

TOWNSHIP OF DARBY

ORDINANCE #733

TELECOMMUNICATIONS RIGHT-OF-WAY ORDINANCE

**TOWNSHIP OF DARBY TELECOMMUNICATIONS
RIGHT-OF-WAY ORDINANCE**

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TOWNSHIP OF DARBY RIGHT-OF-WAY ORDINANCE

Section 1: Purpose

The purpose of this Telecommunications Right-of-Way Ordinance ("Ordinance") is to:

1.1 Assist the TOWNSHIP OF DARBY ("Township") in managing its Public Rights-of-Way with respect to Telecommunications Services providers in accordance with applicable law.

1.2 Regulate the erection, Construction, reconstruction, installation, operation, Maintenance, repair and removal of a Telecommunications System in, upon, along, across, above, over, under or in any manner connected with the Public Rights-of-Way of the Township, as now or in the future may exist; and

1.3 Provide the Township with appropriate compensation for occupation and use of the Township's Rights-of-Way for a Telecommunications System and for the cost of regulating providers of Telecommunications Services consistent with this Ordinance and applicable law.

Section 2: Definitions

Unless the context specifically indicates otherwise, the meaning of the terms used in this Ordinance shall be as follows:

- (1) "Applicant" means the Person who has applied for a Right-of-Way Permit or a Construction Permit.
- (2) "Application" means the form prescribed by the Township, which the Applicant must complete in order to obtain a Right-of-Way or Construction Permit.
- (3) "Construction" means the building, erection, or installation in, on, over or under a Right-of-Way. It does not include Maintenance or repair of existing aerial cables or Equipment in a Right-of-Way or a single line extension from Equipment in the Right-of-Way.
- (4) "Construction Permit" means the written authorization granted by the Township to an Applicant in order to perform Construction in a Right-of-Way.

- (5) "Emergency" means a condition that poses a clear and immediate danger to public, safety, including damage of life, health, or a significant loss of property.
- (6) "Equipment" means any tangible property located or proposed to be located in a Right-of-Way, including, but not be limited to, wires, lines, cables, conduits, pipes, supporting structures or other facilities.
- (7) "Expert" means any Person who has specialized skill or knowledge in legal, technical, engineering, Construction or related fields and who provides assistance to the Township regarding any matter included in this Ordinance.
- (8) "Maintenance" means work of a minor nature that will keep an existing condition from failure or decline.
- (9) "Non-PUC Regulated Person" means any individual, firm, partnership, association, corporation, company or other business entity not regulated as a Public Utility by the Public Utility Commission.
- (10) "Permit Holder" means the Person who has obtained a Right-of-Way Permit.
- (11) "Person" means any individual, firm, partnership, association, corporation, company or other business entity, whether such Person is PUC Regulated or Non-PUC Regulated.
- (12) "Public Utility Commission or PUC" means the State administrative agency, or lawful successor thereto, authorized to regulate and oversee Public Utilities and Telecommunications Providers and Telecommunications Services in the Commonwealth of Pennsylvania, to the extent provided by law.
- (13) "PUC Regulated Person" means any entity which is operating as a Public Utility as defined under the Pennsylvania Public Utility Code, and is subject to regulation by the PUC, regardless of whether or not the entity has been issued a Certificate of Public Convenience by the Pennsylvania Public Utility Commission.
- (14) "Restore" means the process by which a Right-of-Way is returned to a state that is as good or better than its condition was prior to the Construction.

- (15) "Right-of-Way" means the surface and space in, on, over, across, along, under and above any real property in which the Township has an interest in law or in equity, including, but not limited to, any public street, boulevard, avenue, road, highway, easement, bridge, freeway, alley, court or any other place which is under the jurisdiction of the Township, other than real property owned in fee by the Township.
- (16) "Right-of-Way Permit" or "Permit" means a written authorization granted by the Township to an Applicant for use of the Rights-of-Way in the Township for the installation, operation and/or Maintenance of Equipment.
- (17) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in form or content of the information as sent and received.
- (18) "Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to users who will make Telecommunications available directly to the public, regardless of the facilities used.
- (19) "Telecommunications System" means a system that offers Telecommunication Services.
- (20) "Underground Equipment" means all Equipment that is located wholly or partially underneath a Right-of-Way.

Section 3: Requirement for a Right-of-Way Permit for Non-PUC Regulated Persons

3.1 All PUC Regulated Persons shall be deemed to have a license from the Township under this Ordinance to occupy the Right-of-Way.

3.2 No Non-PUC Regulated Person shall enter upon or occupy any Right-of-Way for the purpose of installing, constructing, maintaining or operating a Telecommunications System without first having obtained a Right-of-Way Permit.

3.3 Before a Right-of-Way Permit is issued to a Non-PUC Regulated Person, the holder of or Applicant for a Right-of-Way Permit shall have applied for any and all regulatory approvals, permits or authorizations from the appropriate federal and state

authorities. Upon the request of the Township, the Applicant shall submit written evidence of its applications for or receipt of all such approvals, permits or authorizations.

3.4 Nothing in this Ordinance shall be construed as a waiver of any other ordinances or regulations of the Township or the Township's right to require prospective or current Right-of-Way Permit Holders to secure and remit payment for any and all other required permits or authorizations.

Section 4: Application for a Right-of-Way Permit for Non-PUC Regulated Persons

4.1 A Right-of-Way Permit for Non-PUC Regulated Persons shall only be granted after an Applicant has completed an Application in the form that has been prescribed by the Township, which form may be revised from time to time. Upon request, an Applicant shall be provided with a copy of the then current Application for a Right-of-Way Permit. The Application shall request information regarding the Applicant's proposed or actual physical use and occupation of the Rights-of-Way. The Applicant shall provide specific information regarding the Equipment it proposes to place or currently maintains in the Rights-of-Way. If the completed Application does not fully provide such requested information, the Township may request such additional information as is necessary to enable it to make a determination regarding the physical use and occupation of the Rights-of-Way by the Applicant. For purposes of determining the commencement of the Township's review process, the Application shall be deemed to have been filed on the day all information requested by the Township has been received by the Township.

4.2 Upon the filing of a fully completed Application to the Township and the accompanying fee, the Township shall review the Application as follows. This fee will be refunded in the event the Application is denied. If the Application is granted, the Application fee will apply to the full term of the Right-of-Way Permit of one year. The Township shall grant or deny such Applications within forty-five (45) days of its filing. If the Township denies the Application, it shall provide a written response to the Applicant explaining the basis for denial. If the Township fails to grant or reject such Application within the time period specified above, the Application shall be deemed approved. In each case, the Township shall review the Application to determine whether such use would have a detrimental effect on public safety as it relates to the Rights-of-Way or would place an undue physical burden on the Rights-of-Way.

4.3 In considering an Application, the Township may use such Experts as it deems appropriate to make an informed decision. In the event the Township deems it necessary to employ an outside Expert or Experts to advise the Township with respect to

a particular Application, the reasonable costs of such Expert or Experts shall be borne by the Applicant.

4.4 A Person shall have no recourse whatsoever against the Township for any loss, cost, expense or damage arising out of the failure to grant a Permit. By applying for a Permit, the Applicant acknowledges that it has not been induced to apply for or accept a Permit by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Township or by any other third Person concerning any term or condition of a Permit not expressed in this Ordinance.

Section 5: Duration of Right-of-Way Permit

The Right-of-Way Permit for Non-PUC Regulated Persons shall be issued for a period of one year. Permit Holders shall apply for a renewal of a Right-of-Way Permit at least sixty (60) days prior to its expiration.

Section 6: Requirement for a Construction Permit

6.1 Except in the case of an Emergency, before commencing any Construction in the Rights-of-Way, a Person shall apply for and obtain a Construction Permit. A Construction Permit shall only be granted after an Applicant has completed an Application in the form that has been prescribed by the Township, which form may be revised from time to time. Upon request, an Applicant shall be provided with a copy of the current Application for a Construction Permit. Such Application shall request detailed plans of the proposed Construction activity. Such plans shall describe: (1) the type of Construction activity; (2) the Equipment proposed to be installed or erected; (3) the specific locations of the Construction activity; and, (4) the scheduled beginning and ending dates of all planned Construction. For purposes of determining the commencement of the Township's review process, the Application shall be deemed to have been filed on the day all information requested by the Township has been received by the Township.

6.2 Upon the filing of a fully completed Application and the accompanying fee, the Township shall review such information and either grant or deny a Construction Permit within forty-five (45) days. If the Township denies the Construction Permit, the Township will provide a written response to the Applicant explaining the basis of the denial. If the Township fails to grant or deny the Construction Permit within the time period specified above, the Application shall be deemed granted. In each case, the Township shall review the Application to determine whether such Construction would have a detrimental impact on public safety as it relates to the Rights-of-Way. The Township may impose conditions on the Construction Permit regulating the times,

locations, and manner of Construction to preserve effective traffic flow, prevent hazardous road conditions and/or minimize noise impacts.

Section 7: Fees and Expenses

7.1 Each Person with Equipment in the Right-of-Way Permit shall pay an annual right-of-way management fee to compensate the Township for its costs incurred in connection with the ongoing use and occupancy of the Right-of-Way. Such annual Right-of-Way management fee shall be determined by the Township and authorized by resolution of the Township Board of Commissioners.

This fee is directly related to the Township's costs in reviewing the Application and managing the Rights-of-Way with respect to each Permit Holder. Such costs in managing the Rights-of-Way include, but are not limited to: (1) costs of maintaining the Rights-of-Way; (2) costs of degradation of streets and Right-of-Way property; (3) administrative costs related to the Rights-of-Way; and (4) traffic control costs pertaining to work in the Rights-of-Way.

7.2 Each Applicant for a Construction Permit shall include with its Application an application fee in the amount of Five Hundred Dollars (\$500). This fee is directly related to the Township's costs in reviewing the application and determining time, place and manner restrictions on the Construction activity. If the Application for a Construction Permit is denied, this fee shall not be refunded. If the Application is granted, then the Applicant shall also pay, within thirty (30) days of the presentation of a statement, the Township's actual costs directly related to the Applicant's Construction activity based on the hourly rate established by Resolution of the Township Board of Commissioners. Such actual costs include, but are not limited to, costs of disruption and rerouting of traffic, inspection costs and administrative costs.

7.3 Extraordinary Expenses. In addition to the fees set forth above, a Person shall pay, within thirty (30) days of the presentation of a statement, any extraordinary or unusual expenses reasonably incurred by the Township as a result of the Person's use of the Rights-of-Way, provided that the Township notifies the Person of the expected expenses prior to them being incurred and provides such Person with an opportunity to mitigate such expenses. Examples of extraordinary or unusual costs include, but are not limited to, the cost of obtaining and operating a backhoe, dump truck or other heavy Equipment used to repair the Right-of-Way, overtime or special pay for public safety and/or public works personnel and/or the cost of hazardous waste cleanup or other Emergency services. The statement of such expenses presented to the Person shall be directly related to the Township's actual costs.

7.4 Fee Considerations:

- a. Persons sharing the same conduit shall each pay a full fee;
- b. Persons sending signals over another Permit Holder's existing line or a line that is leased to another and upon which fees are already paid are not subject to additional fees; and
- c. Persons using the same line to provide cable television service and to provide Telecommunications Services shall be subject to a cable television franchise fee, but not a right-of-way management fee. Such Persons shall be subject to all other fees set by this Ordinance.

7.5 In the event that payment of any of the fees identified above is not made upon submission of the Application or by the date due, the Person shall pay a late payment penalty of two percent (2%) per month of the total amount past due. Such penalty shall be in lieu of any other monetary penalty.

Section 8: Management of the Rights-of-Way

8.1 The Township shall have the right to limit the placement of new or additional Equipment in the Right-of-Way if there is insufficient space to reasonably accommodate all requests to occupy and use the Rights-of-Way in a manner that is consistent with public safety. The Township shall consider requests for occupying and using the Rights-of-Way in the order of receipt of fully completed Applications for Right-of-Way Permits. The Township shall strive, to the extent possible, to accommodate all requests, but shall be guided by the physical condition of the Right-of-Way and whether such use would have a detrimental effect on public safety as it relates to the Right-of-Way.

8.2 Any Telecommunications Systems and the Equipment related thereto located in the Rights-of-Way shall not interfere with any wired or wireless Telecommunications System being operated or managed by the Township.

8.3 The Township may inspect any Telecommunications System located in the Rights-of-Way in response to a complaint by a Township resident or in case of an Emergency.

Section 9: Construction Standards

9.1 Whenever a Person or any of its subcontractors shall disturb any pavement, sidewalk or other public property in order to perform any underground activities, such Person will fully comply by registering with Pennsylvania's "One Call" system pursuant

to 73 P.S. §176 et seq. Such Person shall provide the Township with information showing planned locations and reference points for Equipment to be installed. Each Person shall perform Construction activity in a manner consistent and in compliance with the plans it submitted to the Township pursuant to Section 6.1 above and all applicable federal, state and local laws and regulations.

9.2 Whenever a Person or any of its subcontractors shall cause damage to private property, the Right-of-Way or to Township property in the Right-of-Way, the Person shall Restore such Right-of-Way or property within thirty (30) days of the occurrence of the damage. In the event that the Person fails to Restore the Right-of-Way or Township property to its former condition, the Township may repair such damage and assess all such costs of such repair to the Person. If a Person shall cause damage to any tree on public or private property, such Person shall either replace the tree with a tree of similar quality or fully compensate the property owner for any damage to such tree.

9.3 The Telecommunications System shall not endanger or interfere with the safety of Persons or property within the Township. All operating, Maintenance, Construction and repair personnel shall be thoroughly trained in the safe use of all Equipment and in the safe operation of vehicles. Such personnel shall follow all safety procedures required by applicable federal, state and local laws and regulations. All Persons operating Telecommunications Systems shall routinely inspect and maintain all areas of the Telecommunications System so that conditions that could develop into safety hazards shall be corrected before they become a hazard.

9.4 All Construction activity shall be performed in an orderly and workmanlike manner, and in close coordination with public utilities serving the Township following accepted industry Construction procedures and practices.

9.5 All Equipment shall be installed underground where required by municipal ordinance or regulation consistent with the same requirement being imposed on all other similarly situated companies, including all public utilities.

Section 10: Indemnification and Insurance

10.1 All Persons operating Telecommunications Systems shall, at their sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal-injury, including death, and property damage to public or private property arising out of the Person's use or occupancy of the Rights-of-Way. Such Person shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the Person's use or

occupancy of the Rights-of-Way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable Expert fees, court costs and all other costs of indemnification.

10.2 All Persons operating Telecommunications Systems shall, at all times during the life of a Permit, carry itself and require all of its subcontractors to carry commercial liability, worker's disability, and vehicle insurance issued to the Person by an insurance company licensed to do business in the Commonwealth of Pennsylvania in an amount and form acceptable to the Township as set forth in the Permit. Such Person shall name the Township as an additional insured on its liability insurance policies for which defense will be provided as to all such coverages. All required insurance coverage shall provide for thirty (30) days' notice to the Township in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation. Such Person shall provide appropriate insurance certificates to the Township within thirty (30) days after the execution of a Permit and annually with an application for a Renewal Permit. Any certificate of insurance presented to the Township shall verify that the Person is insured against claims for personal injury, including death, as well as claims for property damage arising out of the Applicant's use and occupancy of the Rights-of-Way.

10.3 In lieu of the certificate of insurance required under Section 10.2, proof of self-insuring status that demonstrates adequate financial resources to defend and cover any and all potential claims will be acceptable to the Township.

Section 11: Sale or Transfer of Rights of Permit Holder

A Right-of-Way Permit may be transferred or assigned, provided that the transferee/assignee agrees in writing, prior to the transfer or assignment, to comply with all of the obligations and requirements contained in this Ordinance. The transferee/assignee shall so notify the Township in writing at least thirty (30) days prior to the transfer or assignment.

Section 12: Performance Bond

12.1 All Persons operating or maintaining a Telecommunications System in accordance herewith shall file with their request a bond solely for the protection of the Township with a surety company that is licensed to do business in Pennsylvania in an amount determined by the Township. The bond shall ensure the Person's faithful performance of its obligations contained in this ordinance. The bond shall be a continuing obligation. The amount of the bond shall be determined by the Township in

accordance with applicable standards and will be included in the Permit.

12.2 None of the provisions of this Section 13, nor any bond accepted by the Township pursuant hereto, nor any damages recovered by the Township thereunder shall be construed to excuse the faithful performance by or limit the liability of any Person under this Ordinance or any Permit issued in accordance herewith or for damages either to the full amount of the bond or otherwise.

Section 13: Remedies

13.1 PUC Regulated Persons. In the event a PUC Regulated Person is found by the Township to have violated a PUC regulation, standard, or order, then the Township may bring a complaint against such Person before the Public Utility Commission for violation of such regulation, standard, or order. The Township may also notify the Person of the existence of any suspected violation of PUC standards, regulations or order in order to obtain compliance.

In the event a PUC Regulated Person is found to have violated any other provision of this Chapter that is not within the exclusive jurisdiction of the PUC, then such Person shall be subject, upon conviction thereof, to a fine not exceeding three hundred dollars (\$300), for each and every offense, together with attorneys' fees and costs, and in default of the payment thereof, imprisonment for not more than ninety (90) days. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Chapter and any other remedy at law or in equity under this Title, the Township may apply to a Court of Common Pleas for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Chapter which is not subject to the exclusive jurisdiction of the PUC.

Nothing in this Section shall be construed to permit the Township to commence or attempt to commence prosecution of any PUC Regulated Person for a violation of any regulation, standard or order of the PUC.

13.2 Non-PUC Regulated Persons. Any entity not regulated by the PUC that is found by the Township to have violated any provision of this Chapter shall be subject, upon conviction thereof, to a fine not exceeding three hundred dollars (\$300), for each and every offense, together with attorneys' fees and costs, and in default of the payment thereof, imprisonment for not more than ninety (90) days. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Chapter and any other remedy at law or in equity under this Title, the Township may

apply to a Court of Common Pleas for an injunction or other appropriate relief at law or in equity to enforce compliance with or restrain violation of any provision of this Chapter.

Section 14: Police Powers

The Township, by granting any Permit or conducting any other activity under this Ordinance, does not waive, lessen, impair or surrender the lawful police powers vested in the Township under applicable federal, state and local laws pertaining to the regulation or use of the Rights-of-Way.

Section 15: Severability

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not render this Ordinance invalid.

Section 16: Equal Application

The provisions of this Ordinance shall be imposed upon and enforced against all Persons requiring a Permit for the provision of Telecommunications Services or Construction of a Telecommunications System within the Township.

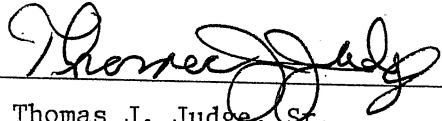
Section 17: Repealer

The provisions of this amending Ordinance insofar as they are the same as corresponding provisions of ordinances and/or regulations in force and effective prior to the enactment of this Ordinance are intended as a continuation of such provisions and not as new enactments.


NOW THEREFORE BE IT ENACTED that the Township Board of Commissioners does hereby approve this Right-of-Way Ordinance, including all of the terms and conditions contained herein.

Enacted and Ordained this 14th day of February, 2018.

ATTEST:



Thomas J. Judge, Sr.
Secretary

TOWNSHIP OF Darby


Richard Womack, President
Board of Commissioners
Township of Darby

**TOWNSHIP OF DARBY
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 733

AN ORDINANCE OF THE TOWNSHIP OF DARBY, DELAWARE COUNTY, PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE OF THE TOWNSHIP OF DARBY, PROVIDING FOR PURPOSES AND FINDINGS OF FACT RELATED TO THE ADOPTION OF THE AMENDMENT, PROVIDING FOR DEFINITIONS; ESTABLISHING CERTAIN GENERAL AND SPECIFIC STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF WIRELESS TELECOMMUNICATIONS TOWERS AND WIRELESS TELECOMMUNICATIONS ANTENNAS; PROVIDING FURTHER FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE ENFORCEMENT OF SAID REGULATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, be it, and it is hereby ORDAINED by the Board of Commissioners of the TOWNSHIP OF DARBY, DELAWARE County, Commonwealth of Pennsylvania, and it is hereby ENACTED and ORDAINED by authority of same as follows:

SECTION I. Amendment to Article XV Section 1501, List of Definitions, of the Wireless Telecommunications Towers and Antennas Section of the Township of Darby Zoning Ordinance

Article XV Section 1501 of the Zoning Ordinance is hereby amended to include the following definitions:

1. *Antenna* — any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An antenna shall not include Wireless Telecommunications Towers as defined below.
2. *Co-location*—the mounting of one or more WCFs, including antennae, on an existing Wireless Telecommunications Tower, or on any structure that already supports at least one Wireless Telecommunications Antenna.

3. *Distributed Antenna Systems (DAS)*—network of spatially separated Antenna sites connected to a common source that provides wireless service within a geographic area or structure.
4. *Emergency*—a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the rights-of-way to be unusable and result in loss of the services provided.
5. *FCC*—Federal Communications Commission.
6. *Height of a Wireless Telecommunications Tower* - the vertical distance measured from the ground level, including any base pad, to the highest point on a Wireless Telecommunications Tower, including antennae mounted on the tower and any other appurtenances.
7. *Monopole*—a WCF or site which consists of a single pole structure, designed and erected on the ground or on top of a structure, to support communications antennae and connecting appurtenances.
8. *Wireless Telecommunications Antenna*—all non-tower Wireless Communications Facilities, including but not limited to, antennae and Related Equipment. Wireless Telecommunications Antennas shall not include support structures for antennae or any Related Equipment that is mounted to the ground or at ground-level.
9. *Related Equipment*—any piece of equipment related to, incidental to, or necessary for, the operation of a Wireless Telecommunications Tower or Wireless Telecommunications Antenna. By way of illustration, not limitation, Related Equipment includes generators and base stations.
10. *Stealth Technology*—camouflaging methods applied to wireless communications towers, antennae and other facilities which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.
11. *Substantially Change or Substantial Change* - A modification to an existing wireless communications facility Substantially Changes the physical dimensions of a tower or base station if it meets any of the following criteria: (1) for Telecommunications Tower outside the public rights-of-way, it increases the height of the facility by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed 20 feet, whichever is greater; for Telecommunications Tower in the rights-of-way, it increases the height of the facility by more than 10% or 10 feet, whichever is greater; (2) for Telecommunications Tower outside the public rights-of-way, it protrudes from the edge of the WCF by more than 20 feet, or more than the width

of the Tower structures are the level off the appurtenance, whichever is greater; for those Telecommunications Tower in the public rights-of-way, it protrudes from the edge of the structure by more than 6 feet; (3) it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets; (4) it entails any excavation of deployment outside the current site of the Telecommunications Tower; or (6) it does not comply with conditions associated with prior approval of construction or modification of the Telecommunications Tower unless the non-compliance is due to an increase in height, increase in width, or addition of cabinets.

12. *Wireless Telecommunications Tower*—any structure that is used for the purpose of supporting one or more Antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles, utility poles and light poles. DAS hub facilities are considered to be Wireless Telecommunications Towers.
13. *WBCA* - Pennsylvania Wireless Broadband Collocation Act (53 P.S. §11702.1 *et. seq.*)
14. *Wireless*—transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.
15. *Wireless Communications Facility (WCF)*—the antennae, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services. WCF include both Wireless Telecommunications Towers and Wireless Telecommunications Antennas.
16. *Wireless Communications Facility Applicant (WCF Applicant)*—any person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the public right-of-way (ROW) or other Township owned land or property.
17. *Wireless Support Structure*—a freestanding structure, such as a Wireless Telecommunications Tower or any other support structure that could support the placement or installation of a wireless communications facility if approved by the Township.

SECTION II. REPEALER AND ADOPTION OF NEW WIRELESS COMMUNICATIONS FACILITIES PROVISIONS

- A. The terms, conditions, and provisions of Article XV Sections 1500-1509 (“Wireless Telecommunications Towers and Antennas”) of the Township of Darby Zoning Ordinance are hereby REPEALED and replaced in their entirety with a new Article XV entitled and provided for as follows:

Article XV Wireless Communications Facilities

A. Purposes and Findings of Fact.

(1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of Wireless Communications Facilities in Township of Darby (referred to herein as the "Township"). While the Township recognizes the importance of Wireless Communications Facilities in providing high quality communications service to its residents and businesses, the Township also recognizes that it has an obligation to protect public safety and to minimize the adverse visual effects of such facilities through the standards set forth in the following provisions.

(2) By enacting these provisions, the Township intends to:

- a. Accommodate the need for Wireless Communications Facilities while regulating their location and number so as to ensure the provision of necessary services;
- b. Provide for the managed development of Wireless Communications Facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of both Township residents and wireless carriers in accordance with federal and state laws and regulations;
- c. Establish procedures for the design, siting, construction, installation, maintenance and removal of both Wireless Telecommunications Towers and Wireless Telecommunications Antennas in the Township, including facilities both inside and outside the public rights-of-way;
- d. Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, and other Wireless Communications Facilities;
- e. Minimize the adverse visual effects and the number of such facilities through proper design, siting, screening, material, color and finish, and by requiring that competing providers of wireless communications services co-locate their Wireless Telecommunications Antenna and related facilities on existing towers;
- f. Promote the health, safety and welfare of the Township's residents.

B. General and Specific Requirements for Wireless Telecommunications Antennas

(1) The following regulations shall apply to all Wireless Telecommunications Antennas:

- a. Conditional Use Subject to Regulations. Wireless Telecommunications Antennas shall be located on existing utility owned poles and traffic lights. If such placement is not possible, Wireless Telecommunications Antennas are permitted by Conditional Use in all zones subject to the restrictions and conditions

prescribed below and subject to applicable permitting by the Township.

- b. Non-conforming Wireless Support Structures. Wireless Telecommunications Antennas shall be permitted to co-locate upon non-conforming Wireless Telecommunications Towers and other non-conforming structures. Co-location of WCF upon existing Wireless Telecommunications Towers is encouraged even if the Wireless Telecommunications Tower is non-conforming as to use within a zoning district.
- c. Standard of Care. Any Wireless Telecommunications Antenna shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any WCF shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
- d. Wind. All Wireless Telecommunications Antennas structures shall be designed to withstand the effects of wind gusts of at least one hundred (100) miles per hour in addition to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/TIA-222, as amended).
- e. Aviation Safety. Wireless Telecommunications Antennas shall comply with all federal and state laws and regulations concerning aviation safety.
- f. Public Safety Communications. Wireless Telecommunications Antennas shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- g. Radio Frequency Emissions. A Wireless Telecommunications Antenna shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- h. Removal. In the event that use of a Wireless Telecommunications Antenna is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:

- (1) All abandoned or unused WCFs and accessory facilities shall be removed within two (2) months of the cessation of operations at the site unless a time extension is approved by the Township.
 - (2) If the WCF or accessory facility is not removed within two (2) months of the cessation of operations at a site, or within any longer period approved by the Township, the WCF and/or associated facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.
- i. Insurance. Each Person that owns or operates a Wireless Telecommunications Antenna shall provide the Township with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering the Wireless Telecommunications Antenna.
 - j. Indemnification. Each person that owns or operates a Wireless Telecommunications Antenna shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Wireless Telecommunications Antenna. Each person that owns or operates a Wireless Telecommunications Antenna shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of a Wireless Telecommunications Antenna. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.
 - k. Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:
 - (1) The Wireless Telecommunications Antenna shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (2) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Township's residents.
 - (3) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

(2) The following regulations shall apply to all collocated Wireless Telecommunications Antennas that do not Substantially Change the Physical Dimensions of the Wireless Support Structure to which they are attached, or that otherwise fall under the Pennsylvania Wireless Broadband Collocation Act

a. Permit required. WCF Applicants proposing the modification of an existing Wireless Telecommunications Tower shall obtain a building permit from the Township. In order to be considered for such permit, the WCF Applicant must submit a permit application to the Township in accordance with applicable permit policies and procedures.

b. Timing of approval for applications that fall under the WBCA. Within thirty (30) calendar days of the date that an application for a Wireless Telecommunications Antenna is filed with the Township, the Township shall notify the WCF Applicant in writing of any information that may be required to complete such application. Within sixty (60) calendar days of receipt of a complete application, the Township shall make its final decision on whether to approve the application and shall advise the WCF Applicant in writing of such decision. The Township shall notify the WCF Applicant as to completeness of the WCF Application within thirty (30) days of receipt.

c. Related Equipment. Ground-mounted Related Equipment greater than three (3) cubic feet shall not be located within fifty (50) feet of a lot in residential use or zoned residential.

d. Permit fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a Wireless Telecommunications Antenna. Such permit fees shall be set by resolution of the Board of Commissioners.

(3) The following regulations shall apply to all Wireless Telecommunications Antennas that do Substantially Change the Wireless Support Structure to which they are attached, or that otherwise do not fall under the Pennsylvania Wireless Broadband Collocation Act:

a. Prohibited on Certain Structures. No Wireless Telecommunications Antenna shall be located on single-family detached residences, single-family attached residences, or any residential accessory structure.

b. Conditional Use Required. Any WCF Applicant proposing the construction of a new Wireless Telecommunications Antenna, or the modification of an existing Wireless Telecommunications Antenna, shall first obtain a Conditional Use from the Township. New constructions, modifications, and replacements that do fall under the WBCA shall not be subject to the Conditional Use process. The Conditional Use application shall demonstrate that the proposed facility complies with all applicable provisions in the Township of Darby Zoning Ordinance.

- c. Historic Buildings. No Wireless Telecommunications Antenna may be located upon any property, or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or is listed on the official historic structures and/or historic districts list maintained by the Township
- d. Retention of Experts. The Township may hire any consultant(s) and/or expert(s) necessary to assist the Township in reviewing and evaluating the application for approval of the WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these WCF provisions. The WCF Applicant and/or owner of the WCF shall reimburse the Township for all costs of the Township's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- e. Permit Fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a Wireless Telecommunications Antenna, as well as related inspection, monitoring and related costs. Fees shall be set by resolution of the Board of Commissioners.
- f. Development Regulations. Wireless Telecommunications Antennas shall be co-located on existing Wireless Support Structures, such as existing buildings or Wireless Telecommunications Towers; subject to the following conditions:
 - (1) The total height of any Wireless Support Structure and mounted WCF shall not exceed twenty (20) feet above the maximum height permitted in the underlying zoning district, unless the WCF Applicant applies for, and subsequently obtains, a variance.
 - (2) In accordance with industry standards, all Wireless Telecommunications Antenna Applicants must submit documentation to the Township justifying the total height of the Wireless Telecommunications Antenna. Such documentation shall be analyzed in the context of such justification on an individual basis.
 - (3) If the WCF Applicant proposes to locate the Related Equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district, and landscaping shall be required to screen as much of the equipment building as possible. An evergreen screen shall surround the site. The evergreen screen shall be a minimum height of six (6) feet at planting.
- g. A security fence with a minimum height of six (6) feet shall surround any separate communications equipment building. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.

- h. Non-commercial usage exemption. Township residents utilizing satellite dishes and/or antennae for the purpose of maintaining television, phone, and/or internet connections at their respective residences shall be exempt from the regulations enumerated in this section of the Zoning Ordinance.
- i. Design Regulations. Wireless Telecommunications Antennas shall employ Stealth Technology and be treated to match the Wireless Support Structure in order to minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF Applicant shall be subject to the approval of the Township.
- j. Removal, Replacement and Modification.
 - (1) The removal and replacement of Wireless Telecommunications Antennas and/or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not Substantially Change the overall size of the underlying Wireless Support Structure.
 - (2) Any material modification to a WCF shall require notice to be provided to the Township, and possible supplemental permit approval to the original permit or authorization.
- k. Inspection. The Township reserves the right to inspect any WCF to ensure compliance with the provisions of the Zoning Ordinance and any other provisions found within the Township Code or state or federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

(4) Regulations Applicable to all Wireless Telecommunications Antennas located in the Public Rights-of-Way.

In addition to the Wireless Telecommunications Antenna provisions listed the following regulations shall apply to Wireless Telecommunications Antennas located in the public rights-of-way:

- a. Co-location. Wireless Telecommunications Antennas in the ROW shall be co-located on existing poles, such as existing utility poles or light poles. If co-location is not technologically feasible, the WCF Applicant, with the Township's approval, shall locate its Wireless Telecommunications Antennas on existing poles or freestanding structures that do not already act as Wireless Support Structures.
- b. Design Requirements:
 - (1) WCF installations located above the surface grade in the public ROW including, but not limited to, those on streetlights and joint utility poles,

shall consist of equipment components that are no more than six (6) feet in height and that are compatible in scale and proportion to the structures upon which they are mounted. All equipment shall be the smallest and least visibly intrusive equipment feasible.

- (2) Antenna and Related Equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
- c. Time, Place and Manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Wireless Telecommunications Antennas in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.
- d. Equipment Location. Wireless Telecommunications Antennas and Related Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:
- (1) In no case shall ground-mounted Related Equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb or within an easement extending onto a privately-owned lot;
 - (2) Ground-mounted Related Equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.
 - (3) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.
 - (4) Any graffiti on any Wireless Support Structures or any Related Equipment shall be removed at the sole expense of the owner.
 - (5) Any proposed underground vault related to Wireless Telecommunications Antennas shall be reviewed and approved by the Township.
- e. Relocation or Removal of Facilities. Within two (2) months following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a WCF in the ROW shall, at its own expense, temporarily or permanently

remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- (1) The construction, repair, maintenance or installation of any Township or other public improvement in the right-of-way;
- (2) The operations of the Township or other governmental entity in the Right-of-Way;
- (3) Vacation of a street or road or the release of a utility easement; or
- (4) An Emergency as determined by the Township.

C. General and Specific Requirements for All Wireless Telecommunications Towers.

- (1) The following regulations shall apply to all Wireless Telecommunications Towers, excluding any Wireless Telecommunications Tower that is less than seventy (70) feet in height and owned and operated by a federally licensed amateur radio status operator.
 - a. Standard of Care. All Wireless Telecommunications Towers shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the National Association of Tower Erectors. All Wireless Telecommunications Towers shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Township.
 - b. Notice. Upon submission of an application for a Wireless Telecommunications Tower and the scheduling of the public hearing upon the application, the WCF Applicant shall mail notice to all owners of every property within five hundred (500) feet of the proposed facility. The WCF Applicant shall provide proof of the notification to the Township.
 - c. Conditional Use Authorization Required. Wireless Telecommunications Towers are permitted by conditional use in all zoning districts and at a height necessary to satisfy their function in the WCF Applicant's wireless communications system. No WCF Applicant shall have the right under these regulations to erect a tower to the maximum height specified in this section unless it proves the necessity for such height. The WCF Applicant shall demonstrate that the antenna/tower/pole

for the Wireless Telecommunications Tower is the minimum height necessary for the service area.

- (1) Prior to Board of Commissioners' approval of a Conditional Use authorizing the construction and installation of Wireless Telecommunications Tower, it shall be incumbent upon the WCF Applicant for such Conditional Use approval to prove to the reasonable satisfaction of the Board of Commissioners that the WCF Applicant cannot adequately extend or infill its communications system by the use of equipment such as redoes, repeaters, antenna(s) and other similar equipment installed on existing structures, such as utility poles or their appurtenances and other available tall structures. The WCF Applicant shall further demonstrate that the proposed Wireless Telecommunications Tower must be located where it is proposed in order to serve the WCF Applicant's service area and that no other viable alternative location exists.
 - (2) The Conditional Use application shall be accompanied by a propagation study evidencing the need for the proposed tower or other communication facilities and equipment, a description of the type and manufacturer of the proposed transmission/radio equipment, the frequency range (megahertz band) assigned to the WCF Applicant, the power in watts at which the WCF Applicant transmits, and any relevant related tests conducted by the WCF Applicant in determining the need for the proposed site and installation.
 - (3) The Conditional Use application shall be accompanied by documentation demonstrating that the proposed Wireless Telecommunications Tower complies with all state and federal laws and regulations concerning aviation safety.
 - (4) Where the Wireless Telecommunications Tower is located on a property with another principal use, the WCF Applicant shall present documentation to the Township Board of Commissioners that the owner of the property has granted an easement for the proposed WCF and that vehicular access will be provided to the facility.
 - (5) The Conditional Use application shall be accompanied by documentation demonstrating that the proposed Wireless Telecommunications Tower complies with all applicable provisions in this section.
- d. Engineer Inspection. Prior to the Township's issuance of a permit authorizing construction and erection of a Wireless Telecommunications Tower, a structural engineer registered in Pennsylvania shall issue to the Township a written certification of the proposed WCF's ability to meet the structural standards offered by either the Electronic Industries Association or the Telecommunication Industry Association and certify the proper construction of the foundation and

the erection of the structure. This certification shall be provided during the conditional hearings, or at a minimum, be made as a condition attached to any approval given such that the certification be provided prior to issuance of any building permits.

- e. Visual Appearance and Land Use Compatibility. Wireless Telecommunications Towers shall employ Stealth Technology, which may include the tower portion to be painted silver or another color approved by the Township Board of Commissioners. All Wireless Telecommunications Towers and Related Equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible. The Township Board of Commissioners shall consider whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; benefit neighboring properties by preventing a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and land development design and construction principles, practices and techniques.

- f. Co-location and siting. An application for a new Wireless Telecommunications Tower shall demonstrate that the proposed Wireless Telecommunications Tower cannot be accommodated on an existing or approved structure or building, or sited on land owned by Township of Darby. The Township Board of Commissioners may deny an application to construct a new Wireless Telecommunications Tower if the WCF Applicant has not made a good faith effort to mount Wireless Telecommunications Antennas on an existing structure. The WCF Applicant shall demonstrate that it contacted the owners of tall structures, buildings, and towers within a one quarter (1/4) of a mile radius of the site proposed, sought permission to install an antenna on those structures, buildings, and towers and was denied for one of the following reasons:
 - (1) The proposed antenna and Related Equipment would exceed the structural capacity of the existing building, structure or tower, and its reinforcement cannot be accomplished at a reasonable cost.
 - (2) The proposed antenna and Related Equipment would cause radio frequency interference with other existing equipment for that existing building, structure, or tower and the interference cannot be prevented at a reasonable cost.
 - (3) Such existing buildings, structures, or towers do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.

- (4) A commercially reasonable agreement could not be reached with the owner of such building, structure, or tower.
- g. Permit Required for Modifications. To the extent permissible under applicable state and federal law, any WCF Applicant proposing the modification of an existing Wireless Telecommunications Tower, which increases the overall height of such WCF, shall first obtain a building permit from the Township. Non-routine modifications shall be prohibited without such a permit.
 - h. Gap in Coverage. A WCF Applicant for a Wireless Telecommunications Tower must demonstrate that a significant gap in wireless coverage or capacity exists in the applicable area and that the type of WCF being proposed is the least intrusive means by which to fill that gap in wireless coverage. The existence or non-existence of a gap in wireless coverage shall be a factor in the Township's decision on an application for approval of a Wireless Telecommunications Tower.
 - i. Additional Antennae. As a condition of approval for all Wireless Telecommunications Tower, the WCF Applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate antennae on Wireless Telecommunications Towers where technically and economically feasible. The owner of a Wireless Telecommunications Tower shall not install any additional antennae without obtaining the prior approval of the Township.
 - j. Wind. Any Wireless Telecommunications Tower structures shall be designed to withstand the effects of wind gusts of at least 100 miles per hour in addition to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222), as amended.
 - k. Height. Any Wireless Telecommunications Tower shall be designed at the minimum functional height. The maximum height of any new Wireless Telecommunications Tower shall be two hundred (200) feet. An existing tower may be modified or extended to a height not to exceed a total height of two hundred fifteen (215) feet, to accommodate the collocation of additional communications antennas.
 - l. Related Equipment. Either one single-story wireless communications equipment building not exceeding 500 square feet in area or up to five metal boxes placed on a concrete pad not exceeding 10 feet by 20 feet in area housing the receiving and transmitting equipment may be located on the site for each unrelated company sharing commercial communications antenna(e) space on the Wireless Telecommunications Tower.
 - m. Public Safety Communications. No Wireless Telecommunications Tower shall interfere with public safety communications or the reception of broadband,

television, radio or other communication services enjoyed by occupants of nearby properties.

- n. Maintenance. The following maintenance requirements shall apply:
- (1) Any Wireless Telecommunications Tower shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (2) Such maintenance shall be performed to ensure the upkeep of the WCF in order to promote the safety and security of the Township's residents, and utilize the best available technology for preventing failures and accidents.
- o. Radio Frequency Emissions. A Wireless Telecommunications Tower shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- p. Historic Buildings or Districts. A Wireless Telecommunications Tower shall not be located upon a property, and/or on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures and/or historic districts list maintained by the Township.
- q. Signs. All Wireless Telecommunications Towers shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. The only other signage permitted on the WCF shall be those required by the FCC, or any other federal or state agency.
- r. Lighting. No Wireless Telecommunications Tower shall be artificially lighted, except as required by law. If lighting is required, the WCF Applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. The WCF Applicant shall promptly report any outage or malfunction of FAA-mandated lighting to the appropriate governmental authorities and to the Township Manager.
- s. Noise. Wireless Telecommunications Towers shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the Township Code, except in emergency situations requiring the use of a backup generator, where such noise standards may be exceeded on a temporary basis only.

- t. Aviation Safety. Wireless Telecommunications Towers shall comply with all federal and state laws and regulations concerning aviation safety.
- u. Retention of Experts. The Township may hire any consultant and/or expert necessary to assist the Township in reviewing and evaluating the application for approval of the Wireless Telecommunications Tower and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of these provisions. The WCF Applicant and/or owner of the WCF shall reimburse the Township for all costs of the Township's consultant(s) in providing expert evaluation and consultation in connection with these activities.
- v. Timing of Approval. Within thirty (30) calendar days of the date that an application for a Wireless Telecommunications Tower is filed with the Township, the Township shall notify the WCF Applicant in writing of any information that may be required to complete such application. All applications for Wireless Telecommunications Towers shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such Wireless Telecommunications Towers and the Township shall advise the WCF Applicant in writing of its decision. If additional information was requested by the Township to complete an application, the time required by the WCF Applicant to provide the information shall not be counted toward the one hundred fifty (150) day review period.
- w. Non-Conforming Uses. Non-conforming Wireless Telecommunications Towers which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of this section.
- x. Removal. In the event that use of a Wireless Telecommunications Tower is planned to be discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCF or portions of WCF shall be removed as follows:
 - (1) All unused or abandoned Wireless Telecommunications Towers and accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Township.
 - (2) If the WCF and/or accessory facility is not removed within six (6) months of the cessation of operations at a site, or within any longer period approved by the Township, the WCF and accessory facilities and equipment may be removed by the Township and the cost of removal assessed against the owner of the WCF.

- (3) Any unused portions of Wireless Telecommunications Towers, including antennae, shall be removed within six (6) months of the time of cessation of operations. The Township must approve all replacements of portions of a Wireless Telecommunications Tower previously removed.
- y. Permit Fees. The Township may assess appropriate and reasonable permit fees directly related to the Township's actual costs in reviewing and processing the application for approval of a Wireless Telecommunications Tower, as well as related inspection, monitoring, and related costs. Fees shall be set by resolution of the Board of Commissioners.
- z. FCC License. Each person that owns or operates a Wireless Telecommunications Tower over forty (40) feet in height shall submit a copy of its current FCC license, including the name, address, and emergency telephone number for the operator of the facility.
- aa. Insurance. Each person that owns or operates a Wireless Telecommunications Tower greater than forty (40) feet in height shall provide the Township with a certificate of insurance evidencing general liability coverage in the minimum amount of \$5,000,000 per occurrence and property damage coverage in the minimum amount of \$5,000,000 per occurrence covering the Wireless Telecommunications Tower. Each Person that owns or operates a Wireless Telecommunications Tower forty (40) feet or less in height shall provide the Township with a certificate of insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the minimum amount of \$1,000,000 per occurrence covering each Wireless Telecommunications Tower.
- bb. Indemnification. Each person that owns or operates a Wireless Telecommunications Tower shall, at its sole cost and expense, indemnify, defend and hold harmless the Township, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of the Wireless Telecommunications Tower. Each person that owns or operates a Wireless Telecommunications Tower shall defend any actions or proceedings against the Township in which it is claimed that personal injury, including death, or property damage was caused by the construction, installation, operation, maintenance or removal of the Wireless Telecommunications Tower. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

cc. Engineer signature. All plans and drawings for a Wireless Telecommunications Tower shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.

dd. Financial security. Prior to receipt of a zoning permit for the construction or placement of a Wireless Telecommunications Tower, the WCF Applicant shall provide to the Township financial security sufficient to guarantee the removal of the Wireless Telecommunications Tower. Said financial security shall remain in place until the Wireless Telecommunications Tower is removed.

(2) The following regulations shall apply to Wireless Telecommunications Towers located outside the Public Rights-of-Way:

a. Development Regulations.

- (1) Wireless Telecommunications Towers shall not be located in, or within seventy-five (75) feet of, an area in which all utilities are located underground.
- (2) Wireless Telecommunications Towers are permitted by Conditional Use, outside the public Rights-of-Way, subject to all applicable prohibitions and conditions enumerated in the Township Zoning Ordinance.
- (3) Sole use on a lot. A Wireless Telecommunications Tower shall be permitted as a sole use on a lot, provided that the underlying lot meets the minimum size specifications set forth in the Township Zoning Code.
- (4) Combined with another use. A Wireless Telecommunications Tower may be permitted on a property with an existing use, or on a vacant parcel in combination with another use, subject to the following conditions:
 - (a) The existing use on the property may be any permitted use in the applicable district, and need not be affiliated with the WCF.
 - (b) Minimum lot area. The minimum lot shall comply with the requirements for the applicable district and shall be the area needed to accommodate the Wireless Telecommunications Tower and guy wires, the equipment building, security fence, and buffer planting if the proposed WCF is greater than forty (40) feet in height.
 - (c) Minimum setbacks. The minimum distance between the base of a Wireless Telecommunications Tower and any adjoining property line or street right-of-way line shall be equal to 100% of the height of the Wireless Telecommunications Tower or the minimum front yard setback of the underlying zoning district, whichever is greatest. Where the site on which a Wireless Telecommunications Tower is proposed

to be located is contiguous to an educational use, child day-care facility, or agriculture or residential use, the minimum distance between the base of a Wireless Telecommunications Tower and any such adjoining uses shall equal two hundred fifty (250) feet, regardless of the height of the Wireless Telecommunications Tower, unless it is demonstrated to the reasonable satisfaction of the Board of Commissioners that in the event of failure the WCF is designed to collapse upon itself within a setback area less than the required minimum setback without endangering such adjoining uses and their occupants.

b. Design Regulations.

- (1) The WCF shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. Application of the Stealth Technology chosen by the WCF Applicant shall be subject to the approval of the Township.
- (2) To the extent permissible by law, any height extensions to an existing Wireless Telecommunications Tower shall require prior approval of the Township.
- (3) Any proposed Wireless Telecommunications Tower shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's antennae and comparable antennae for future users:
- (4) Any Wireless Telecommunications Tower over forty (40) feet in height shall be equipped with an anti-climbing device, as approved by the manufacturer.

c. Surrounding Environs.

- (1) The WCF Applicant shall ensure that the existing vegetation, trees and shrubs located within proximity to the WCF structure shall be preserved to the maximum extent possible.
- (2) The WCF Applicant shall submit a soil report to the Township complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA-222, as amended, to document and verify the design specifications of the foundation of the Wireless Telecommunications Tower, and anchors for guy wires, if used.

d. Fence/Screen.

- (1) A security fence with a minimum height of six (6) feet shall completely surround any Wireless Telecommunications Tower greater than forty (40)

feet in height, as well as guy wires, or any building housing WCF equipment.

(2) Landscaping shall be required to screen as much of a newly constructed Wireless Telecommunications Tower as possible. The Township Board of Commissioners may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if, in the discretion of the Board of Commissioners, they achieve the same degree of screening. Existing vegetation shall be preserved to the maximum extent possible.

(a) An evergreen screen shall be required to surround the site. The evergreen screen shall be a minimum height of six (6) feet at planting.

e. Accessory Equipment.

(1) Ground-mounted Related Equipment associated to, or connected with, a Wireless Telecommunications Tower shall be placed underground or screened from public view using Stealth Technologies, as described above.

(2) All Related Equipment, utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.

f. Access Road. An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to Wireless Telecommunications Towers. The access road shall be a dust-free all-weather surface for its entire length. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road grades shall closely follow natural contours to assure minimal visual disturbance and minimize soil erosion. Where applicable, the WCF owner shall present documentation to the Township that the property owner has granted an easement for the proposed facility.

g. Parking. For each Wireless Telecommunications Tower greater than forty (40) feet in height, there shall be two off-street parking spaces.

h. Inspection. The Township reserves the right to inspect any Wireless Telecommunications Tower to ensure compliance with the Zoning Ordinance and any other provisions found within the Township Code or state or federal law. The Township and/or its agents shall have the authority to enter the property upon which a WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

(3) The following regulations shall apply to Wireless Telecommunications Towers located in the Public Rights-of-Way.

a. Location and development standards.

(1) Wireless Telecommunications Towers in the ROW shall not exceed forty (40) feet in height and are prohibited in areas in which all utilities are located underground.

(2) Wireless Telecommunications Towers shall not be sited in the front façade area of any structure.

(3) Wireless Telecommunications Towers shall be permitted along certain collector roads and arterial roads throughout the Township, regardless of the underlying zoning district. A map of such permitted roads is kept on file at the Township Zoning Office and adopted by the Board of Commissioners via resolution.

b. Time, Place and Manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Wireless Telecommunications Towers in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations. For public utilities, the time, place and manner requirements shall be consistent with the police powers of the Township and the requirements of the Public Utility Code.

c. Equipment Location. Wireless Telecommunications Towers and Related Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the ROW as determined by the Township. In addition:

(1) In no case shall ground-mounted Related Equipment, walls, or landscaping be located within 18 inches of the face of the curb.

(2) Ground-mounted Related Equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.

(3) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Township.

(4) Any graffiti on the tower or on any Related Equipment shall be removed at the sole expense of the owner

- (5) Any underground vaults related to Wireless Telecommunications Towers shall be reviewed and approved by the Township.

d. Design regulations.

- (1) The WCF shall employ the most current Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF Applicant shall be subject to the approval of the Township.
- (2) Wireless Telecommunications Towers in the public ROW shall not exceed forty (40) feet in height.
- (3) To the extent permissible under state and federal law, any height extensions to an existing Wireless Telecommunications Tower shall require prior approval of the Township, and shall not increase the overall height of the Wireless Telecommunications Towers to more than forty (40) feet.
- (4) Any proposed Wireless Telecommunications Towers shall be designed structurally, electrically, and in all respects to accommodate both the WCF Applicant's antennae and comparable antennae for future users.

e. Relocation or Removal of Facilities. Within sixty (60) days following written notice from the Township, or such longer period as the Township determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of a Wireless Telecommunications Tower in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Township, consistent with its police powers and applicable Public Utility Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- (1) The construction, repair, maintenance or installation of any Township or other public improvement in the Right-of-Way;
- (2) The operations of the Township or other governmental entity in the right-of-way;
- (3) Vacation of a street or road or the release of a utility easement; or
- (4) An emergency as determined by the Township.

f. Reimbursement for ROW Use. In addition to permit fees as described in this section, every Wireless Telecommunications Tower in the ROW is subject to the Township's right to fix annually a fair and reasonable fee to be paid for use and

occupancy of the ROW. Such compensation for ROW use shall be directly related to the Township's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Township. The owner of each Wireless Telecommunications Tower shall pay an annual fee to the Township to compensate the Township for the Township's costs incurred in connection with the activities described above.

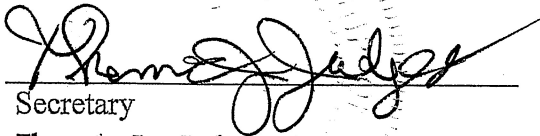
SECTION III. Miscellaneous

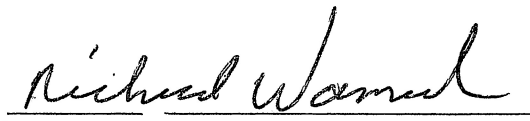
- A. Police powers. The Township, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the Township under applicable federal, state and local laws and regulations.
- B. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.
- C. Effective Date. This Ordinance shall become effective five (5) days after enactment by the Township Board of Commissioners of Township of Darby

ENACTED AND ORDAINED this 14th day of February, 2018.

ATTEST:

THE BOARD OF COMMISSIONERS
OF THE TOWNSHIP OF DARBY:


Secretary
Thomas J. Judge, Sr.


Richard Womack
President