORTHAMPTON TOWNSHIP

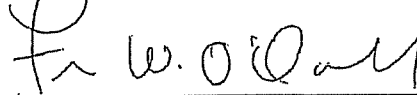


JOHN C. FENNINGHAM, ESQ.,
Chairman and Hearing Officer



BRUCE J. STAMM

Not a voting member on case.
MICHAEL F. GREEN



FRANCIS W. O'DONNELL

3. Michael T. Solomon ("Solomon") is Director of Planning and Zoning for the Township. In this capacity, Solomon maintains an office at 55 Township Road, Richboro, Pennsylvania 18954. Solomon is sued in his capacity as Director of Planning and Zoning.

B. ATC is a public utility.

4. At a public meeting of the Pennsylvania Public Utility Commission ("PUC") held on December 18, 2010, the PUC adopted an order granting ATC's application to operate as a public utility in the Commonwealth of Pennsylvania. A true and correct copy of the Public Utility Commission Approval to act as Competitive Access Provider ("CAP Approval") in the Commonwealth of Pennsylvania is attached hereto as Exhibit "A" and incorporated herein as if set forth fully.

5. ATC is a "public utility" as that term is defined by the Pennsylvania Public Utility Code, 66 Pa.C.S.A. §1102.

6. ATC is a provider of mobile telecommunication and broadband communication services.

C. Broadband Service Provided by Distributed Antenna Systems

7. The broadband service provided by ATC is dependent upon a technical system known as a Distributed Antenna System, or "DAS." DAS is comprised of several components, including remote nodes, generally referred to as utility boxes ("Utility Boxes"), and antennas ("Antennas") (collectively the "DAS Infrastructure").

8. The Utility Boxes are small boxes, measuring approximately 50" x 12" x 10." They are referred to as "slimline boxes" because they are closely attached to utility poles. The Utility Boxes function to carry the broadband signals throughout the DAS system.

9. The Antennas are small in size and mounted to the top of utility poles. The Antennas function is to send broadband signals throughout the DAS system.

10. ATC requires access to public rights-of-way in order to install the Utility Boxes and Antennas onto existing and new utility poles. The DAS Infrastructure will be connected by a combination of underground and aboveground fiber optic cables.

11. The DAS Infrastructure proposed to be installed in the Township is a part of a larger broadband service network being implemented by ATC in the municipalities of Northampton Township, Middletown Township, Newtown Township, Upper Southampton Township and Warminster Township, Bucks County.

12. ATC has current and valid agreements with PECO Energy Company, a Pennsylvania corporation ("PECO") and Verizon to permit the placement of the DAS Infrastructure on existing utility poles owned by those companies within the municipalities, including the Township.

13. The DAS Infrastructure is necessary to facilitate ATC's delivery of broadband service to customers within the Township and adjacent municipalities in Bucks County.

14. DAS is an important component of the national wireless telecommunications network because of its ability to provide wireless coverage or capacity where traditional cellular communications towers are insufficient.

15. The proposed service will include broadband for data (including high speed computer use), voice (telephone), and video communications.

16. The DAS Infrastructure will be located on existing utility poles and on newly installed poles within the public rights-of-way of the Township. A picture of two typical utility

17. The broadband service offered by ATC is a part of the United States National Broadband Plan and the Pennsylvania Broadband Initiatives.

18. Under the Pennsylvania Broadband Initiatives, adopted by the Pennsylvania General Assembly through an amendment to the Public Utility Code, as Act 183 of 2004, the Commonwealth recognized the need for rapid deployment of telephone and broadband infrastructure, such as the DAS Infrastructure proposed by ATC, to ensure economic competitiveness within the Commonwealth. See <http://www.newpa.com/strengthen-your-community/broadband-initiatives>

19. The Federal Communications Commission ("FCC") has recognized the need to remove local impediments to expedient, non-discriminatory and non-differential right-of-way access for mobile telephone and broadband infrastructure. <http://www.broadband.gov/plan/6-infrastructure/>

D. ATC efforts to install DAS Infrastructure in Northampton Township

20. In or about March 2011, ATC provided the Township with a submission entitled "Proposal for a Distributed Antenna System", which detailed the proposed DAS Infrastructure improvements. A true and correct copy of the submission is attached hereto as Exhibit "C" and incorporated herein as if set forth fully.

21. The purpose of the submission was to provide information to the Township as to the broadband service provided by ATC pursuant to the CAP Approval issued by the PUC.

22. By letter dated June 3, 2011 from counsel to ATC, directed to the solicitor of the Township, ATC provided the Township with legal support for ATC's position that it has the right to access the public rights of way in the Township to install the DAS Infrastructure. A true

and correct copy of the June 3, 2011 letter, including a form right-of-way agreement, is attached hereto as Exhibit "D" and incorporated herein as if set forth fully.

23. The Northampton Township Rights-of-Way Ordinance ("ROW Ordinance") purports to require users of the public rights-of-way within the Township who do not fall within the exceptions enumerated in the ROW Ordinance to obtain permits for such use. The ROW Ordinance further imposes a revenue-based fee on the user of the public rights-of-way. A true and correct copy of the ROW Ordinance is attached hereto as Exhibit "E" and incorporated herein as if set forth fully.

24. Section 106-4.B. of the ROW Ordinance provides for certain exemptions from the applicability of the ROW Ordinance. That Section provides, *inter alia*, that the ROW Ordinance "shall not apply to occupation or use of the public ways to provide:

* * * *

(6) The conveyance or transmission of messages or communication by telephone or telegraph for the public.

* * * *

(9) Any ancillary service reasonably necessary or appropriate for the accomplishment of service specified in Subsection B(1) through (8)."

See Exhibit "E", pp. 106:3-106:4.

25. ATC believes and therefore avers that the services which it is authorized to provide as a public utility pursuant to the CAP Approval issued by the PUC and its approved tariff fall within the scope of the exemptions provided at Section 106-4.B. of the ROW Ordinance.

26. ATC submitted applications to the Township seeking approval to install the utility infrastructure in the public rights-of-way, without prejudice to its contention that the Township lacks jurisdiction to control the installation of utility infrastructure by a public utility, as set forth in the June 3, 2011 letter to the Township solicitor (“See Exhibit “D”).

27. By letter dated August 4, 2011 the Township Director of Planning and Zoning, Solomon advised ATC that the permit applications were “administratively incomplete” as a result of the failure to submit additional electrical permit applications and additional fees. A true and correct copy of the August 4, 2011 letter is attached hereto as Exhibit “F” and incorporated herein.

28. The Township has advised ATC that it would not permit ATC to access the public rights-of-way without obtaining multiple permits and without payment of a “rental” fee equal to 5% of gross revenue derived by ATC from the DAS.

29. ATC believes and therefore avers that the Township is intentionally interfering with ATC’s efforts to install the DAS Infrastructure and is impeding the progress of ATC in its implementation of public utility services as a means of inducing ATC to pay fees to the Township that are not required or supportable by the ROW Ordinance and which are contrary to applicable law.

COUNT I
MANDAMUS

ATC Outdoor DAS, LLC. v. Michael T. Solomon
and Board of Supervisors of Northampton Township

30. Paragraphs 1 through 29 of the Complaint are incorporated herein by reference as if set forth in full.

31. The Public Utility Code preempts the field of public utility regulation. *See, e.g., County of Chester v. Philadelphia Electric Company*, 420 Pa. 422, 218 A.2d 331 (1966).

32. Any ordinance or resolution of the Township which purports to regulate the provision of service by a public utility within the public rights-of-way of the municipality is preempted by the Public Utility Code. *County of Chester v. Philadelphia Electric Company*, 420 Pa. 422, 218 A.2d 331 (1966).

33. The Township possesses no authority to regulate the location or installation of public utility infrastructure in the public rights-of-way of the Township through the requirement for permit applications and revenue-based fees. *See, e.g., PECO v. Township of Upper Dublin*, 922 A.2d 996 (Pa.Cmwlth. 2007).

34. The Township has a non-discretionary duty to permit public utilities to provide service through use of the public rights-of-way within Township boundaries, without impediment.

35. The Township, through Solomon, has breached this non-discretionary duty by refusing to permit ATC to install the DAS Infrastructure necessary for ATC to provide the utility services which it has been authorized to provide by the PUC.

36. The effect of the action of the Township and Solomon as of the date of the filing of this Complaint has been to delay and prevent ATC from providing utility services within the Township, as approved by the PUC in the CAP Approval.

37. ATC will be unable to provide public utility services to customers in the Township and adjacent municipalities unless and until the Township permits access to the public rights-of-way of Northampton Township without objection or interference.

38. Unless the Township promptly grants ATC an exemption from the ROW Ordinance and allows ATC to access to the public rights-of-way of the Township, ATC will suffer significant monetary damages as a result of ATC's existing contracts for service, including but not limited to monetary penalties, loss of revenue, loss of potential future business opportunities, and other non-recoverable expenses.

39. Where a Township breaches a nondiscretionary duty to perform a ministerial function, mandamus is appropriate as a matter of law.

40. ATC has no adequate or appropriate remedy at law.

WHEREFORE, Plaintiff ATC Outdoor DAS, LLC respectfully requests that this Honorable Court Order and Direct Solomon and the Township to issue ATC an exemption under Sections 106-4.B(6) and 106-4.B(9) of the ROW Ordinance so as to permit ATC to enter upon and use the public rights-of-way within the Township to install the DAS Infrastructure.

COUNT II
DECLARATORY JUDGMENT

ATC Outdoor DAS, LLC v.
Board of Supervisors of Northampton Township

41. Paragraphs 1 through 40 of the Complaint are incorporated herein as if set forth fully.

42. The ROW Ordinance expressly exempts "the conveyance or transmission of messages or communication by telephone or telegraph for the public" from regulation. See Exhibit "E".

43. ATC believes and therefore avers that ATC, as a public utility, is exempt from the requirements of the ROW Ordinance.

43. ATC believes and therefore avers that ATC, as a public utility, is exempt from the requirements of the ROW Ordinance.

44. The erection of the DAS Infrastructure as proposed by ATC, a public utility, is encompassed within the exemptions of Section 106-4.B.(6) and 106-4.B.(9) of the ROW Ordinance.

45. The Township's position that the ROW Ordinance applies to the proposed activity of ATC, a public utility, is inconsistent with the plain language of the ROW Ordinance.

46. There is a genuine dispute between the parties as to the proper construction of the ROW Ordinance and as applied to the facts of the current controversy.

47. The legal relations between ATC and the Township are affected by the ROW Ordinance and, accordingly, ATC is entitled under the provisions of the Declaratory Judgments Act, 42 Pa.C.S.A. § 7531 et seq., to obtain a declaration of its rights and status under the ROW Ordinance.

WHEREFORE, Plaintiff ATC Outdoor DAS, LLC respectfully requests that this Honorable Court to enter an Order:

- a. Declaring that the application of the ROW Ordinance to ATC, a public utility, is preempted by the Public Utility Code; and
- b. Declaring that pursuant to the ROW Ordinance, the proposed DAS Infrastructure placement in the Township ROW is exempt from regulation under the express language of the ROW Ordinance; and
- c. Granting such other and further relief as this Court deems just and proper.

COUNT III
EQUITY – PERMANENT INJUNCTION

**ATC Outdoor DAS, LLC v. Michael T. Solomon
and Board of Supervisors of Northampton Township**

48. Paragraphs 1 through 47 of the Complaint are incorporated herein as if set forth fully.

49. The ROW Ordinance is preempted by the provisions of the Pennsylvania Public Utility Code, which grants the Pennsylvania Public Utility Commission (“PUC”) sole authority to regulate the character of a public utility’s services and facilities.

50. The jurisdiction of the PUC covers all matters related to the operation of public utilities, including rates, service, use and installation of utility facilities and the location of utility facilities. *PECO v. Township of Upper Dublin*, 922 A.2d 996 (Pa.Cmwlth: 2007).

51. ATC believes and therefore avers that the Township is acting in an arbitrary manner that is contrary to law in attempting to require ATC to obtain permits under the ROW Ordinance for the proposed utility infrastructure.

52. A permanent injunction will lie where the plaintiff establishes a clear right to relief. *Buffalo Township v. Jones*, 813 A.2d 659 (Pa. 2002).

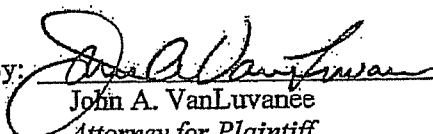
53. ATC has established clear right to relief.

WHEREFORE, Plaintiff ATC Outdoor DAS, LLC respectfully requests that this Honorable Court to enter an Order:

- a. Granting a permanent injunction prohibiting the Township from imposing the requirements of the ROW Ordinance on ATC for installation of the proposed DAS Infrastructure.

- b. Granting a permanent injunction prohibiting the Township from taking any action to delay or prohibit ATC from using the public rights-of-way for DAS Infrastructure.

EASTBURN AND GRAY, P.C.

By: 
John A. VanLuvanee
Attorney for Plaintiff
ATC Outdoor DAS, LLC

VERIFICATION

JAMES SCOTT LEWIS verifies that he is Director of DAS Deployment; that he is authorized to sign this Verification of behalf of Plaintiff, ATC Outdoor DAS, LLC; and that the statements made in the foregoing COMPLAINT are true and correct to the best of his knowledge, information and belief. He understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: October 25, 2011



James Scott Lewis

EXHIBIT "A"

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 18, 2008

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Application of ATC Outdoor DAS, LLC for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider to the Public in the Commonwealth of Pennsylvania.

A-2008-2072972

ORDER

BY THE COMMISSION:

On September 11, 2008, ATC Outdoor DAS, LLC (Applicant or ATC Outdoor) filed an Application seeking a Certificate of Public Convenience pursuant to the Telecommunications Act of 1996, 47 U.S.C. § § 201, *et seq.*, (TA-96) and to Chapter 11 of the Public Utility Code (Code) (66 Pa. C.S. § 1101, *et seq.*) evidencing authority to operate as a Competitive Access Provider (CAP) throughout the Commonwealth of Pennsylvania. The Applicant was granted provisional authority pursuant to our Secretarial Letter dated November 6, 2008, to provide the proposed CAP services pursuant to its proposed tariff during the pendency of the application process.

The Applicant is a Delaware Limited Liability Company with its principal place of business at 116 Huntington Ave., Eleventh Floor, Boston, MA 02116, phone (617) 375-7500, fax (617) 375-7575. Correspondence to resolve complaints may be

directed to either David Peirce in Cary, North Carolina, at (919) 466-6665 or Janae Walker Bronson in Woburn, Massachusetts, at (781) 926-4545. The Applicant complied with 15 Pa. C.S. § 8981, relating to a Foreign Limited Liability Company. The Applicant's registered office provider is CT Corporation System, 116 Pine St., Suite 320 Harrisburg, PA 17101. The Applicant will not be using a fictitious name. The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing.

The Applicant complied with notice requirements set forth in our Application form by serving a copy of its application upon the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of the Attorney General. No protests were filed. No hearings were held.

ATC Outdoor has affiliates doing business in Pennsylvania; however, none of ATC Outdoor's subsidiaries are jurisdictional public utilities. The Applicant's service is charged at the applicable rates set forth in their tariff. ATC Outdoor will provide facilities-based non-switched local transport services, through a combination of its own facilities and facilities to be leased from a variety of telecommunications carriers, to customers throughout the Commonwealth of Pennsylvania. ATC Outdoor's services will be both intrastate and interstate. One service will rely on a technical platform known as a "Distributed Antenna System," or "DAS." A DAS consists of the following: Base Station Hotel, Optical Conversion equipment, Remote Nodes and Access Points. Also, ATC Outdoor plans to provide Radio Frequency ("RF") or optical transport and backhaul services for voice and data providers. The services will be provided on a monthly basis and will be available twenty-four (24) hours per day and seven (7) days per week. At this time, however, ATC Outdoor does not intend to furnish traditional residential or business local telephone services or switched, interexchange telephone service.

The Applicant has demonstrated that it is financially capable of providing telecommunication services as a CAP. We conclude that the Applicant meets the requirements for certification as a CAP,¹ consistent with this Order.

Premised upon our review of the Application and the proposed tariff, and consistent with our Orders, the Code, our Regulations and the TA-96, we conclude that the Applicant's proposed services do not raise concerns at this time regarding safety, adequacy, reliability, or privacy. We note, however, deficiencies in the proposed tariff. See Appendix A. We shall direct the Applicant to revise its tariff in accordance with the changes noted in Appendix A of this Order.² The Applicant shall, thereafter, file its Initial Tariff reflecting the requested changes on or before sixty (60) days from the date of entry of this Order. Copies of the Initial Tariff shall also be served upon the same entities receiving service of the original Application. If the time required for such resolution and filing exceeds sixty (60) days, the Applicant may request an extension of an additional sixty (60) days with the Commission's Secretary. Thus, if the Initial Tariff is not filed within 60 days (120 days including the extension) of the entry of this Order, the Application will be dismissed and the authority granted herein will be revoked without further Commission Order. To the extent that the proposed tariff contains rates, the Initial Tariff may become effective on one (1) day's notice from the date upon which it is filed and served.

We note that the Commission will only approve tariff provisions regarding limitation of liability consistent with law. The Commission does not have jurisdiction to determine liability or award monetary damages. Any tariff provisions contained in the Initial Tariff regarding limitation of liability found to be inconsistent with any applicable

¹ CAP authority may not be used to access the Public Switched Network or toll calling. If a utility with CAP authority wishes to provide access to the Public Switched Network or to provide local or IXC (intraLATA or interLATA) calling services to its customers, the utility must also have been granted CLEC and/or IXC authority by this Commission.

laws, rules and regulations will be deemed inoperative and superseded. Any claim against the public utility and/or public utility's customer regarding liability outside the limited scope of the tariff must be filed in court for determination of liability and monetary damages.

Conclusion

Accordingly, we shall grant the Application. Upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued evidencing the Applicant's authority to provide services as a CAP in the Commonwealth of Pennsylvania, consistent with this Order and our decisions in such other proceedings; **THEREFORE,**

IT IS ORDERED:

1. That the Application of ATC Outdoor DAS, LLC at Docket No. A-2008-2072972, for authority to operate as a Competitive Access Provider throughout the Commonwealth of Pennsylvania is granted, consistent with this Order.
2. That the Applicant shall comply with all the provisions of the Public Utility Code, as now exist or as may be hereafter amended, and with all pertinent rules, regulations, and Orders of this Commission, now in effect or as may be prescribed by this Commission.
3. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right to the Applicant.

² Regardless of the review process, any tariff provision(s) inconsistent with the provisions of the Code, the TA-96, or our Regulations or Orders will be deemed inoperative and superseded. (52 Pa. Code § 64.213).

4. That the Applicant maintain accurate accounting records that segment its Competitive Access Provider revenues in the state.

5. That in accordance with Commission Orders entered October 5, 2005 at M-00041857 and on August 21, 2006 at L-00050176, the applicant shall follow the reporting requirements outlined at the following website:
http://www.puc.state.pa.us/telecom/docs/Reporting_Requirements021308.doc

6. That the Applicant shall file such affiliated interest agreements as may be necessary relative to any transactions with affiliates within 30 days of this Order.

7. That the Applicant shall file its Initial Tariff consistent with the requisite changes noted in Appendix A of this Order, within sixty (60) days after the date of entry of this Order. The Applicant is directed to identify any changes made to the proposed Initial Tariff that are in addition to the changes noted in Appendix A. The Applicant shall serve copies of its Initial Tariff on each entity receiving a copy of the original Application. The Initial Tariff may become effective on or after one (1) day's notice from the date upon which it is filed and served.

8. That the Competitive Access Provider tariff shall reflect on its face that it is a "Competitive Access Provider Tariff." Changes and/or additions made to the approved, filed tariff shall be made in the form of supplements, consecutively numbered in the order of their filing dates, and the tariff designation shall be in the following manner: Supplement No. ___ to Tariff Telephone Pa. P.U.C. No. ___.

9. That the Applicant shall add its Pennsylvania tariff to its website. If the Applicant does not maintain a website, the Commission will host its tariff on the Commission's website.

a. Within 30 days of the filing of its Initial Tariff, the Applicant shall add the tariff to its website and mark it "Pending."

- b. Within 30 days of receipt of its Certificate of Public Convenience, the Applicant shall make any required modifications to the tariff on its website and remove the "Pending" notation. Thereafter the Applicant will continually update the website whenever any supplemental revisions to the tariff are approved by the Commission such that the website tariff is a true and accurate representation of its tariff on file with the Commission.
- c. The Applicant shall contact Cyndi Page (717-787-5722; cypage@state.pa.us) of the Commission's Communications Office, to create a link from the Commission's website to the Applicant's website. If the Applicant does not maintain a website, the Applicant shall contact Cyndi Page to have its tariff added to the Commission's website and to update the tariff upon subsequent approval of supplemental revisions to the tariff.

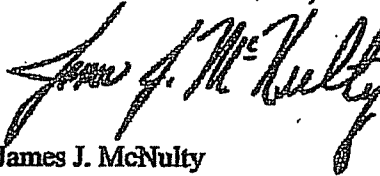
10. That upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Competitive Access Provider within the Commonwealth of Pennsylvania, consistent with this Order.

11. That in the event that the Applicant has not, on or before sixty (60) days (120 days including an approved extension) from the date of entry of this Order, complied with the requirements set forth herein, the Application at Docket No. A-2008-2072972 will be dismissed and the authority granted herein revoked without further Commission Order.

12. That if the Applicant plans to cease doing business within the Commonwealth of Pennsylvania, it shall request authority from the Commission for permission prior to ceasing.

13. That a copy of this Order be served on the Department of Revenue,
Bureau of Corporation Tax.

BY THE COMMISSION,



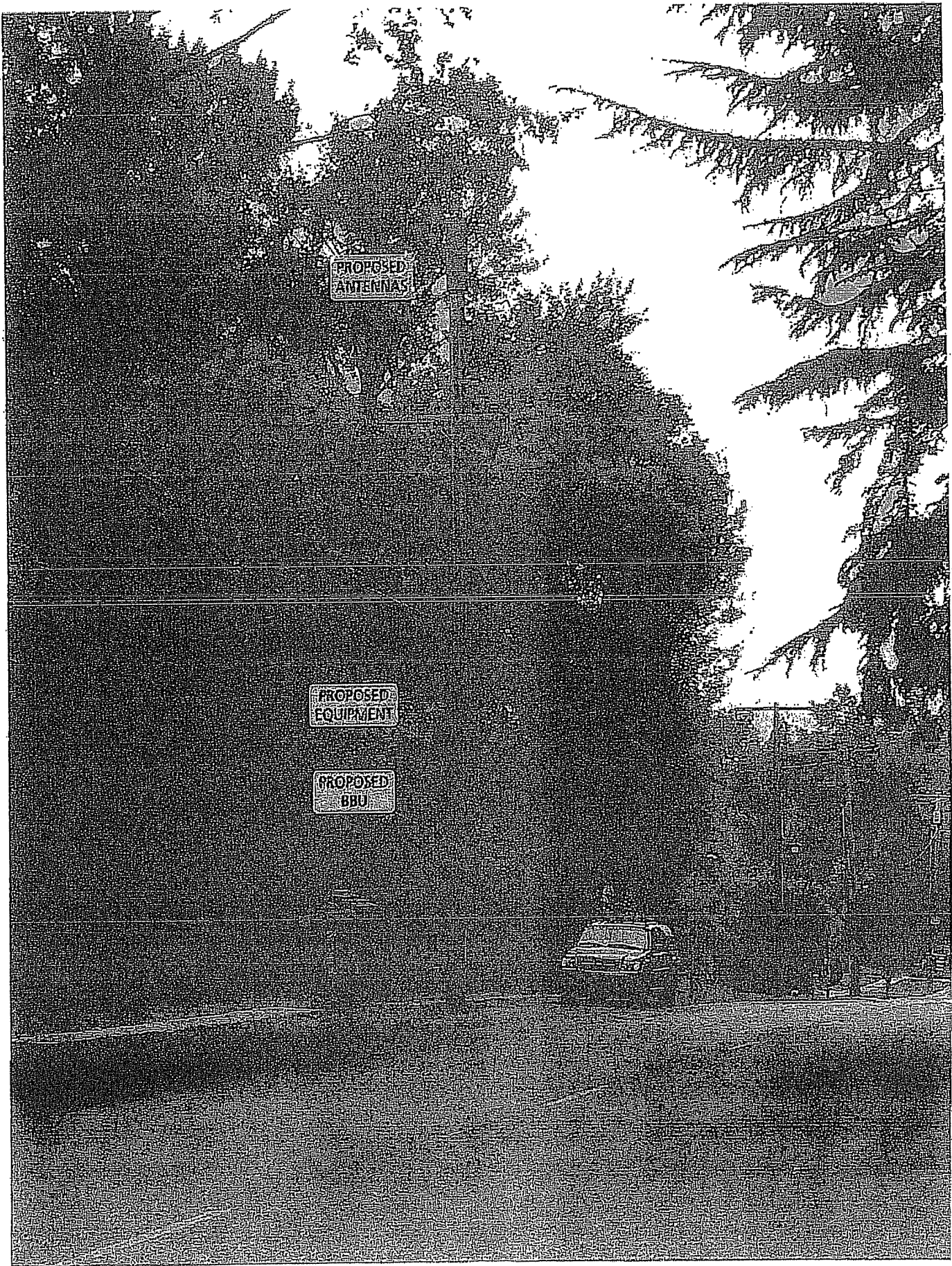
James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 18, 2008

ORDER ENTERED: DEC 22 2008

EXHIBIT "B"



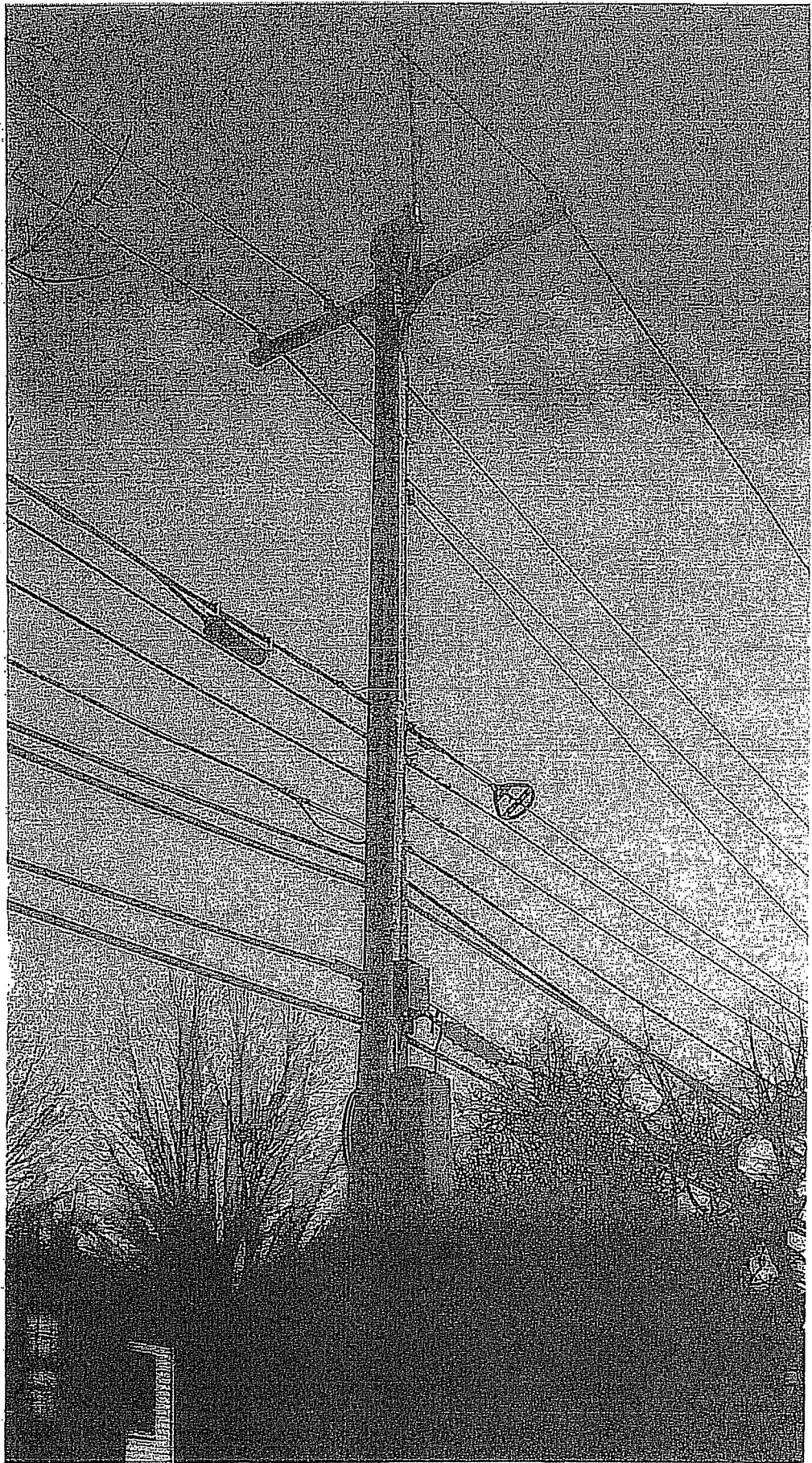


EXHIBIT "C"

PROPOSAL FOR A DISTRIBUTED ANTENNA SYSTEM

**American Tower Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518**

**Prepared by: David Callender
American Tower Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518**

March 9, 2011

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**PROPOSAL to the Northampton Township
For a Distributed Antenna System**

**American Tower Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518**

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Photo Simulations	Tab 3
List and Map of Proposed Nodes	Tab 4
Existing ATC ODAS Installations	Tab 5
Outdoor DAS Overview	Tab 6



ATC OUTDOOR DAS

March 9, 2011

Northampton Township
Northampton Township Complex
55 Township Road
Richboro, PA 18954

I. **Background**

ATC Outdoor DAS, LLC ("ATC ODAS") designs, builds, owns, operates and maintains complete Distributed Antenna Systems ("DAS") solutions that allow telecommunication providers to deliver the coverage they need, while balancing community aesthetic demands and municipal permitting requirements. DAS is a fiber-fed network that relies upon a series of antennas installed atop existing or proposed poles in the right of way to provide a localized solution for mobile devices. Such a network allows users to move seamlessly from DAS to towers or rooftops.

Since 2001, American Tower Corporation ("ATC"), parent company of ATC ODAS, has been designing and deploying DAS solutions to meet the needs of our customers. ATC has diverse experience working closely with telecommunication providers in planning, designing and redesigning their networks for optimum coverage and capacity. ATC ODAS utilizes DAS systems when zoning regulations, permitting restrictions, or space limitations preclude the construction of a tower. The DAS network can deliver increased coverage and capacity for multiple telecommunication carriers with minimal impact on the community.

II. **The Northampton Distributed Antenna System**

The DAS proposed by ATC ODAS, located within and near the Township of Northampton, Pennsylvania, consists of one hub and 71 nodes, all connected by a combination of underground and aboveground fiber optic cabling ("Northampton DAS"). ATC ODAS proposes to locate 60 of the 71 nodes in Northampton. The nodes will be located on existing utility poles owned by Philadelphia Electric Company ("PECO"), Verizon (ILEC), and/or Comcast. ATC ODAS is also looking to locate some nodes on existing street lights or on proposed new poles, all within the public right-of-way. The nodes will be connected to each other and the hub by fiber optic lines located within the public right-of-way.



ATC OUTDOOR DAS

ATC ODAS proposes to locate the hub, which will consist primarily of DAS operating equipment, within an existing ATC tower site. This space will provide 1000 square feet which is needed to shelter the operating equipment for multiple carrier customers.

Currently, the Northampton DAS calls for running approximately 30.0 miles of fiber optic cabling aboveground, and approximately 9.0 miles is proposed to be placed underground.

III. Conclusion

As a premier telecommunications infrastructure provider with more than 34,000 sites in nine countries, ATC recognizes the importance of keeping communities and their residents connected. The Northampton DAS will deliver increased coverage and capacity for multiple carriers with minimal impact to your community.

Additionally, the Northampton DAS will preserve and increase the amenities of Northampton by developing a reliable local telecommunications infrastructure that will help support the security of instant communication, such as calling 911. ATC ODAS may work with the community to customize the design of the Northampton DAS to best suit the needs of the township. The Northampton DAS will promote and conserve the convenience, safety and general welfare of the citizens of Northampton by enhancing telecommunication services within the township and by providing a strong, secure infrastructure to protect and serve your community.

Very truly yours,

David Callender



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA. 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 22, 2008

A-2008-2072972

JOHN C DODGE ESQUIRE
BRIAN A NIXON ESQUIRE
1919 PENNSYLVANIA AVE NW
SUITE 200
WASHINGTON DC 20006

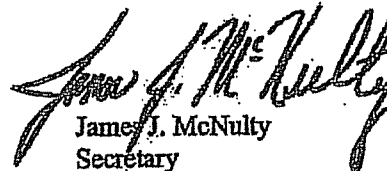
Application of ATC Outdoor DAS, LLC for approval to offer, render, furnish
or supply telecommunication services as a Competitive Access Provider to the public in the
Commonwealth of Pennsylvania.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on December 18, 2008 adopted
an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,


James J. McNulty
Secretary

Encls
Cert. Mail
MH

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held December 18, 2008

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
Robert F. Powelson
Kim Pizzingrilli
Wayne E. Gardner

Application of ATC Outdoor DAS, LLC for approval
to offer, render, furnish or supply telecommunication
services as a Competitive Access Provider to the
Public in the Commonwealth of Pennsylvania.

A-2008-2072972

ORDER

BY THE COMMISSION:

On September 11, 2008, ATC Outdoor DAS, LLC (Applicant or ATC Outdoor) filed an Application seeking a Certificate of Public Convenience pursuant to the Telecommunications Act of 1996, 47 U.S.C. § § 201, *et seq.*, (TA-96) and to Chapter 11 of the Public Utility Code (Code) (66 Pa. C.S. § 1101, *et seq.*) evidencing authority to operate as a Competitive Access Provider (CAP) throughout the Commonwealth of Pennsylvania. The Applicant was granted provisional authority pursuant to our Secretarial Letter dated November 6, 2008, to provide the proposed CAP services pursuant to its proposed tariff during the pendency of the application process.

The Applicant is a Delaware Limited Liability Company with its principal place of business at 116 Huntington Ave., Eleventh Floor, Boston, MA 02116, phone (617) 375-7500, fax (617) 375-7575. Correspondence to resolve complaints may be

directed to either David Peirce in Cary, North Carolina, at (919) 466-6665 or Janae Walker Bronson in Woburn, Massachusetts, at (781) 926-4545. The Applicant complied with 15 Pa. C.S. § 8981, relating to a Foreign Limited Liability Company. The Applicant's registered office provider is CT Corporation System, 116 Pine St., Suite 320 Harrisburg, PA 17101. The Applicant will not be using a fictitious name. The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing.

The Applicant complied with notice requirements set forth in our Application form by serving a copy of its application upon the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of the Attorney General. No protests were filed. No hearings were held.

ATC Outdoor has affiliates doing business in Pennsylvania; however, none of ATC Outdoor's subsidiaries are jurisdictional public utilities. The Applicant's service is charged at the applicable rates set forth in their tariff. ATC Outdoor will provide facilities-based non-switched local transport services, through a combination of its own facilities and facilities to be leased from a variety of telecommunications carriers, to customers throughout the Commonwealth of Pennsylvania. ATC Outdoor's services will be both intrastate and interstate. One service will rely on a technical platform known as a "Distributed Antenna System," or "DAS." A DAS consists of the following: Base Station Hotel, Optical Conversion equipment, Remote Nodes and Access Points. Also, ATC Outdoor plans to provide Radio Frequency ("RF") or optical transport and backhaul services for voice and data providers. The services will be provided on a monthly basis and will be available twenty-four (24) hours per day and seven (7) days per week. At this time, however, ATC Outdoor does not intend to furnish traditional residential or business local telephone services or switched, interexchange telephone service.

The Applicant has demonstrated that it is financially capable of providing telecommunication services as a CAP. We conclude that the Applicant meets the requirements for certification as a CAP,¹ consistent with this Order.

Premised upon our review of the Application and the proposed tariff, and consistent with our Orders, the Code, our Regulations and the TA-96, we conclude that the Applicant's proposed services do not raise concerns at this time regarding safety, adequacy, reliability, or privacy. We note, however, deficiencies in the proposed tariff. See Appendix A. We shall direct the Applicant to revise its tariff in accordance with the changes noted in Appendix A of this Order.² The Applicant shall, thereafter, file its Initial Tariff reflecting the requested changes on or before sixty (60) days from the date of entry of this Order. Copies of the Initial Tariff shall also be served upon the same entities receiving service of the original Application. If the time required for such resolution and filing exceeds sixty (60) days, the Applicant may request an extension of an additional sixty (60) days with the Commission's Secretary. Thus, if the Initial Tariff is not filed within 60 days (120 days including the extension) of the entry of this Order, the Application will be dismissed and the authority granted herein will be revoked without further Commission Order. To the extent that the proposed tariff contains rates, the Initial Tariff may become effective on one (1) day's notice from the date upon which it is filed and served.

We note that the Commission will only approve tariff provisions regarding limitation of liability consistent with law. The Commission does not have jurisdiction to determine liability or award monetary damages. Any tariff provisions contained in the Initial Tariff regarding limitation of liability found to be inconsistent with any applicable

¹ CAP authority may not be used to access the Public Switched Network or toll calling. If a utility with CAP authority wishes to provide access to the Public Switched Network or to provide local or IXC (intraLATA or interLATA) calling services to its customers, the utility must also have been granted CLEC and/or IXC authority by this Commission.

laws, rules and regulations will be deemed inoperative and superseded. Any claim against the public utility and/or public utility's customer regarding liability outside the limited scope of the tariff must be filed in court for determination of liability and monetary damages.

Conclusion

Accordingly, we shall grant the Application. Upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued evidencing the Applicant's authority to provide services as a CAP in the Commonwealth of Pennsylvania, consistent with this Order and our decisions in such other proceedings; **THEREFORE,**

IT IS ORDERED:

1. That the Application of ATC Outdoor DAS, LLC at Docket No. A-2008-2072972, for authority to operate as a Competitive Access Provider throughout the Commonwealth of Pennsylvania is granted, consistent with this Order.
2. That the Applicant shall comply with all the provisions of the Public Utility Code, as now exist or as may be hereafter amended, and with all pertinent rules, regulations, and Orders of this Commission, now in effect or as may be prescribed by this Commission.
3. That the authority granted herein, to the extent that it duplicates authority now held by or subsequently granted to the Applicant, shall not be construed as conferring more than one operating right to the Applicant.

² Regardless of the review process, any tariff provision(s) inconsistent with the provisions of the Code, the TA-96, or our Regulations or Orders will be deemed inoperative and superseded. (52 Pa. Code § 64.213).

4. That the Applicant maintain accurate accounting records that segment its Competitive Access Provider revenues in the state.

5. That in accordance with Commission Orders entered October 5, 2005 at M-00041857 and on August 21, 2006 at L-00050176, the applicant shall follow the reporting requirements outlined at the following website:
http://www.puc.state.pa.us/telecom/docs/Reporting_Requirements021308.doc

6. That the Applicant shall file such affiliated interest agreements as may be necessary relative to any transactions with affiliates within 30 days of this Order.

7. That the Applicant shall file its Initial Tariff consistent with the requisite changes noted in Appendix A of this Order, within sixty (60) days after the date of entry of this Order. The Applicant is directed to identify any changes made to the proposed Initial Tariff that are in addition to the changes noted in Appendix A. The Applicant shall serve copies of its Initial Tariff on each entity receiving a copy of the original Application. The Initial Tariff may become effective on or after one (1) day's notice from the date upon which it is filed and served.

8. That the Competitive Access Provider tariff shall reflect on its face that it is a "Competitive Access Provider Tariff." Changes and/or additions made to the approved, filed tariff shall be made in the form of supplements, consecutively numbered in the order of their filing dates, and the tariff designation shall be in the following manner: Supplement No. ___ to Tariff Telephone Pa. P.U.C. No. ___.

9. That the Applicant shall add its Pennsylvania tariff to its website. If the Applicant does not maintain a website, the Commission will host its tariff on the Commission's website.

a. Within 30 days of the filing of its Initial Tariff, the Applicant shall add the tariff to its website and mark it "Pending."

- b. Within 30 days of receipt of its Certificate of Public Convenience, the Applicant shall make any required modifications to the tariff on its website and remove the "Pending" notation. Thereafter the Applicant will continually update the website whenever any supplemental revisions to the tariff are approved by the Commission such that the website tariff is a true and accurate representation of its tariff on file with the Commission.
- c. The Applicant shall contact Cyndi Page (717-787-5722; cypage@state.pa.us) of the Commission's Communications Office, to create a link from the Commission's website to the Applicant's website. If the Applicant does not maintain a website, the Applicant shall contact Cyndi Page to have its tariff added to the Commission's website and to update the tariff upon subsequent approval of supplemental revisions to the tariff.

10. That upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Competitive Access Provider within the Commonwealth of Pennsylvania, consistent with this Order.

11. That in the event that the Applicant has not, on or before sixty (60) days (120 days including an approved extension) from the date of entry of this Order, complied with the requirements set forth herein, the Application at Docket No. A-2008-2072972 will be dismissed and the authority granted herein revoked without further Commission Order.

12. That if the Applicant plans to cease doing business within the Commonwealth of Pennsylvania, it shall request authority from the Commission for permission prior to ceasing.

13. That a copy of this Order be served on the Department of Revenue,
Bureau of Corporation Tax.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: December 18, 2008

ORDER ENTERED: DEC 22 2008

APPENDIX A

ATC Outdoor DAS, LLC
Docket No. A-2008-2072972
Proposed tariff for
Competitive Access Provider

The proposed tariff contains certain deficiencies that must be addressed by the Applicant before the tariffs can be approved and the Certificate of Public Convenience issued. The Applicant must submit a copy of this Appendix with its revised compliance tariff. On that copy please note the page/sheet of the compliance tariff where the required revision is located for each item below.

1. Correct title to read:

ATC Outdoor DAS, LLC
Competitive Access Provider Carrier
Regulations and Schedule of Charges

2. Title Page: need to add territory to which tariff applies (Throughout Commonwealth of Pennsylvania).
3. Original sheet No.'s 20-24, Section 4, Explanation of Terms: This should be at the beginning of tariff. Preferably the first section. Rename to read Definitions Section. All terms in the Definitions Section must appear somewhere in the tariff. However, the following terms do not appear elsewhere and must therefore be removed from the Definitions Section: LATA, Link, Local Service, Resale of Service, Sharing and Telephone Call.
4. Revise Table of Contents pursuant to changes made in revised tariff.
5. Original Sheet No. 1, Check Sheet: There are 29 original sheets. The tariff has a total of 26 original sheets. Revise Check Sheet and delete sheets 27-29.
6. Original Sheet No. 4, Explanation of Symbols: only include 3 symbols: (C) To signify change, (D) To signify decrease in rate and (I) To signify increase in rate. Exclude all other symbols
7. All pages should contain an issued and effective date.

8. **Missing:** The company did not provide a page for future revisions, typically labeled "List of Modifications" as per 52 Pa. Code § 53.21 (10) and 52 Pa. Code § 53.21. This page should be right after the Table of Contents.
9. **Missing:** company did not provide page explaining the Tariff Format. This page should be preferably inserted right after Table of Contents. The Table of Contents should then reference this page. Use sample tariff Format provided in Appendix B.
10. **All Pages:** State the utility's authority (e.g. Competitive Access Provider) as per ordering paragraph.

TARIFF FORMAT

A. Page Numbering – Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the Tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.

B. Page Revision Numbers – Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Pennsylvania Public Utility Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Because of various suspension periods, deferrals, etc., the most current page number on file with the Pennsylvania Public Utility Commission is not always the Tariff page in effect. Consult the Check Sheet for the page currently in effect.

C. Paragraph Numbering Sequence – There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

- 2.
- 2.1.
- 2.1.1.
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a).
- 2.1.1.A.1.(a)I.
- 2.1.1.A.1.(a)I(i).
- 2.1.1.A.1.(a)I(i)(1).

D. Check Sheets – When a Tariff filing is made with the Pennsylvania Public Utility Commission, an updated Check Sheet accompanies the Tariff filing. The Check Sheet lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc., remain the same, just revised revision levels on some pages). The Tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Pennsylvania Public Utility Commission.

EXHIBIT "D"



BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, DC

MICHAEL T. LAVIGNE
Attorney at Law

One Jefferson Road
Parsippany, NJ 07054-2891

T: (973) 966 8083 F: (973) 206 6620
mlavigne@daypitney.com

June 3, 2011

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

Barbara M. Kirk, Esq.
Rudolph, Clarke & Kirk, LLC
Eight Neshaminy Interplex – Suite 215
Trevose, PA 19053

Re: ATC Outdoor DAS, LLC
Northampton, Pennsylvania

Dear Ms. Kirk:

As we discussed at our meeting held on May 31st, ATC Outdoor DAS, LLC (“ATC ODAS”) is a licensed public utility that has been issued a Certificate of Public Convenience by the Pennsylvania Public Utility Commission (“PUC”) and has been authorized by the PUC to provide telecommunication services as a Competitive Access Provider throughout the Commonwealth of Pennsylvania. As such, ATC ODAS has the right to access the public right-of-way to install its utility infrastructure. Further, ATC ODAS cannot permissibly be charged a fee of 5% of its gross revenue for such access and installation, or any other fee that is not directly related to its use of the right-of-way and that is not similarly imposed on other utility company occupants of the right-of-way.

As was promised at the conclusion of our meeting, I am enclosing herewith for your information and review copies of some of the relevant statutory and decisional authority that forms the basis for ATC ODAS’ position with respect to this matter. I have listed below the enclosed materials, and under each listed item have included bullet points highlighting the pertinent provisions and holdings for your ease of reference.

Northampton Township Rights-of-Way Ordinance

- Section 106-6 requires a rental payment equal to 5% of gross revenue for occupying or using the public ways.
- Section 106-4.B.(6) – “This Chapter 106, Rights-of-Way, Use of, shall not apply to occupation or use of the public ways to provide ... (6) The conveyance or transmission of messages or communication by telephone or telegraph for the public.”

Barbara M. Kirk, Esq.

June 3, 2011

Page 2

• Section 106-4.D. – “This chapter does not authorize the grantee to attach to any pole or other structure in a public way devices for the intentional transmission or radiation of radio frequency emissions or energy through the ether by any means now known or hereafter developed.” – Further evidence that this ordinance and its 5% of gross revenue fee is not intended to apply to the wireless aspect of ATC ODAS’ system.

Section 253 of the Federal Telecommunications Act of 1996 – Removal of Barriers to Entry

• Section 253(a) – “In General – No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

• Section 253 (c) – “State and Local Government Authority – Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

• Section 253(d) - “Preemption – If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”

PECO Energy Company v. Township of Haverford

• U.S. District Court for the Eastern District of Pennsylvania rendered summary judgment in favor of plaintiff.

• Plaintiff’s Exelon operating division was a telecommunications provider installing fiber optic cable infrastructure on utility poles within municipal rights-of-way for data, voice and video communications.

• Plaintiff challenged Township of Haverford ordinance requiring telecommunications providers to obtain municipal authorization to install their infrastructure within the right-of-way and charging a series of fees for such installation, including a fee that was based upon a percentage of the provider’s revenue.

• Case interpreted and applied Sections 253(a) and 253(c) of the Federal Telecommunications Act of 1996.

Barbara M. Kirk, Esq.
June 3, 2011
Page 3

- Under Section 253(a) a municipality does not have unfettered discretion to refuse access by a telecommunications provider to its rights-of-way.

- The ordinance also violated Section 253(c)'s rules regarding reasonable compensation

- Any fee charged by the municipality must be directly related to the company's use of the right-of-way (e.g. increased costs to the municipality of maintaining and improving its rights-of-way as a result of the provider's installation).

- "Revenue-based fees cannot, by definition, be based on pure compensation for use of the rights-of-way."

PECO Energy Company v. Township of Upper Dublin, et al.

- State appellate court case interpreting and applying State law

- The Public Utility Code grants the PUC full authority to regulate the character of a public utility's service and facilities.

- Cites Duquesne Light Company v. Upper St. Clair Township, 377 Pa. 323 (1954) for the proposition that a public utility is not subject to local zoning ordinance regulation of uses and structures.

- "Neither the [First Class Township Code] nor the [Municipalities Planning Code] authorizes municipal regulation of public utility services (citations omitted). We agree."

- "A public utility may be required to obtain a routine township permit and to notify a township of its intended activities. However, permits conditioned on a township's evaluation of necessity and township management of the details of public notification and utility activities ... are not lawful or reasonable regulations."

FCC Memorandum Opinion and Order In the Matter of TCI Cablevision of Oakland County, Inc.

- "We recognize that Section 253 (c) preserves the authority of state and local governments to manage public rights-of-way. Local governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, to manage gas, water, cable (both electric and cable television), and telephone facilities that crisscross the streets and public rights-of-way. We have previously described the types of activities that fall within the sphere of appropriate rights-of-way management in both the Classic Telephone Decision and the OVS Orders, and that

Barbara M. Kirk, Esq.
June 3, 2011
Page 4

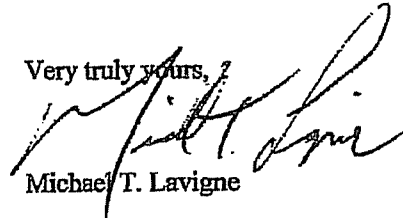
analysis of what constitutes appropriate rights-of-way management continues to set the parameters of local authority. These matters include coordination of construction schedules, determination of insurance, bonding and indemnity requirements, establishment and enforcement of building codes, and keeping track of the various systems using the rights-of-way to prevent interference between them.”

• “One clear message from Section 253 is that when a local government chooses to exercise its authority to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, it must do so on a competitively neutral and nondiscriminatory basis. Local requirements imposed only on the operations of new entrants and not on existing operations of incumbents are quite likely to be neither competitively neutral nor nondiscriminatory.”

I have also enclosed, as requested, a proposed form of Right-of-Way Agreement. Kindly review the enclosed draft agreement and provide me with any comments you may have at your earliest possible convenience.

I look forward to hearing from you.

Very truly yours,



Michael T. Lavigne

MTL/
Enclosures

cc: Mr. David Callender (via e-mail)
Mr. John Coste (via e-mail)

RIGHT-OF-WAY USE AGREEMENT

THIS RIGHT OF WAY USE AGREEMENT ("Use Agreement") is dated _____, 2011 (the "Effective Date"), and entered into by and between the TOWNSHIP OF _____ (the "Township"), a Pennsylvania municipal corporation, having its Township Municipal Building at _____, and ATC OUTDOOR DAS, LLC ("ATC ODAS"), a Delaware limited liability company, having an office at 116 Huntington Avenue, Eleventh Floor, Boston, Massachusetts 02116.

RECITALS

WHEREAS, ATC ODAS has been approved by the Pennsylvania Public Utility Commission (the "PUC") to supply telecommunications services as a Competitive Access Provider to the public throughout the Commonwealth of Pennsylvania by Order of Approval at Docket No. A-2008-2072972, entered December 22, 2008. Pursuant to such authority granted by the PUC, ATC ODAS may locate, place, attach, install, operate and maintain facilities within municipal rights-of-way for purposes of providing telecommunications services; and

WHEREAS, ATC ODAS proposes to place its Telecommunications Facilities (as hereinafter defined) aerially on existing, new or replacement Utility Poles (as hereinafter defined) located in the Township, and underground, for the non-exclusive use of the public rights-of-way within the Township for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunications system.

NOW THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the Township and ATC ODAS hereby agree to and with each other as follows:

Section 1: Definitions.

- a. "PUC" is the Pennsylvania Public Utility Commission.
- b. "ATC ODAS" is the grantee of rights under this Use Agreement and is known as ATC Outdoor DAS, LLC, its successors and assigns.
- c. "Township" is the grantor of rights under this Use Agreement and is known as the Township of _____, County of _____, Commonwealth of Pennsylvania.
- d. "Rights-of-Way" means the surface of, and the space above and below, any public street, unopened right-of-way, highway, turnpike, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way held by the Township. "Rights-of-Way" shall also mean any easement now or hereafter held by the Township for the purpose of public travel and/or for utility and/or public service use dedicated for compatible uses.
- e. "Utility Pole" means, in addition to any pole or other vertical structure owned or controlled by a public utility company used in connection with the provision of utility service, any street light fixture or other pole or other vertical structure located in a Right-of-Way and owned by the Township, and any wires or cable connected thereto, and any replacement thereof.

Section 2: Acknowledgement of Use.

The Township hereby acknowledges and approves the non-exclusive use of the public Rights-of-Way within the Township by ATC ODAS for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

Section 3: Scope of Use Agreement.

Any and all rights expressly granted to ATC ODAS under this Use Agreement, which shall be exercised at ATC ODAS' sole cost and expense, shall be subject to the prior and continuing right of the Township under applicable laws to use any and all parts of the municipal Rights-of-Way concurrently with any other person or persons, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record, all as of the date of this Use Agreement, which may affect such municipal Rights-of-Way. Nothing in this Use Agreement shall be deemed to grant, convey, create or vest in ATC ODAS a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

Subject to obtaining the permission of the owner(s) of existing Utility Poles (except with respect to any Utility Poles owned by the Township, which permission of the Township is evidenced by the Township's execution and delivery of this Use Agreement), which shall be the sole responsibility of ATC ODAS to undertake and obtain, the Township hereby authorizes and permits ATC ODAS to enter upon, over and/or under the municipal Rights-of-Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace its telecommunications facilities, which shall include, but not be limited to, poles, replacement poles, antennas, antenna canisters, equipment boxes, electrical connections, and fiber optic cable (collectively, "Telecommunications Facilities"), in or on Utility Poles, or other structures owned by public utility companies or to be constructed by ATC ODAS located within the municipal Rights-of-Way.

ATC ODAS shall be responsible for maintaining and repairing its Telecommunications Facilities. Notwithstanding the foregoing, when an installation involves the replacement of an

existing Utility Pole owned by the Township: (i) ATC ODAS shall be responsible for removing the existing Utility Pole and replacing it with a new one of similar design and of sufficient height to meet its operational requirements at ATC ODAS' sole cost and expense; (ii) ATC ODAS shall be responsible for maintaining and repairing all of its Telecommunications Facilities attached to the replacement Utility Pole at its sole cost and expense; and (iii) the Township shall retain ownership of the replacement Utility Pole itself and shall be responsible for maintaining and repairing the replacement Utility Pole at the Township's sole cost and expense.

The right, license, privilege and permission is granted to ATC ODAS, its contractors and agents, to trim trees upon and overhanging the Rights-of-Way so as to prevent the branches of such trees from coming in contact with ATC ODAS' Telecommunications Facilities.

Section 4: Compliance with Ordinances.

ATC ODAS shall comply with all lawful and applicable existing ordinances, regulations, rules and policies of the Township as may be amended from time to time and with all lawful and applicable future ordinances, regulations, rules and policies as may be enacted or adopted governing management of the municipal Rights-of-Way and standard utility installations within the municipal Rights-of-Way, including but not limited to road occupancy permits and traffic control by the Township Police Department, provided that none of the foregoing shall limit or alter the rights conferred upon ATC ODAS pursuant to this Use Agreement in any material respect.

Section 5: Term.

This Use Agreement shall be effective as of the Effective Date and shall extend until terminated in writing by ATC ODAS. At such time as ATC ODAS ceases to operate its

Telecommunications Facilities, it shall remove its Telecommunications Facilities at its sole cost and expense.

Section 6: Indemnification.

ATC ODAS, its successors and assigns, hereby agrees to indemnify, defend and hold harmless the Township, its successors and assigns, as well as its elected officials, officers, and employees (collectively, "Township's Indemnified Persons"), from and against any and all claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of ATC ODAS' actions or inaction under this Use Agreement, and reasonable costs in connection therewith. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorney's fees, court costs and any other reasonable expenses that may be incurred by the Township and/or by Township's Indemnified Persons in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with ATC ODAS' activities pursuant to the rights granted in this Use Agreement, except when such claim or harm arises solely from the mistakes, errors, omissions or negligence of the Township or any of Township's Indemnified Persons and without negligence or breach of contract by ATC ODAS.

The Township, its successors and assigns, hereby agrees to indemnify, defend and hold harmless ATC ODAS, its successors and assigns, as well as its members, officers, and employees (collectively, "ATC ODAS' Indemnified Persons"), from and against any and all claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of the Township's actions or inaction under this Use Agreement, and

reasonable costs in connection therewith. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorney's fees, court costs and any other reasonable expenses that may be incurred by ATC ODAS and/or by ATC ODAS' Indemnified Persons in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with the Township's activities pursuant to the rights granted in this Use Agreement, except when such claim or harm arises solely from the mistakes, errors, omissions or negligence of ATC ODAS or any of ATC ODAS' Indemnified Persons and without negligence or breach of contract by the Township.

NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 6, AND EXCEPT AS SPECIFICALLY PROVIDED IN THIS USE AGREEMENT, IN NO EVENT SHALL THE TOWNSHIP OR ATC ODAS BE LIABLE TO THE OTHER FOR, AND ATC ODAS AND THE TOWNSHIP EACH HEREBY WAIVE THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE OR LOSS OF BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES.

Section 7. Notices.

All notices or other correspondence required or permitted to be given in connection with this Use Agreement shall be in writing and delivered by overnight carrier service or by registered or certified mail to the parties at the following addresses:

To ATC Outdoor DAS, LLC: ATC Outdoor DAS, LLC
400 Regency Forest Drive
Suite 300
Cary, North Carolina 27518

To Township of _____: Township of _____

Municipal Building

Attention: Township Manager

Notices, letters, documents or instruments threatening to declare or declaring ATC ODAS in default under or terminating this Use Agreement must also be sent by the Township to the following address:

ATC Outdoor DAS, LLC
116 Huntington Ave.
Boston, Massachusetts 02116
Attn: Legal Department

or to such other address as ATC ODAS may designate by notice from time to time in accordance with the terms of this Section.

Section 8. Liability Insurance.

ATC ODAS will purchase and maintain in full force and effect throughout the term of the Use Agreement such general liability and property damage policies as ATC ODAS may deem necessary. The policy of general liability insurance will at a minimum provide a combined single limit of \$1,000,000.00. ATC ODAS will provide the Township with a certificate of insurance upon request or provide access to the online certificate of insurance request center available on ATC ODAS' web site.

The Township shall notify ATC ODAS within fifteen (15) days after the presentation of any claim or demand to the Township, either by suit or otherwise, made against the Township on account of any of ATC ODAS' or its contractors' sub-contractors', agents', employees', or officers' activities pursuant to the rights granted in this Use Agreement.

Section 9. Assignment.

ATC ODAS may assign this Use Agreement without the prior written consent of the

Township to an affiliate, parent, or subsidiary of ATC ODAS, or to an entity that is acquiring all or substantially all of the assets of ATC ODAS, regardless of whether any such acquisition is effectuated by merger, consolidation, acquisition, liquidation, or by any other method, provided that the assignee shall agree in writing to assume and perform all obligations of ATC ODAS under this Use Agreement.

The Township recognizes that certain components of ATC ODAS' Telecommunications Facilities may be owned in whole or in part by third parties, but installed, operated and maintained by ATC ODAS.

Section 10. Successors and Assigns.

The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 11. Governing Law.

This Use Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

Section 12. Incorporation of Prior Agreements.

This Use Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

Section 13. Modification of Agreement.

This Use Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

Section 14. Invalidity.

If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Use Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

Section 15. Recitals.

The recitals set forth at the beginning of this Use Agreement are incorporated herein by reference and are part of this Use Agreement as if each and every such recital were set forth at length in the body of this Use Agreement.

Section 16. Counterparts.

This Use Agreement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

Section 17. Agreement Reproduction.

A scanned or electronically reproduced copy or image of this Use Agreement, in executed form, shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Use Agreement and without the requirement that the unavailability of such original, executed counterpart of this Use Agreement first be proven.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Use Agreement has been executed as of the date first set

forth above.

ATC OUTDOOR DAS, LLC

WITNESS:

By: _____
Name: _____
Title: _____

Name: _____
Title: _____

Date: _____

TOWNSHIP OF _____

ATTEST:

By: _____
Name: _____
Title: _____

Name: _____
Title: _____

Date: _____

EXHIBIT "E"

Chapter 106

RIGHTS-OF-WAY, USE OF

- | | |
|--|--|
| § 106-1. Title. | § 106-7. Bonds, insurance and indemnification. |
| § 106-2. Word usage; definitions. | § 106-8. Forfeiture or revocation. |
| § 106-3. Registration required. | § 106-9. Violations and penalties. |
| § 106-4. Grant of privileges; exemptions; scope. | § 106-10. Compliance with other laws and ordinances. |
| § 106-5. Standards of service. | § 106-11. Conflicts with other provisions. |
| § 106-6. Rental payments. | |

[HISTORY: Adopted by the Board of Supervisors of the Township of Northampton 8-9-2006 by Ord. No. 510. Amendments noted where applicable.]

GENERAL REFERENCES

Public property — See Ch. 101.
Streets and sidewalks — See Ch. 115.

Cable television franchise — See Ch. A144.

§ 106-1. Title.

This chapter shall be known as the "Northampton Township Rights-of-Way Ordinance."

§ 106-2. Word usage; definitions.

- A. Terms. For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.
- B. As used in this chapter, the following terms shall have the meanings indicated:

AFFILIATE — A person:

- (1) With a direct or indirect ownership interest in the subject entity of 5% or more of which controls such interest, including forms of ownership, such as general, limited, or other partnership interests, direct ownership interests, limited liability companies and other forms of business organizations and entities but, not including corporations;
- (2) With a stock interest in the subject entity where the subject entity is a corporation and such stockholder or its nominee is an officer or director of the grantee or who directly or indirectly owns or controls 5% or more of the outstanding stock, whether voting or nonvoting; or

- (3) Which controls the grantee and/or is controlled by, or is under common control with such person or entity.

CABLE SERVICE — Shall have the same meaning as used in the Communications Act.

COMMUNICATIONS ACT — The Communications Act of 1934, as amended as of the time of enhancement of this chapter.

EQUIPMENT — Any tangible asset used to install, repair, or maintain a facility in the public way.

EXEMPT — A service which is provided to residences or businesses within the service area, but which is exempt from the provisions of this chapter under § 106-4B of this chapter.

FACILITY — Any tangible asset in the public way used or required to provide a nonexempt service to residences or businesses within the service area. The following are not a "facility": a railroad, street railway, gas pipe, water pipe, electric conduit, electric piping, telephone pole, telegraph pole, electric light pole, electric power pole, coal tipple or obstruction to the public way.

GRANTEE — A person who enjoys a nonexclusive privilege to occupy or use a public way to provide nonexempt service under this chapter and who is in continuous compliance with this chapter.

GROSS REVENUE — All gross revenue of the grantee or any affiliate of the grantee derived from the use or occupancy of public ways for the provision of nonexempt services to persons having a residence or place of business in the service area. Gross revenue shall include amounts earned, regardless of whether the amounts are paid in cash, in trade, or by means of some other benefit to the grantee or its affiliates; whether the services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and/or how the amounts are initially recorded by the grantee or its affiliates. Gross revenue shall not be a net of expense, including but not limited to any operating expense, capital expense, sales expense, or commission; any accrual, including, without limitation, any accrual for commissions; or any other expenditure, regardless of whether such expense, deduction, accrual, or expenditure reflects a cash payment. Gross revenue shall not be double counted, viz., gross revenue which has been included as gross revenue of both the grantee and an affiliate but which sum is included in gross revenue due solely to a transfer of funds between the grantee and the affiliate shall not be counted for purposes of determining gross revenue.

NONEXEMPT — A service which is provided to residences or businesses within the service area, but which is not exempt from the provisions of this chapter under § 106-4B of this chapter.

PERSON — Any natural person, sole proprietorship, partnership, association, limited liability company, corporation or other form of organization, authorized to do business in the Commonwealth of Pennsylvania and which provides or seeks to provide one or more

nonexempt services to residences or businesses in the service area. A governmental entity or a municipal authority is not a person.

PUBLIC PROPERTY — Any real property owned by the Township other than the public way.

PUBLIC WAY — The surface of, and the space above and below, any public street, unopened right-of-way, highway, turnpike, bridge, lane, public way, drive, circle, or other public right-of-way held by the Township in the service area. Public way shall also mean any easement now or hereafter held by the Township within the service area for the purpose of public travel and/or for utility and/or public services use dedicated for compatible uses.

SERVICE AREA — The present municipal boundaries of the Township, and shall include any additions thereto by annexation or other legal means.

TOWNSHIP — The Township of Northampton, County of Bucks, Commonwealth of Pennsylvania, or the lawful successor, transferee, or assignee thereof.

§ 106-3. Registration required.

Each person, other than on a transitory basis, who occupies or uses or seeks to occupy or use a public way to provide a nonexempt service to residences or businesses within the service area, or who places any equipment or facility in a public way other than on a transitory basis, including persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Township. Registration is accomplished by filing with the Township a completed provider certification in the form shown at Appendix A¹ to this chapter. Such registration shall be valid for 10 years from the date of registration unless sooner terminated as provided for herein.

§ 106-4. Grant of privileges; exemptions; scope.

A. **Grant.** It shall be unlawful for any person to construct, repair, remove, relocate, or perform any work on or use any facilities or any part thereof in a public way unless in compliance with this Chapter 106, Rights-of-Way, Use of. Continuous compliance with this Chapter 106, Rights-of-Way, Use of, grants to the grantee a nonexclusive privilege to construct, repair, remove, relocate or perform any work on or use any facilities or any part thereof in the public ways within the service area and to occupy or use the public ways for the purpose of providing nonexempt service to residences or businesses within the service area. The grantee shall contract separately with the Township for any use of public property.

B. **Exemptions.** This Chapter 106, Rights-of-Way, Use of, shall not apply to occupation or use of the public ways to provide:

- (1) The transportation of passengers or property or both as a common carrier by means of elevated street railway, inclined plane railway, railroad, street railway or

1. **Editor's Note:** Appendix A is on file in the Township offices.

underground street railway, trackless-trolley omnibus or by any combination of such means.

- (2) The transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances for the public.
 - (3) The productions, generation, manufacture, transmission, storage, distribution, or furnishing of natural or artificial gas, electricity, steam, air conditioning or refrigerating service or any combination thereof to or for the public.
 - (4) The diverting, developing, pumping, impounding, distributing or furnishing of water from either surface or subsurface sources to or for the public.
 - (5) The collection, treatment, or disposal of sewage for the public.
 - (6) ~~The conveyance or transmission of messages or communication by telephone or telegraph for the public.~~
 - (7) The diverting, pumping or impounding of water for the development or furnishing of hydroelectric power to or for the public.
 - (8) The transportation of oxygen or nitrogen, or both, by pipeline or conduit for the public.
 - (9) Any ancillary service reasonably necessary or appropriate for the accomplishment of service specified in Subsection B(1) through (8).
 - (10) Cable service.
- C. Not a cable system. This chapter does not authorize a person to provide cable service. A person seeking to provide cable service must obtain permission from the Township under separate legislation of the Township.
- D. Not a pole attachment agreement. This chapter does not authorize the grantee to attach to any pole or other structure in a public way devices for the intentional transmission or radiation of radio frequency emissions or energy through the ether by any means now known or hereafter developed.

§ 106-5. Standards of service.

- A. Conditions of street occupancy. All facilities and equipment installed or erected by the grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said public ways.
- B. Restoration of public ways. If during the course of the grantee's construction, operation, and/or maintenance of its facilities and equipment there occurs a disturbance of any public way by the grantee, the grantee shall, at its expense, replace and restore such public way to a condition which existed immediately prior to such excavation. If the grantee excavates the surface of any public way, the grantee shall be responsible for restoration of the public way and its surface within the area affected by the excavation.

Restoration of the public way shall be commenced in a timely manner in accordance with standards for such work set by the Township. Weather permitting, restoration shall be undertaken within no more than 10 business days after the damage is incurred and the grantee shall use its best efforts to complete the restoration as soon as possible thereafter. The Township reserves the right, after providing notice to the grantee, to remove and/or repair any work done by the grantee which is inadequate. The reasonable cost thereof, including the cost in inspection and supervision, shall be paid by the grantee. All excavations made by the grantee in the public way shall be properly safeguarded for the prevention of accidents.

- C. Tree and shrubbery. The grantee shall have the authority, except when in conflict with existing Township ordinances, to trim any trees upon and overhanging public ways so as to prevent the branches of such trees from coming in contact with the grantee's facilities, except that at the option of the Township, such trimming may be done by it, or under its supervision and direction, at the expense of the grantee. The grantee shall notify Township and all affected property owners regarding the grantee's need to trim trees or other natural growth upon and overhanging public ways so as to prevent the branches of such trees from coming in contact with its facilities or equipment. Trimming shall be limited to the area required to clear its facilities or equipment.
- D. Safety requirements. All such work in the public ways shall be performed in accordance with applicable safety code and technical requirements.
- E. Maps. Prior to beginning any construction of facilities, the grantee shall provide the Township with a construction schedule for work in the public ways, which schedule shall be updated as changed. Upon completion of initial construction and upon completion of construction of any modification to its facilities, the grantee shall provide the Township with a map showing the location of its installed facilities in the public ways. Such maps shall be provided in both paper form, as well as in an electronic format for placement on the Township's GIS system. Annually thereafter, the grantee shall provide a map to the Township showing the location of the grantee's facilities in the public ways on a scale of 150 feet per inch or whatever standard scale the Township adopts for general use.
- F. Reservation of Township public ways. Nothing in this chapter shall be construed to prevent the Township or other agency of government or municipal authority from constructing sewers, grading, paving, repairing and/or altering any street, and/or laying down, repairing and/or removing water mains and/or constructing and/or establishing any other public work or improvement. If any of the grantee's facilities or equipment interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the grantee's facilities or equipment shall be removed or replaced in the manner the respective Township or other agency of government or municipal authority shall direct. Any and all such removal or replacement shall be at the expense of the grantee. Should the grantee fail to remove, adjust or relocate its facilities by the date established by the Township or other agency of government or municipal authority, the Township or other agency of government or municipal authority may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by the grantee, including all reasonable costs and expenses incurred by the Township or other agency of government or municipal authority due to the grantee's delay.

§ 106-6. Rental payments.

- A. In consideration of occupying or using the public ways under this chapter, the grantee shall pay to the Township a rental equal to 5% of gross revenue or other such remuneration as set forth from time to time by the Township.
- B. The rental shall be assessed on a calendar quarterly basis and shall be payable to the Township no later than 45 days after the expiration of the calendar quarter for which payment is due. The grantee shall file with the Township a complete and accurate statement, under notarial seal, at the end of each calendar year quarter certified as true and correct by a representative of the grantee, authorized to make such certification, explaining how the payment was calculated. In connection with the rental payment due on February 14, the grantee shall also submit to the Township, on that date or no later than six months thereafter, a detailed statement by an officer of the grantee certified by the grantee's independent certified public accountant verifying the accuracy of the gross revenue and rental payments for the previous calendar year, with a detailed breakdown and explanation of the calculation by each month.
- C. The grantee shall keep accurate books of account which shall clearly support the calculation of rentals and describe in sufficient detail the amounts attributable to each specific component of gross revenue. Such books of account and all supplemental information and source documents in support thereof, including, but not limited to, third party remittances and contract documents, shall be made available to the Township and its authorized representatives for examination at a location in Bucks County, Pennsylvania, at any time during regular business hours on 10 days' prior written notice and from time to time for the purpose of verifying or identifying rentals owed to the Township. The grantee shall exercise its best efforts to obtain financial records of affiliates for the Township for the purpose of verifying the accuracy of the rental payments. The Township shall have the right to examine and to recompute any amounts determined to be payable under the chapter; provided, however, that such examination shall take place within 48 months following the close of each year. Any additional amount due to the Township as a result of the examination and recomputation shall be paid within 30 days following written notice to the grantee by the Township, which notice shall include a copy of the examination report. In the event that said examination determines that funds are owed to the Township in an amount in excess of 2%, the cost of said examination shall be borne by the grantee and reimbursed to the Township within 30 days following written notice to the grantee.
- D. In the event that any rental or other payment is not made or the requisite documentation and certification is not provided on or before the applicable dates heretofore specified, interest shall be compounded daily and set at the one-year United States Treasury Bill rate existent on the date payment was due, plus three percentage points. Any amount recomputed to reflect correct payment due shall bear interest as described from the date such payment was originally due.

§ 106-7. Bonds, insurance and indemnification.

- A. Construction bond and performance bond.

- (1) Performance bond. Upon the effective date of the franchise, the grantee shall obtain and maintain during the entire term of the franchise and any extensions and renewals thereof, at its cost and expense, and file with the Township, a corporate surety bond in an amount specified in the franchise to guarantee the faithful performance of the grantee of all its obligations provided under this chapter and the franchise. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation within the meaning of this section.
- (2) Conditions. The performance bond shall provide the following conditions: There shall be recoverable by the Township jointly and severally from the principal and surety, any and all fines and liquidated damages due to the Township and any and all damages, losses, costs, and expenses suffered or incurred by the Township resulting from the failure of the grantee to faithfully comply with the provisions of this chapter and the franchise; comply with all orders, permits and directives of any Township agency or body having jurisdiction over its acts or defaults; pay fees due to the Township; or pay any claims, liens or taxes due the Township which arise by reason of the construction, operation, maintenance or repair of the cable system. Such losses, costs and expenses shall include but not be limited to attorney's fees and other associated expenses.
- (3) Reduction of bond. Upon written application by the grantee, the Township may, at its sole option, permit the amount of the bond to be reduced or waive the requirements for a performance bond subject to the conditions set forth below. Reductions granted or denied upon application by the grantee shall be without prejudice to the grantee's subsequent applications or to the Township's right to require the full bond at any time thereafter. However, no application shall be made by the grantee within one year of any prior application.
- (4) Construction bond. The grantee shall maintain and by its acceptance of any franchise granted hereunder agrees that it will maintain through the rebuild or construction of the cable television system as required by this chapter or the franchise, a faithful construction bond in an amount specified in the franchise conditioned upon the faithful performance of the grantee in the construction or rebuild of a cable television system complying with related provisions of this chapter and the franchise, and upon the further condition that if the grantee shall fail to comply with any law, ordinance or regulation governing the construction or rebuild of the cable television system, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Township as a result, including the full amount of any compensation, indemnification, or cost of repair, construction, removal or abandonment of any property of the grantee, plus attorney's fees and costs, up to the full amount of the bond.
- (5) Use of performance bond and construction bond. Prior to drawing upon the performance bond or the construction bond for the purposes described in this section, the Township shall give the grantee written notice of its intent to draw on the bond. Said notice shall detail the basis for drawing on the bond and, if the grantee has not already been provided with a written notice of violation and an opportunity to correct the violation, the notice provided under this subsection shall

provide the grantee with a minimum of 30 days to remedy the matter. If the matter is not remedied within the cure period specified in the applicable notice, the grantee shall have 10 days from the receipt of such written notice to make a full and complete payment. If the grantee does not make the payment within 10 days, the Township may withdraw the amount thereof, with interest, from the performance bond. Nothing herein shall preclude the Township from taking action in emergency situations without the thirty-day-period specified above.

- (6) Notification. Within three days of a withdrawal from the performance bond or construction bond, the Township shall send to the grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.
- (7) Replenishment of performance bond and construction bond. No later than 30 days after mailing to the grantee by certified mail notification of a withdrawal pursuant to Subsection A(5) above, the grantee shall replenish the performance bond and/or construction bond in an amount equal to the amount so withdrawn.
- (8) Nonrenewal, alteration, or cancellation of performance bond and construction bond. The performance bond and construction bond required herein shall be in a form satisfactory to the Township and shall require 30 days written notice of any nonrenewals, alteration or cancellation to both the Township and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the Township written evidence of the issuance of replacement bond or policies within 30 days following receipt by the Township or the grantee of any notice of cancellation.
- (9) Inflation. To offset the effects of inflation, the amount of the performance bond provided for herein is subject to reasonable adjustment as provided in the franchise.

B. Liability and insurance.

- (1) Certificate of insurance. Prior to commencement of construction, but in no event later than 60 days after the effective date of the franchise and thereafter continuously throughout the duration of the franchise and any extensions or renewals thereof, the grantee shall furnish to the Township certificates of insurance, approved by the Township, for all types of insurance required under this section. Failure to furnish said certificates of insurance in a timely manner shall constitute a violation of this chapter.
- (2) Filing. Any insurance policy obtained by the grantee in compliance with this section shall be filed and maintained with the Township Manager during the term of the franchise, and may be changed from time to time to reflect changing liability limits and/or to compensate for inflation consistent with Subsection B(8) below. The grantee shall immediately advise the Township of any litigation that may develop that would affect this insurance.

- (3) No liability limit. Neither the provisions of this section nor any damages recovered by the Township hereunder shall be construed to or limit the liability of the grantee under any franchise issued hereunder or for damages.
- (4) Endorsement. All insurance policies maintained pursuant to this chapter or the franchise shall contain the following, or a comparable, endorsement: "It is hereby understood and agreed that this insurance policy may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until thirty (30) days after receipt by the Township Manager, by registered mail, of a written notice of such intention to cancel or not to renew."
- (5) Hold harmless clause. All contractual liability insurance policies maintained pursuant to this chapter or the franchise shall include the provision of the following hold harmless clause: "The grantee agrees to indemnify, save harmless and defend the Township, its officials, agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney's fees for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, which may arise or which may be alleged to have arisen out of or in connection with the work covered by the franchise and performed or caused to be performed by grantee, its employees, agents and contractors or their successors. The foregoing indemnity shall apply except if such injury, death or damage is caused directly by the negligence or other fault of the Township, its agents, servants, or employees or any other person indemnified hereunder."
- (6) Commonwealth institution. All insurance policies provided under the provisions of this chapter or the franchise shall be written by companies authorized to do business in the commonwealth, and approved by the Pennsylvania Department of Insurance.
- (7) Named insured. At any time during the term of the franchise, the Township may request and the grantee shall comply with such request, to name the Township as an additional named insured for all insurance policies written under the provisions of this chapter or the franchise.
- (8) Inflation. To offset the effects of inflation and to reflect changing liability limits, all of the coverages, limits, and amounts of the insurance provided for herein are subject to reasonable increases at the end of every three-year-period of the franchise, applicable to the next three-year period, upon the determination of the Township.
- (9) General liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain, throughout the term of the franchise, general liability insurance insuring the grantee in the minimum of:
 - (a) One million dollars for property damage per occurrence;
 - (b) Two million dollars for property damage aggregate;

- (c) Five million dollars for personal bodily injury or death to any one person; and
 - (d) Ten million dollars bodily injury or death aggregate per single accident or occurrence.
- (10) Policy inclusion. Such general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.
- (11) Automobile liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain, throughout the term of the franchise, automobile liability insurance for owned, nonowned, or rented vehicles in the minimum amount of:
- (a) One million dollars for bodily injury and consequent death per occurrence;
 - (b) Five hundred thousand dollars for bodily injury and consequent death to any one person; and
 - (c) Five hundred thousand dollars for property damage per occurrence.
- (12) Workers' compensation and employer's liability insurance. The grantee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain, throughout the term of the franchise, workers' compensation and employer's liability, valid in the commonwealth, in the minimum amount of:
- (a) Statutory limit for workers' compensation; and
 - (b) One hundred thousand dollars for employer's liability.
- (13) No limitation on liability. None of the provisions of this chapter or any insurance policy required herein, or any damages recovered by the Township hereunder, shall be construed to excuse the faithful performance by or limit the liability of the grantee under this chapter or the franchise for damages either to the limits of such policies or otherwise.

C. Indemnification.

- (1) To the fullest extent permitted by law, the grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the Township, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims, (including without limitation workers' compensation claims against the Township or others), causes of action, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the Township in connection therewith, but excluding claims, suits, actions, liabilities, judgments or damages that are the direct result of negligence or deliberate acts or omission of the Township, its officers, employees, agents, boards or commissions):

- (a) To persons or property, in any way arising out of or through the acts or omissions of the grantee, its subcontractors, agents or employees, to which the grantee's negligence shall in any way contribute, and regardless of whether the Township's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury, or damage.
 - (b) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or any other right of any person, firm or corporation, but excluding claims arising out of or related to the Township or educational access programming.
 - (c) Arising out of the grantee's failure to comply with the provisions of any federal, commonwealth, or local statute, ordinance or regulation applicable to the grantee in its business hereunder.
- (2) The foregoing indemnity is conditioned upon the following: The Township shall give the grantee reasonable notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Subsection C. The grantee will provide the defense of any claims brought against the Township under this Subsection C of the franchise by selecting counsel of the grantee's choice to defend the claim, subject to the reasonable consent of the Township, which will not unreasonably be withheld. Nothing herein shall be deemed to prevent the Township from cooperating with the grantee and participating in the defense of any litigation by its own counsel at its own costs and expense; provided, however, that the grantee shall have the right to defend, settle or compromise any claim or action arising hereunder, and the grantee shall have the sole authority to decide the appropriateness and the amount of any such settlement. Recovery by the Township of any sum by reason of the liquidated damages required by the franchise shall be deducted from any recovery which the Township might have against the grantee arising out of the same transaction under the terms of this Subsection C.

§ 106-8. Forfeiture or revocation.

The Township reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under the chapter and the franchise grant:

- A. If the grantee shall default in the performance of any of the material obligations under this chapter, the franchise, or under such documents, contracts and other terms and provisions entered into by and between the Township and the grantee.
- B. If the grantee shall fail to provide or maintain in full force and effect the liability and indemnification coverage or the performance bond as required herein.
- C. If the grantee, after all established regulatory and appellate procedures have been exhausted, shall violate any orders or rulings of any regulatory body having jurisdiction over the grantee relative to this chapter or the franchise.

- D. The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt.

§ 106-9. Violations and penalties.

Any person which commits or suffers the violation of this chapter shall, upon being found liable in a civil enforcement proceeding commenced by the Township, pay a fine of \$600, plus all court costs, including reasonable attorney's fees incurred by the Township. A separate offence shall arise for each day or portion thereof in which a violation is found to exist or for each section of this chapter which is found to have been violated. In addition, the Township also may enforce this chapter by an action brought in equity.

§ 106-10. Compliance with other laws and ordinances.

The grantee shall at all times be subject to the exercise of the police power of the Township. The grantee shall comply with all lawful ordinances, codes, laws, rules and regulations of the Township, County of Bucks, Commonwealth of Pennsylvania, and the United States of America which are now in effect or hereafter enacted. The grantee shall specifically be required to acknowledge and comply with the following provisions contained within this Code:

- A. Section A144-11, Police powers; conflicts.
- B. Section A144-18C, Right of inspection of construction.
- C. Section A144-18D, Right of inspection of property.
- D. Section A144-24A, Authority to construct.
- E. Section A144-24B(3) through (9) and (11), Construction and technical standards.
- F. Section A144-24C, System construction schedule.
- G. Section A144-24E(1) through (3), (5) and (6), and (8) and (9), Use of streets.
- H. Section A144-24F, Erection, removal and common use of poles.
- I. Section A144-24G, Construction reporting requirements.

§ 106-11. Conflicts with other provisions.

Whenever the requirements of this chapter are in conflict with other requirements of the ordinances of the Township of Northampton, the most restrictive, or those imposing the highest standards shall govern. Privileges granted by this chapter do not constitute a waiver or impairment of the rights of the Township at law or equity now or henceforth existing to proceed versus the grantee for enforcement of the chapter or violation of this chapter or ordinances of the Township.

EXHIBIT "F"



Township of Northampton

NORTHAMPTON TOWNSHIP COMPLEX • 55 Township Road, Richboro, Pennsylvania 18954-1592
Township Administration - (215) 357-6800 • Fax: (215) 357-1251

August 4, 2011 [Revised]

ATC Outdoor DAS
10 Presidential Way
Woburn, MA 01801
ATTN: David Callender

RE: ATC Outdoor DAS LLC Permit Applications:

1. 11 New Pole Installations – Various Locations on Plans
2. 16 Various Locations on Plans – Installation of Telecommunications Equipment and Antennas on Existing Poles
3. 17 Various Locations on Plans – Installation of Telecommunications Equipment and Antennas on Existing Poles
4. Various Pole Locations – Installation of Aerial Fiber Optic Cable
5. Mt. Pleasant Drive and Woodland Drive – Installation of Conduit and Hand Holes
6. Middle Holland Road and Rock Way - Installation of Conduit and Hand Holes
7. Bridgetown Pike, E. Heron Road, Buckshire Drive and Brookside Drive - Installation of Conduit and Hand Holes
8. Ponderosa Drive and Briarwood Drive - Installation of Conduit and Hand Holes
9. Rosemary Drive, Loretta Circle, Elsa Way and Florence Drive - Installation of Conduit and Hand Holes
10. E. Holland Road, Pine View Drive, Forrest Drive and Woodlake Drive - Installation of Conduit and Hand Holes
11. Upper Holland Road, Torresdale Drive, Lynford Road and Windy Knoll Drive - Installation of Conduit and Hand Holes
12. Rotterdam Road W., Michael Road, David Road, Lempa Road, Tulip Road and Dutch Drive - Installation of Conduit and Hand Holes

Dear David:

Please be advised that the aforementioned permit applications are administratively incomplete because the submitted permit fees are incorrect and all appropriate permit applications have not been submitted. In discussions with your attorney, electrical permit applications must be submitted for all of the aforementioned applications with the exception of Permit #1 (New Pole Installation – Various Locations).

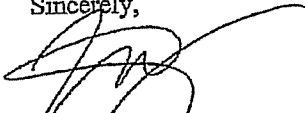
**Township of
Northampton**

David Callender
August 4, 2011
Page Two

With respect to permit fees, the total amount due is \$26,842.00. In addition, a \$5,000.00 escrow is required.

Feel free to contact me if you have any questions.

Sincerely,



Michael T. Solomon
Director of Planning and Zoning

MTS/tms

cc: Robert Pellegrino, Township Manager
Barbara Kirk, Township Solicitor
John Van Luvanee, Esquire (via e-mail)

Via U.S. Regular Mail and
Certified Mail No. 7006 2760 0003 5677 1984
Return Receipt Requested

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

ATC OUTDOOR DAS, LLC

v.

BOARD OF SUPERVISORS OF
NORTHAMPTON TOWNSHIP

and

MICHAEL T. SOLOMON

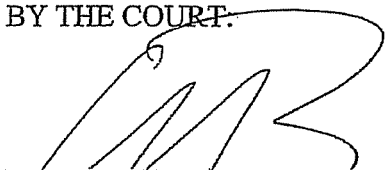
No.: 2011-09455

ORDER

AND NOW, this 5th day of ~~December~~ ^{January, 2012}, 2011, upon consideration of Plaintiff's Motion for Peremptory Judgment, Defendant's answer thereto, Defendant's Preliminary Objections, Plaintiff's response thereto and Defendant's subsequent response, as well as Defendant's Motion to Dismiss Plaintiff's Peremptory Judgment, Plaintiff's response thereto and Defendant's subsequent response, and having heard oral argument on December 13, 2011, it is hereby ORDERED and DECREED that;

2. Plaintiff's Motion for Peremptory Judgment is GRANTED on Count I of Plaintiff's Complaint in favor of Plaintiff, and thus, Defendant's Motion to Dismiss is DENIED.
3. Defendants are ordered to issue Plaintiff an exemption under Sections 106-4.B(6) and 106-4.B(9) of the ROW Ordinance so as to permit ATC to enter upon and use the public rights-of-way within Northampton Township to install the DAS Infrastructure.
4. Defendant's Preliminary Objections are OVERRULED.

BY THE COURT.


WALLACE H. BATEMAN, JR., I



LAW OFFICES

ARTHUR M. EASTBURN 1911-1971
SAMUEL S. GRAY, JR. 1938-2003

EASTBURN AND GRAY, P.C.

60 EAST COURT STREET
P.O. BOX 1389
DOYLESTOWN, PA 18901-0137
215-345-7000
FAX: 215-345-9142
WWW.EASTBURNGRAY.COM

775 PENLLYN BLUE BELL PIKE
BLUE BELL, PA 19422
215-345-7000

JOHN A. VANLUVANEE
E-MAIL: JVANLUVANEE@EASTBURNGRAY.COM

PLEASE REPLY TO: DOYLESTOWN OFFICE

THOMAS F. J. MacANIFF
DEREK J. REID*+
KENNETH R. WILLIAMS
JOANNE D. SOMMER
DAVID L. MARSHALL
GRACE M. DEON*
ROBERT M. COX*
JUDITH A. ALGEO
KELLIE A. McGOWAN*
JUDY L. HAYMAN*
CATHERINE NGUYEN*
MARK S. CAPPUCCIO
ROBERT R. WATSON

OF COUNSEL:
FRANK N. GALLAGHER

JOHN A. VAN LUVANEE
ERIC R. TOBIN
D. RODMAN EASTBURN
JOHN N. SCHAEFFER, III
JANE E. LEOPOLD-LEVENTHAL
G. MICHAEL CARR*
WILLIAM T. DUDECK*
KIMBERLY LITZKE
MARC D. JONAS
JULIE L. VON SPRECKELSEN*
SEAN M. CORR*
MARTHA SPERLING

CHARLES H. DORSETT, JR.

*ALSO ADMITTED IN NEW JERSEY

*+MANAGING SHAREHOLDER-NEW JERSEY

January 27, 2012

Michael J. Savona, Esquire
Friedman, Schuman, Applebaum,
Nemeroff & McCaffery, P.C.
Suite 200
101 Greenwood Avenue, 5th Floor
Jenkintown, PA 19046

Re: **ATC Outdoor DAS, LLC v. Northampton Township**
Board of Supervisors
Bucks County CCP Docket No. 2011-09455

Dear Mr. Savona:

On January 5, 2012 Judge Bateman entered as Order in the above matter granting peremptory judgment to ATC on the mandamus count of its Complaint against Northampton Township. Since the date of that order, we have engaged in discussions concerning a possible settlement of the litigation. Those discussions have been without prejudice to the legal positions of the parties. You have requested that I confirm, in writing, the terms of a settlement that I have been authorized to communicate to the Township.

In return for the Township's agreement to: (i) not take any further action in the above matter, including but not limited to filing post trial motions and/or appeals of Judge Bateman's order; (ii) agreeing to promptly process and issue all permits that the township has previously identified, which are itemized on the attached list prepared by Michael Solomon; and (iii) assisting



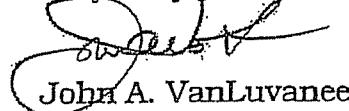
Michael J. Savona, Esq.
January 27, 2012
Page 2 of 2

ATC with abutter issues that may arise during the installation of the system, if any, ATC would agree to:

- (1) Apply for the permits identified by Mr. Solomon without prejudice to its legal position as asserted in its complaint in the above-captioned action.
- (2) Pay the permit fees in the amount of \$26,842.00 and the engineering escrow in the amount of \$5,000.00 as calculated by Mr. Solomon.
- (3) Pay the sum of \$100,000.00 to the Township to offset the administrative impact to the Township for updating Township files and records with details of the proposed new DAS system, and for sharing that information with potential future users in the course of managing the Township's rights of ways. In Northampton Township, there will be 56 nodes located on 36 existing wooden pole locations and 20 new poles (12 steel and 8 wood). The \$100,000.00 is calculated based on an administrative contribution of \$1,785.71 for each of the 56 nodes.
- (4) ATC will dedicate two (2) dark fiber strands across the Northampton fiber system. Any and all costs to connect to the system will be borne by the Township now or in the future.

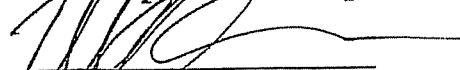
This offer is made in the spirit of compromise and without prejudice to ATC's legal position. If the offer is acceptable to the Township, please sign the attached copy of this letter. Your signature will confirm that you have been duly authorized by the Township to accept the offer communicated in this letter. When signed, this letter will constitute a binding agreement between the parties.

Very truly yours,


John A. VanLuvanee

JAV/eah
cc: David Bass, Esquire

Accepted on behalf of
Northampton Township



Michael J. Savona, Esq.
Township Solicitor

Date: Jan - 30, 2012

ATC Permit Fees

1.	11 poles state	(11 x \$100)	=	\$ 1,100.00 <u>4.00</u>
				\$ 1,104.00
2.	16 tel. equip. electric state	(16 x \$85) (16 x \$200) (2 x \$4)	= = =	\$ 1,360.00 3,200.00 <u>8.00</u>
				\$ 4,568.00
3.	17 tel. equip. electric state	(17 x \$85) (17 x \$200) (2 x \$4)	= = =	\$ 1,445.00 3,400.00 <u>8.00</u>
				\$ 4,853.00
4.	29 fiber opt. electric state	(29 x \$85) (29 x \$200) (2 x \$4)	= = =	\$ 2,465.00 5,800.00 <u>8.00</u>
				\$ 8,273.00
5.	2 conduits electric state	(2 x \$85) (2 x \$200) (2 x \$4)	= = =	\$ 170.00 400.00 <u>8.00</u>
				\$ 578.00
6.	2 conduits electric state	(2 x \$85) (2 x \$200) (2 x \$4)	= = =	\$ 170.00 400.00 <u>8.00</u>
				\$ 578.00
7.	4 conduits electric state	(4 x \$85) (4 x \$200) (2 x \$4)	= = =	\$ 340.00 800.00 <u>8.00</u>
				\$ 1,148.00
8.	2 conduits electric	(2 x \$85) (2 x \$200)	= =	\$ 170.00 400.00

	state	(2 x \$4)	=	<u>8.00</u>
				\$ 578.00
9.	4 conduits	(4 x \$85)	=	\$ 340.00
	electric	(4 x \$200)	=	800.00
	state	(2 x \$4)	=	<u>8.00</u>
				\$ 1,148.00
10.	4 conduits	(4 x \$85)	=	\$ 340.00
	electric	(4 x \$200)	=	800.00
	state	(2 x \$4)	=	<u>8.00</u>
				\$ 1,148.00
11.	4 conduits	(4 x \$85)	=	\$ 340.00
	electric	(4 x \$200)	=	800.00
	state	(2 x \$4)	=	<u>8.00</u>
				\$ 1,148.00
12.	6 conduits	(6 x \$85)	=	\$ 510.00
	electric	(6 x \$200)	=	1,200.00
	state	(2 x \$4)	=	<u>8.00</u>
				\$ 1,718.00

TOTAL AMOUNT DUE: \$26,842.00

PLUS

ESCROW (TOWNSHIP ENGINEER) \$5,000



Township of Northampton

NORTHAMPTON TOWNSHIP COMPLEX • 55 Township Road, Richboro, Pennsylvania 18954-1592
Township Administration – (215) 357-6800 • Fax: (215) 357-1251

May 15, 2012

Mr. John Coste, Regional Manager
ATC Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518

MAY 17 2012

Re: Northampton Township, Bucks County
Permit No. 60683
STOP WORK ORDER

Dear Mr. Coste:

In accordance with the terms, conditions, and provisions of the Northampton Township Code, Chapter 21, §21-101 – §21-119 as amended, I am writing to advise you that ATC Outdoor DAS, LLC ("ATC") is in violation of the terms of permit 60683, issued February 13, 2012 and, as such ATC is hereby **ORDERED AND DIRECTED** to immediately **CEASE, DESIST AND STOP** any and all construction work pursuant to permit 60683.

In particular, ATC's activity pursuant to permit 60683 is in direct violation of the following permit requirements:

- 1) ATC has failed to coordinate its work schedule with the Township Engineer to insure timely inspection of right-of-way disturbance and restoration, as required by §21-104(2).
- 2) ATC failed to disclose to the Township the exact locations and types of infrastructure being installed within the right-of-way, and has installed or proposed to install infrastructure in locations which are not authorized by permit 60683.
- 3) ATC failed to adequately restore disturbed areas of the right-of-way, in accordance with appropriate Township specifications, as required by §21-108.
- 4) ATC failed to maintain adequate public safety precautions, as required by §21-109.



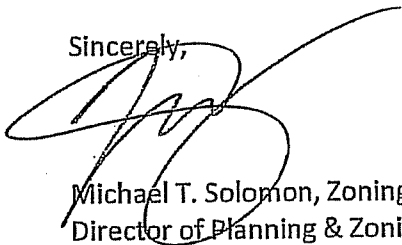
- 5) ATC has failed to provide the Township with adequate proof of liability insurance as required under §21-104(3)

Accordingly, unless and until the foregoing violations are remediated to the satisfaction of the Township, ATC is hereby notified that further work may not proceed pursuant to permit 60683, and all construction activity presently underway must immediately **CEASE** and **DESIST**.

ATC has the right to appeal this notice to the Northampton Township Zoning Hearing Board, in accordance with §27-1302 of the Northampton Township Code within 30 days of the date of this letter.

Failure to comply with the terms and conditions of this notice may result in prosecution in accordance with applicable provisions of the Pennsylvania Crimes Code.

Sincerely,



Michael T. Solomon, Zoning Officer
Director of Planning & Zoning

Cc: David Callender II, Project Manager, American Tower Corp.
Scott Lewis, Director DAS Deployment, American Tower Corp.
Daniel S. Cohen, Attorney, Cohen Law Group
Michael J. Savona, Attorney, Friedman, Schuman



Township of Northampton

NORTHAMPTON TOWNSHIP COMPLEX • 55 Township Road, Richboro, Pennsylvania 18954-1592
Township Administration – (215) 357-6800 • Fax: (215) 357-1251

May 15, 2012

Mr. John Coste, Regional Manager
ATC Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518

MAY 17 2012

RE: Relocation of Facilities in Northampton Township Rights-of-Way
PERMIT No. 60683

Dear Mr. Coste:

This letter will serve as Notice, in accordance with the Northampton Township Code, § 21-110, that Northampton Township has determined that your proposed placement of certain infrastructure within the Township rights-of-way, as detailed in the above referenced Permit No. 60683, does not comply with applicable Township regulations and, accordingly, must be relocated.

Specifically, you have advised that ATC intends to install new telecommunications facilities, and particularly towers and related equipment, within residential subdivisions wherein such installations are prohibited under the terms and conditions of the Northampton Township Zoning Code. These locations include, but are not limited to, all of the following addresses:

1. 145 Woodland Drive
2. Rock Way
3. 108 Buckshire Drive
4. 119 Briarwood Drive
5. 127 Tulip Road
6. 95 East Rotterdam Road
7. 119 Lempa Road
8. 54 Florence Drive
9. 167 W. Lynford Road
10. 81 Lynford Road
11. 27 Windy Knoll Drive
12. Lot adjacent to 205 Woodlake Drive



Further, it has come to the Township's attention that ATC is proposing to install above-ground telecommunications facilities at the foregoing locations within the public rights-of-way of residential subdivisions wherein the Township has imposed strict regulations regarding the use of the rights-of-way which prohibit the installation of any facilities above ground. In particular, your proposed installation violates the terms of all of the following:

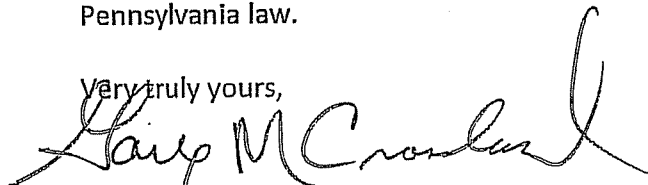
1. Final Plan of Windmill Village West, dated July 25, 1973, approved March 28, 1979.
2. Final Plan of Hillcrestshire, Section IV, dated February 6, 1970, approved Sept. 14, 1977
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9. Final Plan of Willowgreene North, dated February 1, 1977, approved May 25, 1977
10. Final Plan of Pine Run, dated October 27, 1978, approved March 28, 1979.

Given that the Township has imposed strict right-of-way requirements in each and every one of the foregoing residential areas, and given that we have discovered that ATC intends to install facilities in the rights-of-way which violate these requirements, your facilities cannot be located as proposed in the foregoing locations.

This correspondence shall serve as your official NOTICE that your proposed installations at the foregoing locations cannot proceed, and that the Township is requiring you to reconfigure the proposed installations, all as provided under § 21-110 of the Northampton Township Code. Unless and until you have reconfigured your proposed infrastructure installations to meet the requirements detailed herein, you may not proceed with any above-ground installations at any of the locations detailed in this Notice.

Failure to comply with the terms and conditions of this Notice shall subject you to the penalties provided for violations under § 21-119, in addition to any other available remedies provided under Pennsylvania law.

Very truly yours,



Gary M. Crossland
Director of Public Works

Cc: David Callender II, Project Manager, American Tower Corp.
Scott Lewis, Director DAS Deployment, American Tower Corp.
Daniel S. Cohen, Attorney, Cohen Law Group
Michael J. Savona, Attorney, Friedman, Schuman



Township of Northampton

NORTHAMPTON TOWNSHIP COMPLEX • 55 Township Road, Richboro, Pennsylvania 18954-1592
Township Administration – (215) 357-6800 • Fax: (215) 357-1251

May 15, 2012

Mr. John Coste, Regional Manager
ATC Outdoor DAS, LLC
400 Regency Forest Drive, Suite 300
Cary, NC 27518

MAY 17 2012

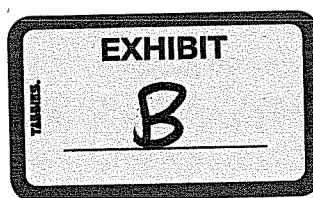
Re: Northampton Township, Bucks County
Permit No. 60683
STOP WORK ORDER

Dear Mr. Coste:

In accordance with the terms, conditions, and provisions of the Northampton Township Code, Chapter 21, §21-101 – §21-119 as amended, I am writing to advise you that ATC Outdoor DAS, LLC ("ATC") is in violation of the terms of permit 60683, issued February 13, 2012 and, as such ATC is hereby **ORDERED AND DIRECTED** to immediately **CEASE, DESIST AND STOP** any and all construction work pursuant to permit 60683.

In particular, ATC's activity pursuant to permit 60683 is in direct violation of the following permit requirements:

- 1) ATC has failed to coordinate its work schedule with the Township Engineer to insure timely inspection of right-of-way disturbance and restoration, as required by §21-104(2).
- 2) ATC failed to disclose to the Township the exact locations and types of infrastructure being installed within the right-of-way, and has installed or proposed to install infrastructure in locations which are not authorized by permit 60683.
- 3) ATC failed to adequately restore disturbed areas of the right-of-way, in accordance with appropriate Township specifications, as required by §21-108.
- 4) ATC failed to maintain adequate public safety precautions, as required by §21-109.



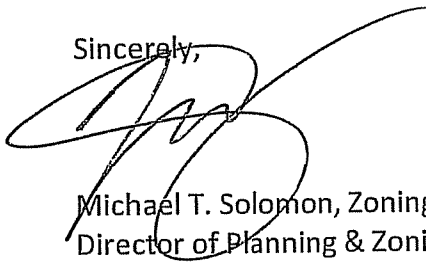
- 5) ATC has failed to provide the Township with adequate proof of liability insurance as required under §21-104(3)

Accordingly, unless and until the foregoing violations are remediated to the satisfaction of the Township, ATC is hereby notified that further work may not proceed pursuant to permit 60683, and all construction activity presently underway must immediately **CEASE** and **DESIST**.

ATC has the right to appeal this notice to the Northampton Township Zoning Hearing Board, in accordance with §27-1302 of the Northampton Township Code within 30 days of the date of this letter.

Failure to comply with the terms and conditions of this notice may result in prosecution in accordance with applicable provisions of the Pennsylvania Crimes Code.

Sincerely,



Michael T. Solomon, Zoning Officer
Director of Planning & Zoning

Cc: David Callender II, Project Manager, American Tower Corp.
Scott Lewis, Director DAS Deployment, American Tower Corp.
Daniel S. Cohen, Attorney, Cohen Law Group
Michael J. Savona, Attorney, Friedman, Schuman



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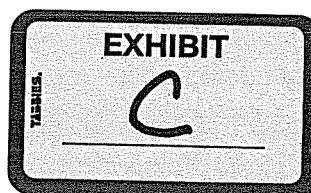
RE: Relocation of Facilities in Northampton Township Rights-of-Way
PERMIT No. 60683

Dear Mr. Coste:

This letter will serve as Notice, in accordance with the Northampton Township Code, § 21-110, that Northampton Township has determined that your proposed placement of certain infrastructure within the Township rights-of-way, as detailed in the above referenced Permit No. 60683, does not comply with applicable Township regulations and, accordingly, must be relocated.

Specifically, you have advised that ATC intends to install new telecommunications facilities, and particularly towers and related equipment, within residential subdivisions wherein such installations are prohibited under the terms and conditions of the Northampton Township Zoning Code. These locations include, but are not limited to, all of the following addresses:

1. 145 Woodland Drive
2. Rock Way
3. 108 Buckshire Drive
4. 119 Briarwood Drive
5. 127 Tulip Road
6. 95 East Rotterdam Road
7. 119 Lempa Road
8. 54 Florence Drive
9. 167 W. Lynford Road
10. 81 Lynford Road
11. 27 Windy Knoll Drive
12. Lot adjacent to 205 Woodlake Drive



Further, it has come to the Township's attention that ATC is proposing to install above-ground telecommunications facilities at the foregoing locations within the public rights-of-way of residential subdivisions wherein the Township has imposed strict regulations regarding the use of the rights-of-way which prohibit the installation of any facilities above ground. In particular, your proposed installation violates the terms of all of the following:

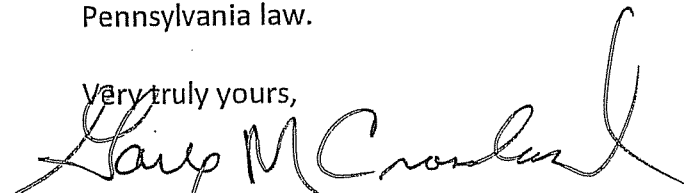
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Given that the Township has imposed strict right-of-way requirements in each and every one of the foregoing residential areas, and given that we have discovered that ATC intends to install facilities in the rights-of-way which violate these requirements, your facilities cannot be located as proposed in the foregoing locations.

This correspondence shall serve as your official NOTICE that your proposed installations at the foregoing locations cannot proceed, and that the Township is requiring you to reconfigure the proposed installations, all as provided under § 21-110 of the Northampton Township Code. Unless and until you have reconfigured your proposed infrastructure installations to meet the requirements detailed herein, you may not proceed with any above-ground installations at any of the locations detailed in this Notice.

Failure to comply with the terms and conditions of this Notice shall subject you to the penalties provided for violations under § 21-119, in addition to any other available remedies provided under Pennsylvania law.

Very truly yours,



Gary M. Crossland
Director of Public Works

Cc: David Callender II, Project Manager, American Tower Corp.
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