

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION

ATC OUTDOOR DAS, LLC

NO. 2011-09455

v.

BOARD OF SUPERVISORS OF
NORTHAMPTON TOWNSHIP

and

MICHAEL T. SOLOMON
Director of Code Enforcement

RULE TO SHOW CAUSE

AND NOW, this _____ day of _____ 2012, upon consideration of the
Petition to Intervene of CONTACT, et al., ("Petition"), a Rule is hereby entered upon
Plaintiff and Defendants to show cause, if any, why the relief prayed for in the Petition
should not be granted.

RULE RETURNABLE the _____ day of _____, 2012, at
_____.M., or as soon thereafter as counsel may be heard, in Courtroom No.
_____, Bucks County Courthouse, Doylestown, PA.

It is further ORDERED that notice of entry of this Rule shall be immediately
served on all parties by counsel for Intervenors.

BY THE COURT:

Wallace H. Bateman, Jr., J.

**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION**

ATC OUTDOOR DAS, LLC

NO. 2011-09455

v.

BOARD OF SUPERVISORS OF
NORTHAMPTON TOWNSHIP

and

MICHAEL T. SOLOMON
Director of Code Enforcement

ORDER

AND NOW, this day of June 2012, upon consideration of the Petition of CONTACT, et al., to Intervene in the above-captioned action, and any response thereto, and for good cause shown, it is hereby ORDERED and DECREED that said Petition is GRANTED and CONTACT, an unincorporated association, by and through its members Edward Bendzlowicz, John and Catherine Slavin, Beth-Ann and Steve Wolfson, Payton Wang and June Zhao, Barbara and Jim Barsky, Suzanne DeLong, Thomas Daynorowicz, Michelle Dvorak-Held, Helene Krouchick, Audrey Shapiro, Thomas M. Harrelson and Carolyn Harrison, Joseph Smith, Janice Kotofsky, Len and Carol Dubas, Noel Carter, Joseph Corsello, Lisa Wajert, Janet Swenson, Paul and Lauren Fine, Lori Hume, Pat Jacobs, Leon and Eileen Gosciniak, Lil and Robert Boysen, Ken Magrann, William Martin, Mitch Hartka, Bob and Margot Sweed, Steve McGill, David Alper,

Anthony Zuazo, Kelly Becker, and Connie Whalen is hereby permitted to intervene to defend against the relief sought by Plaintiff ATC OUTDOOR DAS, LLC.

BY THE COURT:

Wallace H. Bateman, Jr., J.

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CIVIL DIVISION

ATC OUTDOOR DAS, LLC

NO. 2011-09455

v.

BOARD OF SUPERVISORS OF
NORTHAMPTON TOWNSHIP

and

MICHAEL T. SOLOMON
Director of Code Enforcement

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OF BUCKS COUNTY
12 JUN -8 AM 9:45

PETITION TO INTERVENE OF CONTACT

CONTACT, an unincorporated association, by and through its constituent members as identified herein, and, in the alternative, said individual members, by and through their attorneys Hill Wallack LLP, hereby petition the Court pursuant to Pennsylvania Rule of Civil Procedure 2327(4) to grant them permission to intervene in the above-captioned action to defend against the relief that is being sought by Plaintiff therein to facilitate the placement by Plaintiff of certain telecommunications equipment in Northampton Township in violation of the property rights and interests of Intervenors, and in support thereof aver as follows:

1. Plaintiff ATC Outdoor DAS, LLC ("ATC") commenced this action by filing a Complaint in mandamus, declaratory relief and equity on or about October 26, 2011.

2. ATC's Complaint ostensibly seeks to compel Defendants, Board of Supervisors of Northampton Township and the Township's Director of Code Enforcement, Michael T. Solomon, to essentially stand aside and allow ATC to

construct a distributed antenna system ("DAS") throughout the Township to serve the wireless telecommunications network of ATC's clients.

3. As part of that telecommunications system, ATC intends to erect twelve (12) fiberglass poles approximately twenty-five (25) feet in height upon which it will affix a wireless antenna and related telecommunications equipment. See, *ATC's Motion to Compel*, para. 15, and *ATC's Complaint*, Exhibit "B," and full and complete copy of ATC's March 9, 2011 proposal, attached hereto as Exhibit "A."

4. ATC contends that it is a "public utility" and that its DAS system constitutes a utility service. See, *ATC's Complaint*, paras. 5, 34-36.

5. Each of the twelve (12) new poles is to be erected in the front yard of a single family residence located within one of ten residential subdivisions in Northampton Township.

6. Specifically, records and information provided to the Township indicate the new twenty-five (25) foot tall telecommunications poles, upon which other wireless communications equipment will be mounted, are to be installed in the front yards of the homes located at the following addresses:

- a. 145 Woodland Drive;
- b. Rock Way;
- c. 108 Buckshire Drive;
- d. 119 Briarwood Drive;
- e. 127 Tulip Road;
- f. 95 East Rotterdam Road;
- g. 119 Lempa Road;
- h. 54 Florence Drive;

- i. 167 W. Lynford Road;
- j. 81 Lynford Road;
- k. 27 Windy Knoll Drive;
- l. Lot adjacent to 205 Woodlake Drive.

See, Exhibit "A," and ATC's Motion for Enforcement of Peremptory Judgment, Exhibits "D" and "F."

7. ATC has also begun marking alternative locations throughout the Township for placement of the telecommunications poles, including the properties situate at 139 Woodland Drive at the corner of Great Oak and Woodland Drive, and at 145 Tulip Drive.

8. Each of the above-referenced residential lots is subject to a restrictive covenant pursuant to which the facilities of all utilities are to be located underground.

9. In fact, all properties in all of the neighborhoods in which the telecommunications poles are to be placed are subject to the same restrictive covenant, and no telephone poles, street lights or other utility facilities are permitted to be, or in fact are located above ground.

10. The members of Intervenor CONTACT (an acronym for "Citizens Of Northampton Township Against Cell Towers") are homeowners in the neighborhoods in which the twelve (12) new fiberglass poles and associated telecommunications equipment are to be installed by ATC, and neighborhoods surrounding them.

INTERVENORS

11. CONTACT is an unincorporated association, the members of which are the following residents Northampton Township:

- a. Edward Bendzlowicz is an adult individual who owns and resides at the real property having an address of 95 Rotterdam East, Holland, Bucks County, PA 18966.
- b. John and Catherine Slavin are adult individuals who own and reside at the real property having an address of 119 Briarwood Drive, Holland, Bucks County, PA 18966.
- c. Beth-Ann and Steve Wolfson are adult individuals who own and reside at the real property having an address of 145 Tulip Road, Holland, Bucks County, PA 18966.
- d. Payton Wang and June Zhao are adult individuals who own and reside at the real property having an address of 108 Dutch Drive, Holland, PA, Bucks County, PA 18966.
- e. Barbara and Jim Barsky are adult individuals who own and reside at the real property having an address of 123 Dutch Drive, Holland, Bucks County, PA 18966.
- f. Suzanne DeLong is an adult individual who owns and resides at the real property having an address of 23 David Road, Holland, Bucks County, PA 18966.
- g. Thomas Daynorowicz is an adult individual who owns and resides at the real property having an address of 23 David Road, Holland, Bucks County, PA 18966.

- h. Michelle Dvorak-Held is an adult individual who owns and resides at the real property having an address of 15 David Road, Holland, Bucks County, PA 18966.
- i. Helene Krouchick is an adult individual who owns and resides at the real property having an address of 124 Grant Drive, Holland, Bucks County, PA 18966.
- j. Audrey Shapiro is an adult individual who owns and resides at the real property having an address of 100 Michael Road, Holland, Bucks County, PA 18966.
- k. Thomas M. Harrelson is an adult individual who owns and resides at the real property having an address of 130 Woodland Drive, Churchville, Bucks County, PA 18966.
- l. Joseph Smith is an adult individual who owns and resides at the real property having an address of 101 Shelly Road, Holland, Bucks County, PA 18966.
- m. Janice Kotofsky is an adult individual who owns and resides at the real property having an address of 144 Tulip Road, Holland, Bucks County, PA 18966.
- n. Len and Carol Dubas are adult individuals who own and reside at the real property having an address of 178 Forest Drive, Holland, Bucks County, PA 18966.

- o. Noel Carter is an adult individual who owns and resides at the real property having an address of 61 Windmill Drive, Holland, Bucks County, PA 18966.
- p. Joseph Corsello is an adult individual who owns and resides at the real property having an address of 16 Tulip Road, Holland, Bucks County, PA 18966.
- q. Lisa Wajert is an adult individual who owns and resides at the real property having an address of 32 Cathleen Drive, Richboro, Bucks County, PA 18966.
- r. Janet Swenson is an adult individual who owns and resides at the real property having an address of 139 Woodland Drive, Willowgreene South, Churchville, PA 18966.
- s. Paul and Lauren Fine are adult individuals who own and reside at the real property having an address of 21 Redwood Road, Richboro, Bucks County, PA 18966.
- t. Lori Hume is an adult individual who owns and resides at the real property having an address of 32 Tulip Road, Holland, Bucks County, PA 18966.
- u. Pat Jacobs is an adult individual who owns and resides at the real property having an address of 123 Signal Hill Road, Holland, Bucks County, PA 18966.
- v. Leon and Eileen Gosciniak are adult individuals who own and reside at the real property having an address of 121 Brookside Drive, Holland, Bucks County, PA 18966.

- w. Lil and Robert Boysen are adult individuals who own and reside at the real property having an address of 3585 Aster Avenue, Trevose, Bucks County, PA 19053.
- x. Ken Magrann is an adult individual who owns and resides at the real property having an address of 5 Dawn Drive, Churchville, Bucks County, PA 18966.
- y. William Martin is an adult individual who owns and resides at the real property having an address of 90 Johanna Drive, Holland, Bucks County, PA 18966.
- z. Mitch Hartka is an adult individual who owns and resides at the real property having an address of 15 Elsa Way, Richboro, PA 18954.
- aa. Bob and Margot Sweed are adult individuals who own and reside at the real property having an address of 70 Vanderveer Avenue, Holland, Bucks County, PA 18966.
- bb. Steve McGill is an adult individual who owns and resides at the real property having an address of 103 Briarwood Drive, Holland, Bucks County, PA 18966.
- cc. David Alper is an adult individual who owns and resides at the real property having an address of 108 Windy Knoll Drive, Richboro, Bucks County, PA 18954.
- dd. Anthony Zuazo is an adult individual who owns and resides at the real property having an address of 106 Lynford Road, Richboro, Bucks County, PA 18954.

ee. Kelly Becker is an adult individual who owns and resides at the real property having an address of 82 Rotterdam West, Holland, Bucks County, PA 18966.

ff. Connie Whalen is an adult individual who owns and resides at the real property having an address of 78 E. Julianna Drive, Churchville, Bucks County, PA 18966.

12. CONTACT, by and through its members, seeks to intervene pursuant to Pa. R. Civ. P. 2327(4).

13. Pennsylvania Rule of Civil Procedure 2327 provides:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

LEGALLY ENFORCEABLE PROPERTY INTERESTS
UNDER PA. R. CIV. P. 2327(4)

14. The ATC telecommunications pole to be located at 95 East Rotterdam Road is situated within the residential subdivision known as "Windmill Village".

15. The property at 95 East Rotterdam Road is owned by CONTACT member Edward Bendzlowicz, and ATC proposes to place of telecommunications tower on his property.

16. The properties owned by the following members of CONTACT are located in the Windmill Village subdivision: 95 East Rotterdam Road (Bendzlowicz), 108 Dutch Drive (Wang/Zhao), 123 Dutch Drive (Barsky), and 70 Vanderveer Avenue (Sweed).

17. All lots in the subdivision of Windmill Village were laid out upon and created by a final plan of subdivision dated November 10, 1965, last revised November, 10, 1965, and approved by the Board of Supervisors of Northampton Township on or about March 9, 1966, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on May 4, 1966 in Plan Book 34, Page 32.

18. The final plan of Windmill Village contains the following covenant: "Under Ground Utilities to be provided." *Id., note 11.*

19. The telecommunications pole to be located at 145 Woodland Drive is situate within the residential subdivision known as "Windmill Village West".

20. The property owned by the following member of CONTACT is located in the Windmill Village West subdivision: 78 E. Julianna Drive (Whalen).

21. All lots in the subdivision of Windmill Village West were laid out and created upon a final plan of subdivision dated July 25, 1973, last revised March 5, 1979, and approved by the Board of Supervisors of Northampton Township on or about March 28, 1979, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on May 10, 1979 in Plan Book 183, Page 6.

22. The final plan of Windmill Village West contains the following covenant: "Underground Utilities to be provided." *Id., Note 10.*

23. While the property at 145 Woodland Drive has been identified as the location of a telecommunications tower in the pleadings heretofore filed, no markings have been made on that property; instead, markings have been made on the property across the street from it situate 139 Woodland Drive at the corner of Great Oak and Woodland Drive.

24. The property at 139 Woodland Drive is situate in the Willowgreene South Subdivision and is owned by CONTACT member Janet Swenson.

25. The telecommunications pole to be located at 108 Buckshire Drive is situate within the residential subdivision known as "Hillcrestshire, Section IV".

26. CONTACT members Leon and Eileen Gosciniak, who reside at 121 Brookside Drive, live across the street from the location of the pole to be placed at 108 Buckshire Drive.

27. The properties owned by the following members of CONTACT are located in the Hillcrestshire Section IV subdivision: 103 Briarwood Drive (McGill).

28. All lots in the subdivision of Hillcrestshire Section IV were laid out and created upon a final plan of subdivision dated February 6, 1970, last revised June 13, 1977, and approved by the Board of Supervisors of Northampton Township on or about September 14, 1977, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on September 21, 1977 in Plan Book 160, Page 22

29. The final plan of Hillcrestshire Section IV contains the following covenant: "Underground Utilities to be provided." *Id.*, Note 11.

30. The telecommunications pole to be located at 119 Briarwood Drive is situate within the residential subdivision known as "Timber Valley, Section 1".

31. CONTACT members John and Catherine Slavin own and reside at 119 Briarwood Drive, and ATC proposes to place of telecommunications tower on their property.

32. The properties owned by the following members of CONTACT are located in the Timber Valley, Section 1 subdivision: 119 Briarwood Drive (Slavin), and 121 Brookside Drive (Gosciniak).

33. All lots in the subdivision of Timber Valley, Section 1 were laid out and created upon a final plan of subdivision dated April 19, 1986, and approved by the Board of Supervisors of Northampton Township on or about May 14, 1986, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on June 2, 1986 in Plan Book 233, Page 28.

34. The final plan of Timber Valley, Section 1 contains the following covenant: "All proposed utilities to be placed underground." *Id.*, Note 5.

35. The telecommunications pole to be located at 127 or 145 Tulip Road is situate within the residential subdivision known as "Deerfield".

36. The property at 145 Tulip Road is owned by CONTACT members Beth-Ann and Steve Wolfson.

37. The properties owned by the following members of CONTACT are located in the Deerfield subdivision: 145 Tulip Road (Wolfson), 23 David Road (Daynorowicz), 15 David Road (Dvorak-Held), 100 Michael Road (Shapiro), 144 Tulip Road (Kotofsky), 16 Tulip Road (Corsello), 21 Redwood Drive (Fine), 32 Tulip Road (Hume) and 82 Rotterdam West (Becker).

38. All lots in the subdivision of Deerfield were laid out and created upon a final plan of subdivision dated November 10, 1969, last revised January 4, 1978, and approved by the Board of Supervisors of Northampton Township on or about January

11, 1978, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on January 12, 1978 in Plan Book 164, Page 41.

39. The final plan of Deerfield contains the following covenant: "Underground utilities to be provided." *Id.*, Note 11.

40. The telecommunications pole to be located at 54 Florence Drive is situated within the residential subdivision known as "Villa Estates".

41. The properties owned by the following members of CONTACT are located in the Villa Estates subdivision: 32 Cathleen Drive (Wajert) and 15 Elsa Way (Hartka).

42. All lots in the subdivision of Villa Estates were laid out and created upon a final plan of subdivision dated May 14, 1993, last revised April 14, 1994, and approved by the Board of Supervisors of Northampton Township on or about July 13, 1994, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on August 31, 1994 in Plan Book 276, Page 16.

43. The final plan of Villa Estates contains the following covenant: "All proposed utilities to be placed underground." *Id.*, Note 4.

44. The telecommunications pole to be located at 167 W. Lynford Road is situated within the residential subdivision known as "Spring Valley Farms, Section 1".

45. All lots in the subdivision of Spring Valley Farms, Section 1 were laid out and created upon a final plan of subdivision dated July 11, 1972, last revised August 23, 1972 and approved by the Board of Supervisors of Northampton Township on or about September 13, 1972, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on September 15, 1972 in Plan Book 100, Page 41.

46. The final plan of Spring Valley Farms, Section 1 contains the following covenant: "Underground utilities to be provided." *Id, Note 9.*

47. The telecommunications pole to be located at 81 Lynford Road is situate within the residential subdivision known as "Spring Valley Farms, Section III".

48. The properties owned by the following members of CONTACT are located in the Spring Valley Farms, Section III subdivision: 108 Windy Knoll Drive (Alper) and 106 Lynford Road (Zuazo).

49. All lots in the subdivision of Spring Valley Farms, Section 3 were laid out and created upon a final plan of subdivision dated January 2, 1974, last revised November 16, 1977 and approved by the Board of Supervisors of Northampton Township on or about August 8, 1978, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on August 18, 1978 in Plan Book 172, Page 19.

50. The final plan of Spring Valley Farms, Section 3 contains the following covenant: "Underground utilities to be provided." *Id, Note 9.*

51. The telecommunications pole to be located at 27 Windy Knoll Drive is situate within the residential subdivision known as "Willowgreene North."

52. All lots in the subdivision of Willowgreene North were laid out and created upon a final plan of subdivision dated February 1, 1977, last revised July 5, 1977 and approved by the Board of Supervisors of Northampton Township on or about May 25, 1977, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on September 9, 1977 in Plan Book 159, page 43.

53. The final plan of Willowgreene North contains the following covenant: "All utilities to be provided underground." *Id.*, Note 15.

54. The telecommunications pole to be located at 139 Woodland Drive is situate within the residential subdivision known as "Willowgreene South."

55. The property at 139 Woodland Drive is owned by CONTACT member Janet Swenson.

56. The property owned by the following member of CONTACT is also located in the Willowgreene South subdivision: 130 Woodland Avenue (Harrelson).

57. All lots in the subdivision of Willowgreene South were laid out and created upon a final plan of subdivision dated April 23, 1973, last revised August 14, 1973, approved by the Northampton Township Board of Supervisors on or about September 12, 1973, and duly recorded in the Office of the Recorder of Deeds of Bucks County in Plan Book 115, Page 22.

58. The final plan of Willowgreene South contains the following covenant: "Underground utilities to be provided." *Id.*, Note 12.

59. The telecommunications pole on the lot to be located adjacent to 205 Woodlake Drive is situate within the residential subdivision known as "Pine Run".

60. The property owned by the following member of CONTACT is located in the Pine Run subdivision: 178 Forrest Drive (Dubas).

61. All lots in the subdivision of Pine Run were laid out and created upon a final plan of subdivision dated October 27, 1978, last revised January 24, 1983 and approved by the Board of Supervisors of Northampton Township on or about March 28,

1979, which final plan was duly recorded in the Office of the Recorder of Deeds of Bucks County on February 10, 1983 in Plan Book 216, Page 46.

62. The final plan of Pine Run contains the following covenant: "All proposed utilities to be placed underground." *Id.*, Note 8.

63. Each and every one of the aforesaid covenants, contained in a recorded Plan of Subdivision pursuant to which all owners of the subdivision took title to their respective properties, is a legally enforceable property interest of the owner(s) of the lots in the respective subdivisions.

64. The aforesaid covenants are enforceable at law and in equity by the property owners against those who would violate the covenants.

IMPACT OF ATC'S CIVIL ACTION

65. Each one of the properties upon which a new telecommunications pole is to be installed by ATC, with the exception of the location on Rock Way, is located in a neighborhood in which all properties are subject to a covenant prohibiting the placement of utility facilities above-ground.

66. The placement of the twelve (12) twenty-five (25) foot tall telecommunications poles by ATC in these neighborhoods violates the covenant contained in the title to the properties owned by the foregoing members of CONTACT, since title to every one of their properties is subject to such covenant.

67. The impact of the twenty-five (25) foot telecommunications poles upon the property rights of those members of CONTACT will be substantial, direct and immediate, as and for the reasons set forth in the Intervenor's Memorandum of Law in

Support of Petition to Intervene, which is incorporated by reference as if fully set forth at length.

68. The property rights that are being infringed by ATC pertain to the homes of the members of CONTACT and, as such, the interests being infringed by ATC are among the most treasured and sensitive an individual may possess.

69. In addition to the violation of the covenants against above-ground utility facilities, the owners of the properties at 95 East Rotterdam Road (Bendzlowicz), 119 Briarwood Drive (Slavin), 139 Woodland Drive (Swenson), and 145 Tulip Road (Wolfson) above will suffer additional substantial, direct and immediate injury to their property rights because they will have a 25 foot tall telecommunications tower built in their front yards.

70. The proposed new telecommunications poles will substantially, directly, immediately and adversely affect the families who call those properties home.

71. In its Complaint, ATC avers that the actions of the Township and its Zoning Officer which prompted ATC to file suit against them have had the effect of “delay[ing] and prevent[ing] ATC from” constructing its telecommunications system in Northampton Township. *See, ATC’s Complaint, para. 36.*

72. In its Complaint, ATC further seeks a permanent injunction against Northampton Township “prohibiting the Township from taking any action to delay or prohibit ATC from using the public rights-of-way for DAS Infrastructure,” which includes the placement of the 12 telecommunications poles in the Intervenors’ neighborhoods. *Id., para. (b) of prayer for relief in Count III.*

73. The goal of ATC in bringing this Civil Action is to eliminate the involvement of the Township in the construction of the wireless telecommunications system ATC intends to construct throughout the Township, and to facilitate the hasty erection of telecommunications poles in the neighborhoods of Northampton Township without any municipal review or due process.

74. If successful in this action, ATC will be allowed to construct Township-wide improvements, including twenty-five (25) foot tall telecommunications poles that otherwise are prohibited, without any regard for the health, safety and welfare of the residents of Northampton Township as otherwise would be protected under the ordinances duly adopted by the Township Board of Supervisors.

75. If ATC succeeds in this action, the members of CONTACT will be deprived of their property rights and interests without the due process that otherwise would be afforded to them if ATC's plans were subject to the review and approval processes embodied in applicable Township ordinances, including the Zoning Ordinance and the Telecommunications Ordinance.

76. Neither the Township Board of Supervisors nor the Township Zoning Officer possess or will suffer the infringement of the property interests that will be infringed upon by the placement of ATC's telecommunications poles.

77. The Township is empowered to enforce its ordinances, which are for the general good of the Township as a whole.

78. While the enforcement of the Township's ordinances in furtherance of its police powers may lead to a result consistent with that desired by the Intervenors, the

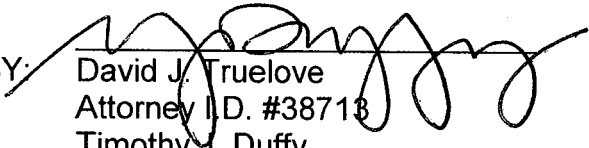
interests of the Township Defendants and the Intervenors are not the same and are not necessarily mutually supportive.

WHEREFORE, CONTACT, an unincorporated association, by and through its aforesaid members respectfully requests that the Court grant their petition to Intervene and enter an Order in the form provided.

Respectfully submitted,

HILL WALLACK LLP

BY:



David J. Truelove
Attorney I.D. #38713
Timothy J. Duffy
Attorney I.D. #65430
777 Township Line Road, Suite 250
Yardley, PA 19067
Phone: 215-579-7700
Fax: 215-579-9248

VERIFICATION

I, Edward Bendzlowicz, member of CONTACT, verify that the statements made in the foregoing Petition to Intervene are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Date: 6/7/12


Edward Bendzlowicz

VERIFICATION

I, Janet Swenson, a member of CONTACT, verify that the factual statements made in the foregoing Petition to Intervene are true and correct to the best of my knowledge, information and belief. I understand that the written statement contained herein is made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.

Date: 6-7-2012

Janet Swenson
Janet Swenson

EXHIBIT A



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

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 January, 2012 ~~December, 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., J.



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 Pizzigrilli
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.

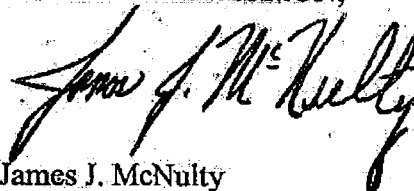
10. That upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Competitive Access Provider within the Commonwealth of Pennsylvania, consistent with this Order.

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:

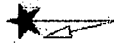
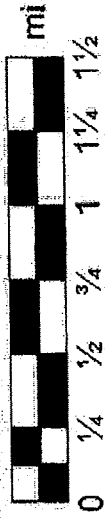
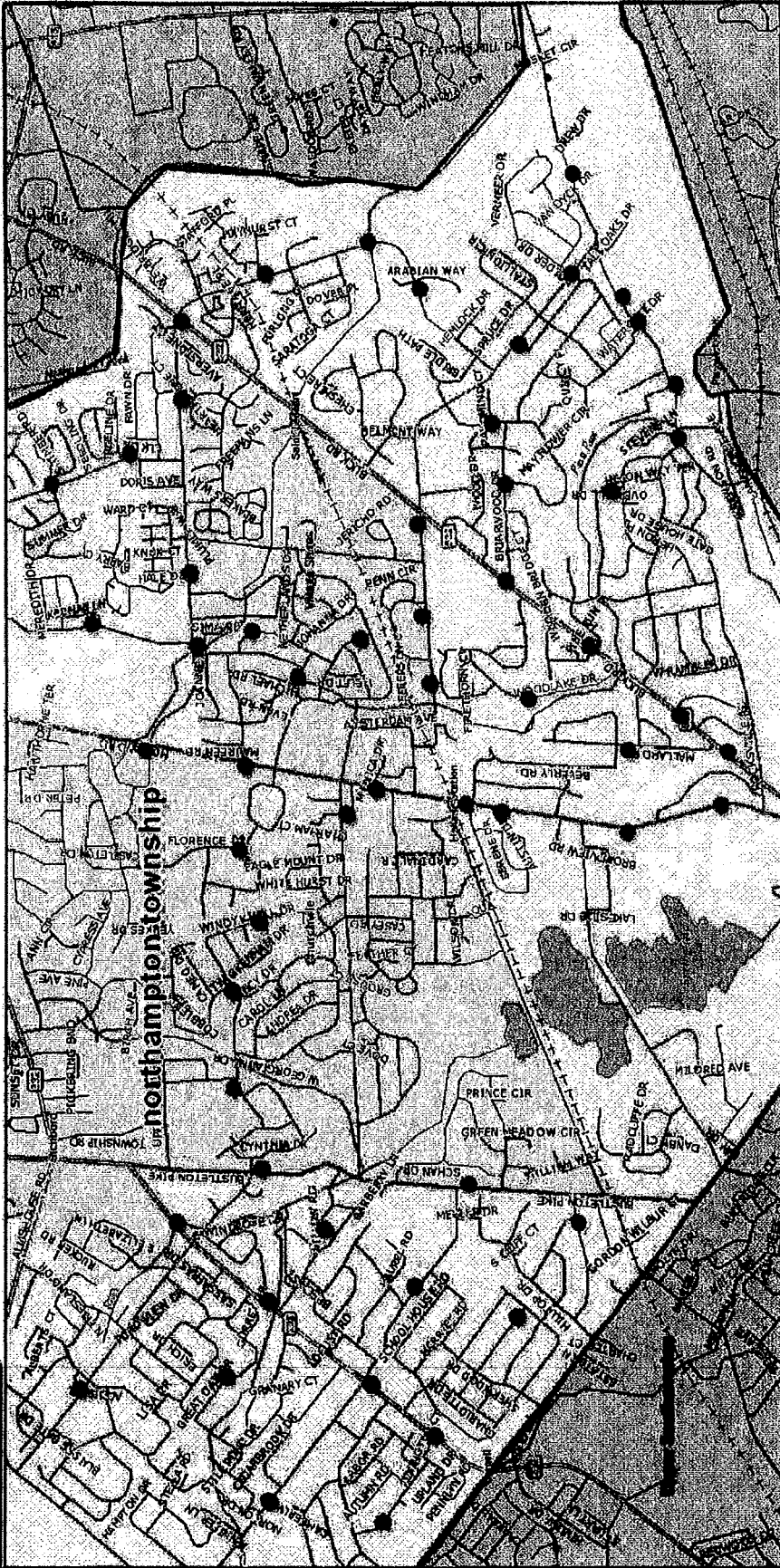
- 2.
- 2.1.
- 2.1.1.
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a).
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

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.

Highlighted Properties are Proposed to Receive New 25' Fiberglass Poles

Node #	Latitude	Longitude	Address Description	Address	City	State	Zip Code	Municipality
183	40.21372	-75.02661	Across from 276 TANYARD, Corner of WENJUDY	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	40.20953	-75.02060	Just West of WILLOW GREEN on SECOND ST PIKE	399 STHY 232	RICHBORO	PA	18954	NORTHAMPTON
192	40.20577	-75.02577	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	40.21105	-74.97387	Across from XMPR on ROCKWAY & KEENAN LN	(No street address available)	CHURCHVILLE	PA	18956	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 TREVOSE	PA	19053	NORTHAMPTON
228	40.18395	-74.94987	1176 BRIDGETOWN PIKE	445 BRIDGETOWN PIKE	FEASTERVILLE TREVOSE	PA	19053	NORTHAMPTON
229	40.18642	-74.94112	Front of 1408 BRIDGETOWN PIKE	711 BRIDGETOWN PIKE	FEASTERVILLE TREVOSE	PA	19053	NORTHAMPTON
230	40.18666	-74.94819	Corner of E. HOLLAND & POLDER DR, 7 POLDER DR	3 POLDER DR	FEASTERVILLE TREVOSE	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 TREVOSE	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 BRIARWOOD DR)	1363 STHY 532	SOUTHAMPTON	PA	18966	NORTHAMPTON
238	40.18108	-74.95616	277 BRIDGETOWN PIKE, Front of 978	243 BRIDGETOWN PIKE	FEASTERVILLE TREVOSE	PA	19053	NORTHAMPTON
239	40.18074	-74.95983	Across from 871 BRIDGETOWN PIKE RD	129 BRIDGETOWN PIKE	FEASTERVILLE TREVOSE	PA	19053	NORTHAMPTON
240	40.18581	-74.97430	Side of 10 PINE RUN DR	1431 STHY 532	SOUTHAMPTON	PA	18966	NORTHAMPTON
241	40.18453	-74.96334	Side of 121 BROOKSIDE DR	OVERHILL DR (No street address) (BUBBLE)	SOUTHAMPTON	PA	18966	NORTHAMPTON
242	40.19028	-74.96304	Side of 119 BRIARWOOD DR	95 BRIARWOOD DR	SOUTHAMPTON	PA	18966	NORTHAMPTON
243	40.21005	-74.98187	Corner of HOLLAND & UPPER HOLLAND; NW Corner of Intersection	593 UPPER HOLLAND RD	RICHBORO	PA	18954	NORTHAMPTON
244	40.20435	-74.97813	Side of 114 DUTCH RD	113 DUTCH RD	VILLAGE SHIRES	PA	18966	NORTHAMPTON
245	40.19857	-74.97322	Side of 123 DUTCH DR	123 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	-74.97614	On the eastern side of 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	40.20493	-74.98455	On the eastern side of HOLLAND RD	111 FLORENCE DR	CHURCHVILLE	PA	18966	NORTHAMPTON
252	40.19928	-74.98627	579 LOWER HOLLAND RD, OPP OF 593 LOWER HOLLAND RD	548 LOWER HOLLAND RD	CHURCHVILLE	PA	18966	NORTHAMPTON
254	40.20611	-74.98136	On the eastern side of WEST WYOMING RD, HOLLAND RD & GREENDALE	148 W WYOMING DR	CHURCHVILLE	PA	18966	NORTHAMPTON
255	40.20512	-74.98214	On the eastern side of HOLLAND RD	210 ROAD HOLLAND RD (Rear of 111 FLORENCE DR)	CHURCHVILLE	PA	18966	NORTHAMPTON
256	40.20103	-74.97842	Opposite of 33 WINDY KNOLL DR	107 WINDY KNOLL DR	CHURCHVILLE	PA	18966	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	40.18515	-74.97406	Side of 205 WOODLAK DR	195 WOODLAK 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 TREVOSE	PA	19053	NORTHAMPTON



MN (12.3° W)

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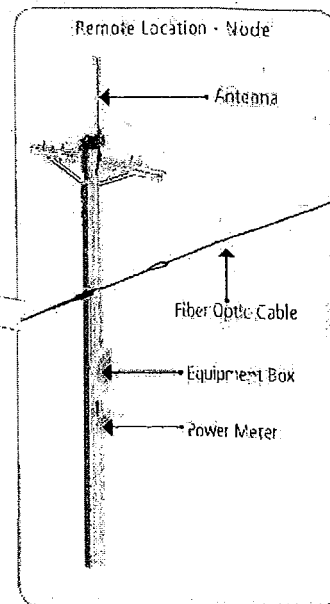
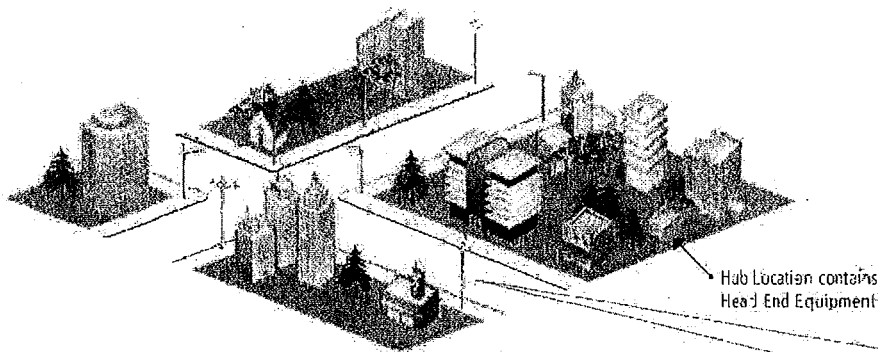
www.delorme.com

Data Zoom 12-6

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).

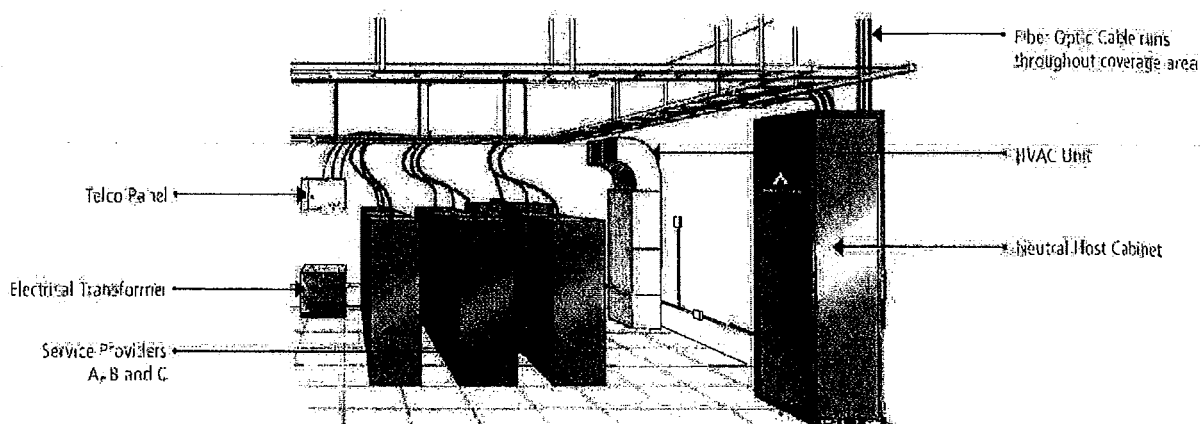
Typical Outdoor DAS Installation



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.



then filed a Motion for Peremptory Judgment to compel the Township to issue certain permits, which Motion was granted on January 5th, 2012.

In compliance with this Court Order, the Township issued permits under its Right-of-Way Ordinance (the only relief that had been sought by ATC), and ATC began construction on the utility poles on March 1, 2012. On May 15, 2012, the Township issued Stop Work Orders to ATC. The orders were issued because, *inter alia*, ATC's utility pole construction directly violated applicable provisions of the Township's Zoning Code and Telecommunications Ordinance, and because they violated the prohibition against above ground utilities contained in various land development agreements. ATC then filed its Motion for Enforcement of Peremptory Judgment, Determination of Contempt and Injunctive Relief in order to allow ATC to continue its proposed construction.

CONTACT is an unincorporated association, the members of which are owners of properties in and adjacent to the residential neighborhoods of Northampton Township in which ATC plans to place its 25 foot tall telecommunications towers. All lots in each of the neighborhoods in which the telecommunications towers are to be placed are subject to a restrictive covenant that prohibits the placement of utility facilities above-ground. In addition, four of the members of CONTACT (Bendzlowicz at 95 Rotterdam East, Slavin at 119 Briarwood Drive, Swenson at 139 Woodland Drive, and Wolfson at 145 Tulip Road) own and reside at the properties upon which it appears ATC plans to place its towers.

II. HOW THE QUESTION IS PRESENTED

Plaintiff filed its Motion for Enforcement of Peremptory Judgment, Determination of Contempt and Injunctive Relief on May 18. That motion has not yet been moved for disposition, and therefore, Intervenors timely file this Petition for Intervention.

III. QUESTIONS PRESENTED

- A. Are the property interests of the members of CONTACT (an unincorporated citizens' association) which are affected by the installation of telecommunications poles so substantial, direct and immediate as to vest CONTACT and its members with standing to intervene?

Suggested Answer: Yes.

IV. ARGUMENT

CONTACT has standing to intervene because the installation of telecommunications towers violates a legally enforceable property interest of its constituent members that is not adequately protected from being violated by ATC.

- A. Standard for Intervention

Pennsylvania Rule of Civil Procedure 2327 governs intervention in Civil Actions. A person not a party to an action will be permitted to intervene if the determination of the action may affect a "legally enforceable interest" of that person, whether or not he may be bound by that judgment. *Pa. R.C.P. 2327(4)*. Generally speaking, to satisfy Rule 2327(4) in an action involving real property, the applicant must

own an interest in the property in question or must own a cause of action that would be affected by the current action. *Keener v. Zoning Hearing Bd. Of Millcreek Twp.*, 714 A.2d 1120, 1122 (Pa. Cmwlth. 1998).

“To possess standing, a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. A party possesses standing if he has a ‘substantial, direct, and immediate interest’ in the interest of the subject matter of the litigation.” *Unified Sportsmen of Pennsylvania ex rel. their members v. Pennsylvania Game Commission*, 903 A.2d 117, 122 (Pa. Cmwlth. 2006) (citing, *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992), and *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)). The, “substantial, direct and immediate” test for intervention has been explained by the Court as follows:

An interest is ‘substantial’ when there is a discernible adverse effect to an interest of the aggrieved individual which differs from the abstract interest of the general citizenry in having others comply with the law. An interest is ‘direct’ when an aggrieved person can show a causal connection between the alleged harm to his or her interest and the matter of which he or she complains. Finally, the interest is ‘immediate’ when the causal connection between the injury and the matter complained of is not too remote.

Pennsylvania Social Services Union, Local 668 v. Commonwealth Department of Public Welfare, 699 A.2d 807, 810 (Pa. Cmwlth. 1997).

“An association, as a representative of its members, may have standing to bring a cause of action even in the absence of injury to itself; the association must allege that at least one of its members is suffering immediate or threatened injury as a result of the challenged action.” *Unified Sportsmen of Pennsylvania, supra.*, 903 A.2d at 122 (quoting, *Malt Beverages Distributors Association v. Pennsylvania Liquor Control*

Board, 881 A.2d 37, 41 (Pa. Cmwlth. 2005), allocator denied, 586 Pa. 775, 895 A.2d 1264 (2006)); *see, also, Energy Conservation Council of Pennsylvania v. Public Utility Commission*, 995 A.2d 465, 476 (Pa. Cmwlth. 2010) (*Parents United for Better Schools v. School District of Philadelphia*, 166 Pa. Cmwlth. 462, 646 A.2d 689, 692 (1994) (“thus, as long as an organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged [*i.e.*, is aggrieved, the organization] has standing”). CONTACT satisfies the “substantial, direct, and immediate” test in two ways: (1) six of the properties upon or next to which the telecommunications towers are to be placed are owned by members of CONTACT; and, (2) the towers will violate restrictive covenants that run with the land in all of the neighborhoods in which the poles are proposed to be placed.

B. The placement of telecommunications towers in the front yards of the homes of members of CONTACT substantially, directly and immediately harm the property interests of those members.

CONTACT members Ed Bendzlowicz, John and Catherine Slavin, Janet Swenson and Beth-Ann and Steve Wolfson own and live at the properties upon which two of the 25 foot tall telecommunications poles are to be placed. *See, Petition to Intervene, paras. 10(a) and (c), 15, 16, 28 and 29.* As such, Mr. Bendzlowicz, Mr. and Mrs. Slavin, Ms. Swenson, and Mr. and Mrs. Wolfson are aggrieved beyond a mere assertion of “the common interest of all citizens in procuring obedience to the law.” *Energy Conservation Council of Pennsylvania v. Public Utility Commission*, 995 A.2d 465, 475 (Pa. Cmwlth. 2010). As such, they afford standing to CONTACT.

Applying the “substantial, direct, and immediate” test, the harm to these four families is “substantial” because their front yards are only two of twelve in the entire

Township in which a 25 foot tall telecommunications pole will be placed. The placement of the poles in the front yards of their homes has a “discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *Unified Sportsmen of Pennsylvania, supra.*, at 122 (quoting, *Pennsylvania Banker’s Association v. Department of Banking, et al.* 893 A.2d 864 (Pa. Cmwlth. 2006)). It is hardly an “abstract interest” to be singled out as two of only twelve property owners in a Township of the Second Class to be forced to have a 25 foot tall telecommunications tower placed in his front yard.

The harm to the interests of Mr. Bendzlowicz, Mr. and Mrs. Slavin, Ms. Swenson, and Mr. and Mrs. Wolfson is “direct” because there is a causal connection between the action CONTACT wishes to challenge, namely, ATC’s attempt to avoid the municipal permitting process, and the harm suffered, namely, the rushed placement of a 25 foot tall telecommunications tower in their front yards. Finally, the harm this Civil Action will visit upon the interests of these four families is immediate in that the placement of the telecommunications pole in their front yards is “not a remote consequence” of the present Civil Action; rather, it is the ultimate goal thereof.

At least one other member of CONTACT, namely, Janice Kotofsky at 144 Tulip Road (Deerfield), lives next to or directly across the street from the proposed location of one of the telecommunications poles. Given the close proximity to the poles to their homes, those members also have a “substantial, direct, and immediate” interest in the present action for the same reasons Mr. Bendzlowicz, Mr. and Mrs. Slavin, Ms. Swenson, and Mr. and Mrs. Wolfson do. *See, e.g., Energy Conservation Council of Pennsylvania, supra.*, 995 A.2d at 476 (standing found where the organization, “has at

least sixteen members that are located *in and around* the area in which the [Trans-Allegheny Interstate Line Company electrical transmission facilities] including a potentially 200 foot tall 502 segment, will be located.”) Thus, because at least seven members of CONTACT will have telecommunications poles in their yards, directly across the street, or next door to them, CONTACT has standing to intervene to defend against the substantial, direct and immediate harm that will result if ATC succeeds in the present litigation. *Unified Sportsmen of Pennsylvania, supra.*, 903 A.2d at 122.

C. The result of this Civil Action, if successful, will be the substantial, direct and immediate violation of restrictive covenants that are enforceable property rights of the members of CONTACT

The goal of ATC in bringing this Civil Action is to obtain judicial sanction to the substantial, direct and immediate violation of the rights of an even broader scope of the membership of CONTACT. As noted in the Petition, all but 12 members of CONTACT own and reside at properties that are subject to covenants that will be violated by the placement of the telecommunications towers within their neighborhoods. The plans of subdivision that were approved by Northampton Township and subsequently recorded in the Office of the Recorder of Deeds of Bucks County for all of the neighborhoods in which a telecommunications pole is to be placed contain a covenant that requires the facilities of all utilities to be placed underground. *Petition to Intervene, paras. 13 through 55.*

Northampton Township, like all others, has the authority under the Municipalities Planning Code to attach conditions to its subdivision approvals. *See, Doylestown Township v. Teeling*, 160 Pa. Cmwlth. 397, 635 A.2d 657, 660 (1996). Such conditions may be set forth in a recorded subdivision plan and as such, are restrictive covenants

that “are enforceable even if the conditions are not specifically set forth in the deeds conveying the lots created by the subdivision.” *Id.*, 635 A.2d at 661 (citing, *Ballard v. Heppe*, 403 Pa. Super. 441, 589 A.2d 266, *appeal denied*, 529 Pa. 630, 600 A.2d 950 (1991)). “Such covenants are ‘said to run with the land, when not only the original parties or their representatives but each successive owner of the land, will be entitled to its benefit... “ *Id.*

The Courts have recognized that “conditions attached to an approved subdivision plan may be enforced by actions in equity.” *Id.*, 635 A.2d at 660. The owners of properties in the subdivision that are subject to such conditions have the right to enforce that condition against violations on not only their own property, but upon other, similarly restricted properties throughout the same subdivision. *See, e.g., Doylestown Township, supra; Perrige v. Horning*, 440 Pa. Super. 31, 654 A.2d 1183 (Pa. Super. 1995); *Gey v. Beck*, 390 Pa. Super. 317, 568 A.2d 672 (Pa. Super. 1990) (intentional violation of a restrictive covenant justifies grant of injunctive relief in favor of landowner who asserts violation of covenant). Hence, the members of CONTACT who are the owners (original or successive) of a lot subject to a valid restrictive covenant have an interest in that covenant and the right to enforce it against those who would violate it.

Applying the “substantial, direct, and immediate” test as set forth above, the members of CONTACT, and hence that association, have standing to enforce the restrictive covenant against its intended violation by ATC. The harm the members seek to avoid by intervening in this Action is substantial – rather than some “abstract interest of all citizens” – because the members, unlike the greater population, have a recognized and specific property interest peculiar to their respective properties that will

be violated by the placement of the poles, i.e., a specific restrictive covenant. Their interest is not generally created by operation of law or Township-wide ordinance.

Their interest is "direct" in that there is "a causal connection between the alleged harm to his or her interest and the matter to which he or she complains." *PA Social Services Union, Local 668, supra.*, 699 A.2d at 810. The goal of ATC's suit is to place telecommunications poles in the neighborhoods where the members of CONTACT reside. The placement of those utility poles – being above ground, rather than underground utility facilities -- will be the sole cause of and constitute violations of the interests the CONTACT members seek to protect. Hence, the harm they wish to protect by intervening is "direct."

Finally, the harm that will result if ATC succeeds in this Action is immediate because "the causal connection between the injury and the matter complained of is not too remote." *Id.* Rather than being a remote consequence of ATC's action, the placement of the telecommunications poles is the intended and proximate result of the entry of judgment in favor of ATC in this action. The hasty placement of telecommunications poles in neighborhoods without having to undergo any scrutiny at the local level is the goal of the Action, not a remote consequence thereof. All three prongs of the "substantial, direct and immediate" test being satisfied, the violation of the covenants in the recorded subdivision plans provides a further basis for the standing of CONTACT to intervene in this action.

This conclusion is consistent with the related law of zoning. Many courts have held that property owners in the immediate vicinity of property involved in a zoning dispute have the requisite interest to become intervenors under Rule 2327(4). *See, e.g.*

Larock v. Sugarloaf Twp. Zoning Hearing Bd., 740 A.2d 308, 314 (Pa. Commw. Ct. 1999); *Grant v. Zoning Hearing Bd. Of the Twp. Of Penn*, 776 A.2d 356, 359 (Pa. Commw. Ct. 2001); *Esso Standard Oil Co. v. Taylor*, 159 A.2d 692, 696 (1960).

At issue in *Keener* was whether the owner of a lien against property near land to be re-zoned had a legally enforceable interest. 714 A.2d at 1122. The court held that such a lien does satisfy the requirements of Rule 2327(4). *Id.* Moreover, the court found that the property in question need not be immediately adjacent to the property at issue in a zoning case to constitute a sufficient interest. *Id.* at 1123.

Similarly, in *Larock* petitioner residents sought to intervene when nearby property was to be re-zoned as a quarry. 740 A.2d at 310. The Court recognized that “[o]wners of property in the immediate vicinity of property involved in zoning litigation have the requisite interest and status to become intervenors under Pa. R.C.P. No. 2327(4).” *Id.* at 313. By nature of the residents’ status as property owners in the immediate vicinity of the proposed quarry, the court found that they did have a legally enforceable interest. *Id.*

The individual home owners in Northampton have a stronger interest than the one at issue in *Keener*. Though some of the property owners will have utility poles that directly broach their lands, others will be in the immediate vicinity of the poles. The construction of those poles will have a negative impact on the values of all homes in the area. Much like *Larock*, this gives these property owners the requisite legally enforceable interest to satisfy the requirements of Rule 2327(4). These property owners paid a premium to live in an area with restrictive covenants against above ground utilities.

D. The Township Does Not Adequately Represent the Interests of Individual Property Owners.

The second part of the analysis governing intervention under the Pennsylvania Rules of Civil Procedure gives the court discretion to deny standing if the petitioner's interest is already adequately represented. *Pa. R.C.P. 2329(2)*. The Court should allow anyone to intervene who has an interest of their own which no party on the record is interested in protecting. *Keener*, 714 A.2d at 1123 (citing *Bily v. Bd. of Property Assessment, Appeals and Review of Allegheny County*, 44 A.2d 250, 251 (1945)). The Court should also allow a party to intervene if the party already in the action does not "unequivocally" share the proposed intervenor's interests. *Larock*, 740 A.2d at 314. When the property at issue involves an individual's home, the owner's right to protect the property's viability is paramount. *Id.* at 312.

The Courts in Pennsylvania have held that a township does not necessarily adequately represent the interests of its individual residents. *Id.* at 314; *Keener*, 714 A.2d at 1123. Rather, townships and their boards are generally charged only with "providing for the public health and safety and general welfare of the municipality." *Cherry Valley Associates v. Stroud Twp. Bd. Of Supervisors*, 530 A.2d 1039, 1041 (Pa. Commw. Ct. 1987).

In *Keener*, the township initially opposed, then seemed to favor, the granting of a variance request for area to be used as a quarry. *714 A.2d at 1121*. Berks, a company that owned property adjoining the proposed quarry, sought to intervene. *Id.* at 1123. The court stated that "[w]hile the Township may have adequately represented Berks' interest throughout most of the controversy, when it entered into a settlement

agreement with Keener to allow the use that Berks has opposed all along, the Township no longer represented Berks' interests." *Id.* at 1123.

Similarly, in *Larock*, the court dealt with an appeal concerning the re-zoning of land to operate a quarry. *740 A.2d at 310*. In reversing the lower court and allowing residents to intervene, the court focused on the necessarily divergent interests of the Township versus its residents. *Id.* at 314. While the residents' goal was to prohibit the quarry entirely, the Township's goal was to protect the interests of the township as a whole, which included a settlement agreement permitting the quarry's operation. *Id.* But the court stated that a person has the right to protect his property from harm, "whether it be in the form of decreased valuation...or some other cause." *Id.* at 312.

The case at hand greatly mirrors the circumstances surrounding the *Keener* decision. Here Northampton Township initially granted ATC's request to construct the utility poles, but later denied it. Like *Keener*, the Township may at some point wish to settle and permit the towers' construction. Such a settlement may not be consistent with the best interests of this particular group of property owners who are most affected by the poles' construction. What may be good for the Township as a whole may not necessarily be the best for the owners of properties that will be directly and substantially impacted by the placement of those poles in their front yards.

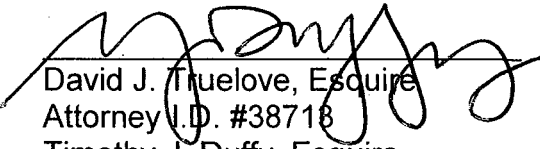
This property interest is paramount to the members of CONTACT, while such private property rights are not, and arguably cannot be the paramount concern of the Township. The legally enforceable interests of the residents are not being adequately represented by the township, and therefore, the bar of Rule 2329(2) is not triggered. Intervention is warranted.

V. CONCLUSION

For the foregoing reasons, CONTACT, by and through its constituent members, respectfully requests that this court grant its Petition for Leave to Intervene and enter an order in the form provided.

Respectfully Submitted,
HILL WALLACK LLP

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Date: _____

6/7/12

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

ATC OUTDOOR DAS, LLC : No. 2011-09455
 :
v. :
 :
BOARD OF SUPERVISORS OF :
NORTHAMPTON TOWNSHIP :
and :
MICHAEL T. SOLOMON :
Director of Code Enforcement :


CERTIFICATE OF SERVICE

I, Timothy J. Duffy, Esquire, hereby certify that on June 8, 2012, I served a true and correct copy of the foregoing Petition to Intervene and Memorandum of Law in Support Thereof upon the following by electronic mail and Federal Express, overnight delivery, postage prepaid, addressed as follows:

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Date: 0/8/12