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Attorneys for Plaintiff
ATC Outdoor DAS, LLC

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

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

ORDER FIXING HEARING DATE

AND NOW this ____ day of _____ 2012, upon consideration of Plaintiff's Motion for Enforcement of Peremptory Judgment, Determination of Contempt and Injunctive Relief and any response thereto, IT IS HEREBY ORDERED that a hearing is scheduled to be held on the ____ day of _____, 2012, at _____ AM/PM in Courtroom ____.

BY THE COURT:

WALLACE H. BATEMAN, JR., J.

John A. VanLuvanee, Esquire
Attorney I.D. No. 15974
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Attorneys for Plaintiff
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**I IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
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BOARD OF SUPERVISORS OF NORTHAMPTON TOWNSHIP	:	
	:	
and	:	
	:	
MICHAEL T. SOLOMON	:	
Director of Code Enforcement	:	

ORDER

AND NOW this ____ day of _____ 2012, upon consideration of Plaintiff's Motion for Enforcement of Peremptory Judgment, Determination of Contempt and Injunctive Relief and any response thereto, it is hereby ORDERED AND DECREED that:

- A. The acts of Northampton Township and Michael T. Solomon in issuing the Stop Work Orders identified in paragraphs 17 and 18 of Plaintiff's Motion constitute violations of the Peremptory Judgment entered by the Court on January 5, 2012;
- B. The Township and Solomon are in contempt of the Peremptory Judgment;

- C. The Township is enjoined from taking further action to enforce the Stop Work Orders and interfering with the completion of Plaintiff's distributed antenna system pursuant to the permits issued by the Township; and
- D. ATC shall be awarded its reasonable attorneys' fees incurred in the filing and prosecution of its Motion.

BY THE COURT:

WALLACE H. BATEMAN, JR., J.

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**IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
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ATC OUTDOOR DAS, INC. : **No. 2011-09455**
:
v. :
:
BOARD OF SUPERVISORS OF :
NORTHAMPTON TOWNSHIP :
:
and :
:
MICHAEL T. SOLOMON :
Director of Code Enforcement :

**MOTION FOR ENFORCEMENT OF PEREMPTORY JUDGMENT,
DETERMINATION OF CONTEMPT AND INJUNCTIVE RELIEF**

ATC Outdoor DAS, Inc., by and through its attorneys, Eastburn and Gray, P.C., hereby files this Motion for Enforcement of Peremptory Judgment, Determination of Contempt and Injunctive Relief, and in support of its Motion avers:

1. ATC Outdoor DAS, LLC (“ATC”) is a Delaware limited liability corporation registered to do business in the Commonwealth of Pennsylvania maintaining its principal place of business at 116 Huntington Ave, Eleventh Floor, Boston, Massachusetts 02116. ATC is a public utility, as that term is defined by the Pennsylvania Public Utility Code, 66 Pa.C.S.A. §1102.

2. The Board of Supervisors of Northampton Township (“Board”) is the governing body of Northampton Township (“Township”), a second class township organized and existing pursuant to the provisions of the Second Class Township Code. 53 P.S. § 65101, *et. seq.* The Board and the Township maintain their office at 55 Township Road, Richboro, Pennsylvania 18954.

3. Michael T. Solomon is the Director of Planning and Zoning and maintains an office at 55 Township Road, Richboro, Pennsylvania 18954.

4. On October 26, 2011, ATC filed a Complaint in Mandamus, Declaratory Judgment and Equity with this Honorable Court to the above docket number seeking relief as a result of the Township’s failure to permit ATC access to the public rights-of-way of the Township for the purpose of installing utility infrastructure in the nature of a distributed antenna system (“DAS”).

5. In paragraph 28 of Count I of its Complaint, ATC averred that the Township would not permit access to public rights-of-way without obtaining multiple permits and without payment of a rental fee.

6. In paragraph 32 of Count I, ATC averred that “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.”

7. ATC filed a Motion for Preemptory Judgment concurrent with the filing of the Complaint. A true and correct copy of the Motion for Preemptory Judgment is attached hereto as Exhibit “A” and incorporated herein as if set forth fully.

8. In its Motion for Preemptory Judgment, ATC averred that:

- A. as of the date of the filing of the Complaint, the Township and Solomon had refused ATC access to the public rights-of-way within the Township for purposes of providing utility service.
- B. the Pennsylvania Public Utility Commission (“PUC”) has exclusive jurisdiction over the operation of public utilities within the Commonwealth of Pennsylvania.
- C. the Township has no legal authority to prohibit a public utility from accessing a public right-of-way in order to install utility facilities.

See Exhibit “A.”

9. In its Motion for Peremptory Judgment, ATC requested that the Court “issue a peremptory judgment ordering Township and Solomon to grant access to the public right-of-way for purposes of providing utility service through the installation and operation of utility infrastructure.” *See Exhibit “A.”*

10. By Order dated January 5, 2011, the Honorable Wallace H. Bateman granted ATC’s Motion for Peremptory Judgment (“Peremptory Judgment”). A true and correct copy of the Peremptory Judgment is attached hereto as Exhibit “B” and incorporated herein as if set forth fully.

11. The Township did not appeal the Peremptory Judgment.

12. Subsequent to the entry of the Peremptory Judgment, ATC and the Township, through their respective counsel, entered into a letter agreement dated January 27, 2012 (“Agreement”). Pursuant to the Agreement, ATC agreed, *inter alia*, to submit such permit applications and fees as the Township alleged were required, without prejudice to ATC’s legal

position, as asserted in its Complaint in the above matter, that ATC had the absolute right to occupy the Township rights-of-way for the purpose of installing the DAS system without the requirement to obtain permits. A copy of the Agreement is attached hereto as Exhibit "C" and made part hereof.

13. The Township issued Permit No. 60683, authorizing ATC to install component elements of a distributed antenna system ("DAS") at 56 locations within the Township. A true and correct copy of Permit No. 60683 is attached hereto as Exhibit "D" and incorporated herein as if set forth fully.

14. ATC paid the Township a total of \$26,842.00 for permits; entered into a Construction Escrow Fee Agreement under which it posted \$5,000.00; and, in addition, paid the Township the sum of \$100,000.00 pursuant to the terms of the Agreement.

15. ATC commenced work on the DAS in the public rights-of-way on or about March 1, 2012. As of May 15, 2012, the DAS was over 50% completed, and only twelve (12) new poles remain to be installed.

16. In two letters dated May 15, 2012, the Township directed that ATC stop work in the public rights-of-way ("Stop Work Orders").

17. The first Stop Work Order was issued by Solomon in his capacity as the Director of Planning and Zoning. A true and correct copy of the Solomon Stop Work Order is attached hereto as Exhibit "E" and incorporated herein.

18. A second Stop Work Order was issued by Gary M. Crossland, Director of Public Works. A true and correct copy of the Crossland Stop Work Order is attached hereto as Exhibit "F" and incorporated herein.

19. ATC believes and therefore avers that the acts of issuing the Stop Work Orders are in violation of the Peremptory Judgment.

20. ATC believes and therefore avers that the issuance of the Stop Work Orders constitutes deliberate and willful attempts to frustrate ATC's ability to complete the installation of the DAS system, which installation was authorized by Peremptory Judgment. Unless this Court enforces the Peremptory Judgment and enjoins the Township from enforcing the Stop Work Orders and from attempting to prohibit ATC from completing the DAS, ATC will incur delay in completing the DAS system and suffer monetary damages.

21. Unless the Township is enjoined for entering the Stop Work Orders the purpose and intent of the Peremptory Judgment will be frustrated.


22. ATC has incurred, and will continue to incur, attorney's fees as a result of the issuance of the Stop Work Orders.

WHEREFORE, Plaintiff ATC Outdoor DAS, Inc., respectfully requests that this Honorable Court enter an Order granting the following relief:

- A. Holding that the acts of Northampton Township and Michael T. Solomon in issuing the Stop Work Orders identified in paragraphs 17 and 18 of Plaintiff's Motion constitute violations of the Peremptory Judgment entered by the Court on January 5, 2012;
- B. Declaring the Township and Solomon in contempt of the Peremptory Judgment;
- C. Enjoining the Township from taking further action to enforce the Stop Work Orders and interfering with the completion of Plaintiff's distributed antenna system pursuant to the permits issued by the Township;

- D. Awarding ATC its reasonable attorneys' fees incurred in the filing and prosecution of its Motion; and
- E. Granting such other and further relief which the Court deems just and appropriate.

EASTBURN AND GRAY, PC

By: 

John A. VanLuvanee, Esquire
Kellie A. McGowan, Esquire
Attorneys for Plaintiff
ATC Outdoor DAS, Inc.

Exhibit A

John A. VanLuvanee, Esquire
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 Kellie A. McGowan, Esquire
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*Attorneys for Plaintiff
 ATC Outdoor DAS, LLC*

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

ATC OUTDOOR DAS, LLC

v.

**BOARD OF SUPERVISORS OF
 NORTHAMPTON TOWNSHIP**

and

MICHAEL T. SOLOMON

:
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No.

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 2011 OCT 26 A 11: 58
 PROTHONOTARY
 OF BUCKS COUNTY

MOTION FOR PEREMPTORY JUDGMENT

Plaintiff ATC Outdoor DAS, LLC ("ATC"), by and through its attorneys, Eastburn & Gray, P.C., files this Motion requesting that the Court enter a peremptory judgment on Plaintiff's Complaint pursuant to Pa.R.C.P. 1098, and in support thereof avers the following:

ATC has filed a Complaint, including Count I in Mandamus, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

1. As of the date of the filing of the Complaint, the Township and Solomon have refused ATC access to the public rights-of-way within the Township for purposes of providing utility service.

2. The Pennsylvania Public Utility Commission ("PUC") has exclusive jurisdiction over the operation of public utilities within the Commonwealth of Pennsylvania.

3. The Township has not legal authority to prohibit a public utility from accessing a public right-of-way in order to install utility facilities.

4. Pa.R.C.P. 1098 provides that the Court, at any time after the filing of the Complaint, may enter judgment if the right of the plaintiff is clear, upon prior notice to all parties.

5. Based on the averments of its Complaint, ATC believes and therefore avers that its right to peremptory judgment is clear.

WHEREFORE, Plaintiff ATC Outdoor DAS, LLC respectfully requests that this Honorable Court issue a peremptory judgment ordering Township and Solomon to grant access to the public right-of-way for purposes of providing utility service through the installation and operation of utility infrastructure.

EASTBURN AND GRAY, P.C.

By:

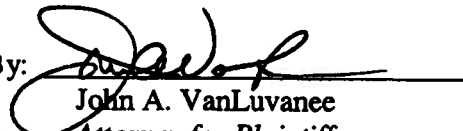

John A. VanLuvanee
Attorney for Plaintiff
ATC Outdoor DAS, LLC

EXHIBIT "A"

John A. VanLuvanee, Esquire
 Attorney I.D. No. 15974
 Kellie A. McGowan, Esquire
 Attorney I.D. No. 93460
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Attorneys for Plaintiff
ATC Outdoor DAS, LLC

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

ATC OUTDOOR DAS, LLC.	:	
	:	No. 2011-9455
	:	
v.	:	MANDAMUS
	:	
BOARD OF SUPERVISORS OF NORTHAMPTON TOWNSHIP	:	DECLARATORY JUDGMENT
	:	
and	:	EQUITY
	:	
MICHAEL T. SOLOMON	:	
Director of Planning and Zoning	:	

COMPLAINT

A. The Parties

1. ATC Outdoor DAS, LLC (“ATC”) is a Delaware limited liability corporation registered to do business in the Commonwealth of Pennsylvania. ATC maintains its principal place of business at 116 Huntington Ave, Eleventh Floor, Boston, Massachusetts 02116.

2. The Board of Supervisors of Northampton Township (“Board”) is the governing body of Northampton Township (“Township”), a duly organized second class township pursuant to the provisions of the Second Class Township Code, 53 P.S. § 65101, et. seq. The Board maintains an office at 55 Township Road, Richboro, Pennsylvania 18954.

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.Cmwlt. 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).

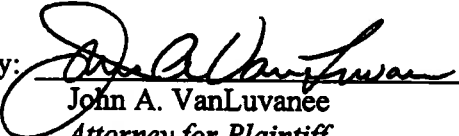
53. ATC has established clear right to relief.

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 CLBC 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.**

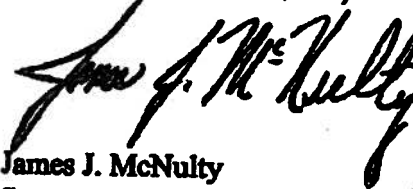
10. That upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Competitive Access Provider within the Commonwealth of Pennsylvania, consistent with this Order.

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"

PROPOSED
ANTENNAS

PROPOSED
EQUIPMENT

PROPOSED
ERU

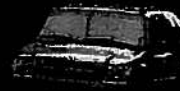




EXHIBIT "C"

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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CLEC License	Tab 2
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.**

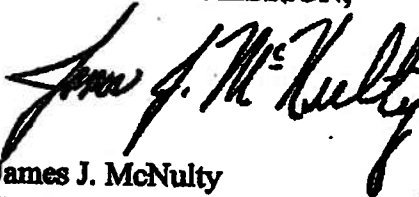
10. That upon the establishment of filed rates and the approval of the Initial Tariff, a Certificate of Public Convenience shall be issued authorizing the Applicant to furnish services as a Competitive Access Provider within the Commonwealth of Pennsylvania, consistent with this Order.

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

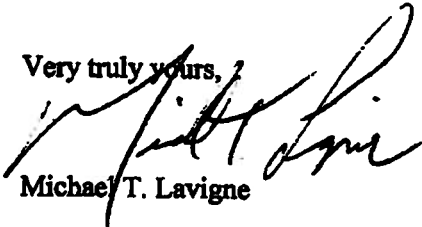
analysis of what constitutes appropriate rights-of-way management continues to set the parameters of local authority. These matters include coordination of construction schedules, determination of insurance, bonding and indemnity requirements, establishment and enforcement of building codes, and keeping 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

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

By: _____
Name: _____
Title: _____

Date: _____

WITNESS:

Name: _____
Title: _____

TOWNSHIP OF _____

By: _____
Name: _____
Title: _____

Date: _____

ATTEST:

Name: _____
Title: _____

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).

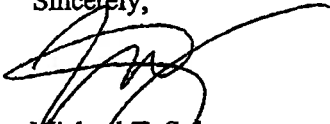
**Township of
Northampton**

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

Exhibit B

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., J.

Copies mailed to:

**John A. VanLuvanee, Esquire
Kellie A. McGowan, Esquire
Eastburn & Gray, P.C.
60 East Court Street
Doylestown, PA 18901**

**Barbara M. Kirk, Esquire
Eight Neshaminy Interplex, Suite 215
Trevose, PA 19053**

Exhibit C

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

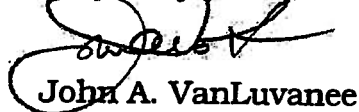
Michael J. Savona, Esq.
January 27, 2012
Page 2 of 2

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

Exhibit D

56 TOWNSHIP ROAD
RICHBORO, PA 18954 (215) - 357-6800

CONSTRUCTION PERMIT

DEPT. FILE COPY

PROPERTY NO.: 40 STREET: COMMERCE DRIVE
OWNER/ADDRESS OWNER PHONE
N&V POLI AFFILIATES, LLP
40 COMMERCE DRIVE
IVYLAND PA 18974
SUBDIVISION / LOT STORE # LOT SIZE
CHEROKEE IND. PARK SEC 1 /

PERMIT NO. : 60683
DATE : 2/13/2012
TMP : 31-001-001-001
ZONING DIST.:
TRANS. NO. :
DATE : 2/13/2013

FEEES

BLDG. : 0.00
PLUMBING : 0.00
MECHANICAL: 0.00
ELECTRIC : 0.00
OTHER : 0.00
USE/OCCU
COMPLIANCE: 0.00

APPLICANT
PHONE ATC OUTDOOR DAS, LLC.
919-466-5011 400 REGENCY FOREST DR. STE. 300
CARY NC 27518

TOTAL FEE -> 0.00

THE APPLICANT, AS GENERAL CONTRACTOR AND SUBCONTRACTORS ARE HEREBY GRANTED PERMISSION TO PERFORM THE FOLLOWING:

BOCA BUILDING CLASSIFICATION

TYPE : F1
USE GROUP : B3

BUILDING CONTRACTOR NAME / ADDRESS CONTRACTOR PHONE
EST. COST SQUARE FEET

NO. UNITS MODEL:

PLUMBING SUBCONTRACTOR NAME / ADDRESS PHONE NO.
MAST. #: NO. FIXTURES

WELL: SUBCONTRACTOR NAME / ADDRESS PHONE NO. PUBLIC WATER

DEPT. OF HEALTH PERMIT NO. -> DATE:
MECHANICAL SUBCONTRACTOR NAME / ADDRESS PHONE NO. PUBLIC SEWER

TYPE

ELECTRICAL SUBCONTRACTOR NAME / ADDRESS PHONE NO.

SAME

ELECTRIC PERMIT INSPECTION/ISSUANCE PERMIT FEE

OTHER SUBCONTRACTOR NAME / ADDRESS PHONE NO.

SAME

TYPE: HIGHWAY 0.00 POLES, CONDUITS, FIBER OPT.

PERMIT ISSUED IN ACCORDANCE WITH LETTER OF AGREEMENT BETWEEN ATC AND NORTHAMPTON TOWNSHIP DATED 01/27/2012.

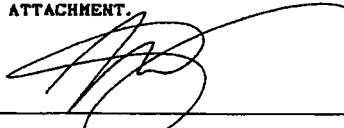
OTHER REMARKS

ATC OUTDOOR DAS, LLC (OWNER FOR HUB OF DAS SYSTEM)
400 REGENCY FOREST DRIVE, SUITE 300, CARY, NC 27518

IN ACCORDANCE WITH THE SUBMITTED PLANS, WORK ASSOCIATED WITH THIS PERMIT RELATES TO NEW POLE INSTALLATIONS, INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT AND ANTENNAS ON EXISTING POLES, INSTALLATION OF AERIAL FIBER OPTIC CABLE, AND CONDUIT.

PERMIT FEES \$26,842 (\$8,750 HWY, \$18,000 ELECTRIC, \$92.00 PA STATE FEE)

LOCATIONS ARE AS IDENTIFIED ON THE FOLLOWING ATTACHMENT.



ZONING CODE ENFORCEMENT DIRECTOR
MICHAEL SOLOMON

PHILADELPHIA BUSINESS FORMS CO. 215-233-2222

TMO Project Code	Node #	ATC Site ID	Code #	Polygon Name	Hub ID	Latitude	Longitude	Address Description	Address Description from Survey	GIS Address	City	State	Zip Code	County
1BU1407	183	345637	Buc02	Bucks County	308540	40.211372	-75.02661	Across from 276 Tanyard	Across from 276 TANYARD, Corner of WENDY	353 TANYARD RD	RICHORO	PA	18954	Bucks
1BU1407	188	345873	Buc06	Bucks County	308540	40.20339	-75.03457	Adjacent to 693 New Rd	693 NEW RD	271 NEW RD	SOUTHAMPTON	PA	18966	Bucks
1BU1407	189	345874	Buc07	Bucks County	308540	40.19786	-75.02632	Adjacent to 259 second street pike	259 SECOND ST PIKE	193 STHY 232	SOUTHAMPTON	PA	18966	Bucks
1BU1407	190	345875	Buc08	Bucks County	308540	40.20853	-75.01500	Adjacent to 750 Second St Pike	Front of the WAWA Food Market, 750 SECOND ST PIKE	688 STHY 232	RICHORO	PA	18954	Bucks
1BU1407	191	345876	Buc09	Bucks County	308540	40.20353	-75.02060	399 STHY 232	Just West of WILLOW GREEN on SECOND ST PIKE	399 STHY 232	RICHORO	PA	18954	Bucks
1BU1407	192	345877	Buc10	Bucks County	308540	40.20573	-75.02578	Adjacent to 7 Great Oak Drive	Corner GREAT OAK DR & WOODLAND DR, side of GREAT OAK DR	70 GREAT OAK DR	SOUTHAMPTON	PA	18966	Bucks
1BU1407	193	345878	Buc11	Bucks County	308540	40.20388	-75.01139	Adjacent to 671 Bustleton Pike	BUSTLETON PIKE & TANYARD, South of ANTHONY DR, side of 671 BUSTLETON PIKE	685 BUSTLETON PIKE	CHURCHVILLE	PA	18954	Bucks
1BU1407	194	345879	Buc12	Bucks County	308540	40.20021	-75.01543	Adjacent to 57 Willow Road	57 WILLOW RD	14 WILLOW RD	SOUTHAMPTON	PA	18966	Bucks
1BU1407	195	345880	Buc13	Bucks County	308540	40.19530	-75.01921	Adjacent to 173 New Road	173 NEW RD	777 NEW RD	SOUTHAMPTON	PA	18966	Bucks
1BU1407	196	345881	Buc14	Bucks County	308540	40.19724	-75.03599	Adjacent to 56 Boxwood	41 FOXWOOD RD, front of 56 BOXWOOD	56 BOXWOOD RD	SOUTHAMPTON	PA	18966	Bucks
1BU1407	197	345882	Buc15	Bucks County	308540	40.19438	-75.03018	Across from 123 Second St Pike	Across from 123 SECOND ST PIKE	80 STHY 232	SOUTHAMPTON	PA	18966	Bucks
1BU1407	198	345883	Buc16	Bucks County	308540	40.18981	-75.02155	Adjacent to 159 Stratford	159 STRATFORD DR	123 STRATFORD DR	SOUTHAMPTON	PA	18966	Bucks
1BU1407	213	345830	Buc30	Bucks County	308540	40.21543	-74.96324	Adjacent to 5 South Timber	Side of 5 SOUTH TIMBER	341 SAINT LEONARDS RD	SOUTHAMPTON	PA	18966	Bucks
1BU1407	214	345826	Buc31	Bucks County	308540	40.21984	-74.96948	Across from 1039 Newtown Richboro Rd	1153-322 STATE HWY, across from 1039		SOUTHAMPTON	PA	18966	Bucks
1BU1407	216	345821	Buc32	Bucks County	308540	40.21305	-74.97309	Rock Way & Keenan Ln (On west side of Rock Way, 100' north of Keenan Ln)	Across from XPMR on ROCKWAY & KEENAN LN	1161 STHY 332 (No street address available)	SOUTHAMPTON	PA	18966	Bucks
1BU1407	218	345818	Buc33	Bucks County	308540	40.21101	-74.96118	Adjacent to 288 Saint Leonard	0.00000	159 SAINT LEONARDS RD	SOUTHAMPTON	PA	18966	Bucks
1BU1407	219	345813	Buc34	Bucks County	308540	40.20807	-74.95721	Across from 571 Middle Holland Rd	DOE RUN DR & MIDDLE HOLLAND, across street from 571 MIDDLE HOLLAND RD	578 MIDDLE HOLLAND RD	VILLAGE SHIRES	PA	18966	Bucks
1BU1407	220	345810	Buc35	Bucks County	308540	40.20806	-74.95146	1078 STHY 532	BUCK RD & MIDDLE HOLLAND RD	1078 STHY 532	VILLAGE SHIRES	PA	18966	Bucks
1BU1407	221	345807	Buc36	Bucks County	308540	40.20339	-74.94837	Adjacent to 123 Signal Hill Rd	side of 123 SIGNAL HILL RD, corner of SIGNAL HILL & STONEYFORD RD	528 STONEYFORD RD	SOUTHAMPTON	PA	18966	Bucks
1BU1407	222	345804	Buc37	Bucks County	308540	40.20739	-74.97435	248 MIDDLE HOLLAND RD	JODI RD & MIDDLE HOLLAND RD	248 MIDDLE HOLLAND RD	VILLAGE SHIRES	PA	18966	Bucks
1BU1407	223	345802	Buc38	Bucks County	308540	40.20759	-74.96950	374 MIDDLE HOLLAND RD	Across the street from corner @ LIBERTY DR on HOLLAND RD	374 MIDDLE HOLLAND RD	VILLAGE SHIRES	PA	18966	Bucks
1BU1407	224	345800	Buc39	Bucks County	308540	40.19775	-74.94695	360 STONEYFORD RD	Btwn 184 & 198 STONEYFORD RD	360 STONEYFORD RD	SOUTHAMPTON	PA	18966	Bucks

Node

G/S

18U1407	225	345795	Buc40	Bucks County	308540	40.19479	-74.94937	185 STONEYFORD RD	167 STONEYFORD RD	185 STONEYFORD RD	SOUTHAMPTON	PA	18966	Bucks
18U1407	226	345639	Buc41	Bucks County	308540	40.18937	-74.95284	Adjacent to 975 East Holland Rd	PEPPERELL DR & HOLLAND RD, 975 EAST HOLLAND RD	951 E HOLLAND RD	FEASTERVILLE TREVOLVE	PA	19053	Bucks
18U1407	228	345643	Buc43	Bucks County	308540	40.18395	-74.94987	Adjacent to 1176 Bridgetown Pike	1176 BRIDGETOWN PIKE	445 BRIDGETOWN PIKE	FEASTERVILLE TREVOLVE	PA	19053	Bucks
18U1407	229	345647	Buc44	Bucks County	308540	40.18642	-74.94112	Adjacent to 1408 Bridgetown Pike	Front of 1408 BRIDGETOWN PIKE	711 BRIDGETOWN PIKE	FEASTERVILLE TREVOLVE	PA	19053	Bucks
18U1407	230	345649	Buc45	Bucks County	308540	40.18666	-74.94819	Adjacent to 7 Polder Dr	Corner of E. HOLLAND & POLDER DR, 7 POLDER DR	3 POLDER DR	FEASTERVILLE TREVOLVE	PA	19053	Bucks
18U1407	231	345650	Buc46	Bucks County	308540	40.18767	-74.95433	Adjacent to 1614 Bridgetown Pike	Next to Driveway at 1614 BRIDGETOWN PIKE	913 BRIDGETOWN PIKE	FEASTERVILLE TREVOLVE	PA	19053	Bucks
18U1407	237	345663	Buc51	Bucks County	308540	40.19024	-74.96982	Adjacent to 7 Briarwood Dr	BUCK RD & BRIARWOOD DR (Side of #7 BRIARWOOD DR)	1363 STHY 532	SOUTHAMPTON	PA	18966	Bucks
18U1407	238	345667	Buc52	Bucks County	308540	40.18108	-74.95616	Adjacent to 975 Bridgetown Pike	277 BRIDGETOWN PIKE, Front of 978	243 BRIDGETOWN PIKE	FEASTERVILLE TREVOLVE	PA	19053	Bucks
18U1407	239	345672	Buc53	Bucks County	308540	40.18074	-74.95983	Across from 871 Bridgetown Pike	Across from 871 BRIDGETOWN PIKE RD	129 BRIDGETOWN PIKE	FEASTERVILLE TREVOLVE	PA	19053	Bucks
18U1407	240	345681	Buc54	Bucks County	308540	40.18581	-74.97430	Adjacent to 10 Pine Run Dr	Side of 10 PINE RUN DR	1431 STHY 532	SOUTHAMPTON	PA	18966	Bucks
18U1407	241	345683	Buc55	Bucks County	308540	40.18453	-74.96333	Adjacent to 121 Brookside Dr	Side of 121 BROOKSIDE DR	OVERHILL DR (No street address available)	SOUTHAMPTON	PA	18966	Bucks
18U1407	242	345685	Buc56	Bucks County	308540	40.19028	-74.96304	Adjacent to 119 Briarwood Dr	Side of 119 BRIARWOOD DR	96 BRIARWOOD DR	SOUTHAMPTON	PA	18966	Bucks
18U1407	243	345689	Buc57	Bucks County	308540	40.21005	-74.98187	595 UPPER HOLLAND RD	Corner of HOLLAND & UPPER HOLLAND; NW Corner of Intersection	595 UPPER HOLLAND RD	RICHBORO	PA	18954	Bucks
18U1407	244	345692	Buc58	Bucks County	308540	40.20435	-74.97361	Adjacent to 145 Tulip	Side of 145 TULIP RD	143 TULIP RD	VILLAGE SHIRES	PA	18966	Bucks
18U1407	245	345698	Buc59	Bucks County	308540	40.19827	-74.97372	Adjacent to 123 Dutch Dr	Side of 123 DUTCH DR	163 DUTCH DR	VILLAGE SHIRES	PA	18966	Bucks
18U1407	246	345700	Buc60	Bucks County	308540	40.20465	-74.98284	Adjacent to 1120 Holland Dr	Side of 1120 HOLLAND RD	1166 HOLLAND RD	CHURCHVILLE	PA	18966	Bucks
18U1407	247	345703	Buc61	Bucks County	308540	40.20169	-74.97663	Adjacent to 80 David Rd	Utility easement side of 80 DAVID RD	75 DAVID RD	VILLAGE SHIRES	PA	18966	Bucks
18U1407	248	345706	Buc62	Bucks County	308540	40.19761	-74.98449	Adjacent to 944 Holland Rd	944 HOLLAND RD, HOLLAND RD & MONICA	944 HOLLAND RD	CHURCHVILLE	PA	18966	Bucks
18U1407	250	345721	Buc63	Bucks County	308540	40.19462	-74.97226	Adjacent to 28 Grant Ave	331 E HOLLAND RD (Rear of 28 GRANT AVE)	317 E HOLLAND RD	VILLAGE SHIRES	PA	18966	Bucks
18U1407	251	345723	Buc64	Bucks County	308540	40.20495	-74.98893	Adjacent to 54 Florence Dr	Front of 54 ELSA WAY, 54 FLORENCE	49 FLORENCE DR	CHURCHVILLE	PA	18954	Bucks
18U1407	252	345724	Buc65	Bucks County	308540	40.19928	-74.98627	Across from 593 Lower Holland Rd	579 LOWER HOLLAND RD, OPP of 593 LOWER HOLLAND RD	648 LOWER HOLLAND RD	CHURCHVILLE	PA	18966	Bucks
18U1407	254	345727	Buc66	Bucks County	308540	40.20515	-75.00538	Adjacent to 58 Torresdale	Corner of TORRESDALE DR & West LYNFORD RD, Front of 58 TORRESDALE	145 W LYNFORD RD	CHURCHVILLE	PA	18954	Bucks

18U1407	255	345729	Buc67	Bucks County	308540	40.20522	-74.99887	Adjacent to 91 West Lynford Rd	Side of 91 W. LYNFORD RD	LYNFORD RD (No street address available)	CHURCHVILLE	PA	18954	Bucks
18U1407	256	345733	Buc68	Bucks County	308540	40.20408	-74.99402	Across from 34 Windy Knoll Dr	Opposite of 34 WINDY KNOLL DR	102 WINDY KNOLL DR	CHURCHVILLE	PA	18954	Bucks
18U1407	260	345746	Buc72	Bucks County	308540	40.19260	-74.98559	Across from 827 Holland Rd	Across from 827 HOLLAND RD	788 HOLLAND RD	SOUTHAMPTON	PA	18966	Bucks
18U1407	263	345758	Buc75	Bucks County	308540	40.18916	-74.97809	Adjacent to 205 Woodlake Dr	Side of 205 WOODLAKE DR	155 WOODLAKE DR	SOUTHAMPTON	PA	18966	Bucks
18U1407	264	345762	Buc76	Bucks County	308540	40.18095	-74.97922	Adjacent to 8 Twist Dr	Side of 8 TWIST DR	1507 STHY 532	SOUTHAMPTON	PA	18966	Bucks
18U1407	265	345765	Buc77	Bucks County	308540	40.17834	-74.98196	Adjacent to 377 Buck Rd	377 BUCK RD	1545 STHY 532	SOUTHAMPTON	PA	18966	Bucks
18U1407	266	345770	Buc78	Bucks County	308540	40.18377	-74.98742	Adjacent to 487 Holland Rd	479 HOLLAND RD	578 HOLLAND RD	SOUTHAMPTON	PA	18966	Bucks
18U1407	267	345773	Buc79	Bucks County	308540	40.18362	-74.98159	Adjacent to 140 Mallard Rd	Side of 140 MALLARD RD	130 MALLARD RD	SOUTHAMPTON	PA	18966	Bucks
18U1407	268	345778	Buc80	Bucks County	308540	40.17846	-74.98552	Adjacent to 357 Holland Rd	357 HOLLAND RD	417 HOLLAND RD	SOUTHAMPTON	PA	18966	Bucks
18U1407	270	345782	Buc81	Bucks County	308540	40.19095	-74.95872	Adjacent to 84 Ponderosa	Side of 84 PONDEROSA	109 PONDEROSA DR	SOUTHAMPTON	PA	18966	Bucks
18U1407	271	345785	Buc82	Bucks County	308540	40.19436	-74.97707	Adjacent to 223 East Holland Rd	Next to 223 E. HOLLAND DR @ PINE VIEW DR	213 E HOLLAND RD	VILLAGE SHIRES	PA	18966	Bucks
18U1407	419	346159	Buc82	Bucks County	308540	40.18295	-74.95166	Adjacent to 148 Watergate Dr	WATERGATE & BRIDGETOWN PIKE, SW of 148 WATERGATE	386 BRIDGETOWN PIKE	FEASTERVILLE TREVOSE	PA	19053	Bucks

Exhibit E



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

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.

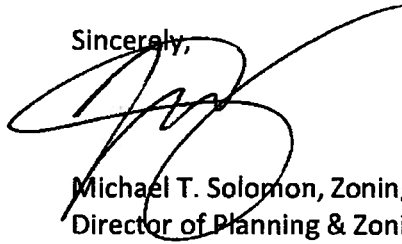
- 5) ATC has failed to provide the Township with adequate proof of liability insurance as required under §21-104(3)

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

Exhibit F



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

**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:

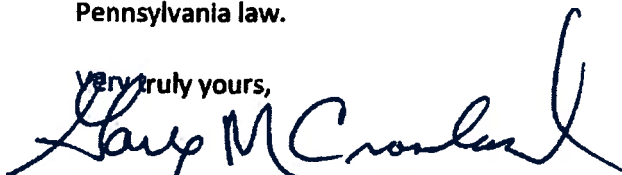
1. Final Plan of Windmill Village West, dated July 25, 1973, approved March 28, 1979.
2. Final Plan of Hillcrestshire, Section IV, dated February 6, 1970, approved Sept. 14, 1977
3. Final Plan of Timber Valley, Section 1, dated April 19, 1986, approved May 14, 1986
4. Final Plan of Windmill Village, dated November 10, 1965, approved March 9, 1966
5. Final Plan of Deerfield, dated November 10, 1969, approved January 11, 1978
6. Final Plan of Villa Estates, dated May 14, 1993, approved July 13, 1994
7. Final Plan of Spring Valley Farms, Section I, dated July 11, 1972, approved Sept. 13, 1972
8. Final Plan of Spring Valley Farms, Section III, dated January 2, 1974, approved Aug. 8, 1978
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