TOWNSHIP OF PENN
PERRY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2014-4

AN ORDINANCE OF THE PENN TOWNSHIP, PERRY COUNTY, PENNSYLVANIA; PROVIDING FOR THE AMENDMENT OF THE ZONING ORDINANCE OF PENN TOWNSHIP AND PARTICULARLY PROVIDING FOR THE REPEAL AND REPLACEMENT OF §1637 (COMMERCIAL COMMUNICATION TOWER) OF THE ZONING ORDINANCE; PROVIDING FOR DEFINITIONS; ESTABLISHING CERTAIN GENERAL AND SPECIFIC STANDARDS RELATING TO THE LOCATION, PLACEMENT, CONSTRUCTION AND MAINTENANCE OF TOWER-BASED WIRELESS TELECOMMUNICATIONS FACILITIES AND NON-TOWER WIRELESS TELECOMMUNICATION FACILITIES; AND PROVIDING FURTHER FOR THE REGULATION OF SUCH FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY AND OUTSIDE THE PUBLIC RIGHTS-OF-WAY.

NOW THEREFORE, be it, and it is hereby ORDAINED by the Board of Supervisors of the Township of Penn, Perry County, Commonwealth of Pennsylvania, and it is hereby ENACTED and ORDAINED by authority of same as follows:

SECTION I. Short Title.

This Ordinance shall be known as the "Penn Township Wireless Communications Facilities Ordinance."

SECTION II. Purposes and Findings of Fact.

A. The purpose of this Ordinance is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless communications facilities in Penn 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.

B. By enacting this Ordinance, the Township intends to:

a. Promote the health, safety and welfare of Township residents and businesses with respect to wireless communications facilities;

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 tower-based and non-tower based wireless communications facilities 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, cable wi-fi and other wireless communications facilities;

e. Encourage the co-location of wireless communications facilities on existing structures rather than the construction of new tower-based structures;

f. Protect Township residents from potential adverse impacts of wireless communications facilities and preserve, to the extent permitted under law, the visual character of established communities and the natural beauty of the landscape; and

g. Update the Township's wireless facilities regulations to incorporate changes in federal and state laws and regulations.

SECTION III. Definitions.

Article II, *Definitions*, Section 202, *Specific Words and Phrases,* of the Penn Township Zoning Ordinance is hereby amended as follows:

A. Delete the definitions of *Communications Antenna, Communications Equipment Building, Communications Tower, and Height of a Communications Tower* from §27-202 of the Township Zoning Ordinance.

B. Add the following definitions to the "Definitions" section of the Township Zoning Ordinance, §27-202:

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 Tower-Based Wireless Communications Facilities defined below.

2. *Co-location*— The placement or installation of new wireless telecommunications facilities on previously approved and constructed wireless support structures, including self-supporting or guyed monopoles or towers, electrical transmissions towers, water towers or any other structures that can support the placement or installation of wireless telecommunications facilities if approved by the municipality.

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. *Equipment Building*—An unmanned building or cabinet containing communications equipment required for the operation of a Tower-Based Wireless Communications Facility or a Non-Tower Wireless Communications Facility

6. *FCC*—Federal Communications Commission.

7. *Height of Tower-Based WCF* — The vertical distance from the ground level to the highest point on a Tower-Based WCF, including antennae mounted to the structure

8. *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.

9. *Non-Tower Wireless Communications Facility (Non-Tower WCF)*—all non-tower wireless communications facilities, including but not limited to, Antennae and related equipment. Non-Tower WCF shall not include support structures for Antennae and related equipment.

10. *Persons*—individuals, corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, corporations and other entities established pursuant to statutes of the Commonwealth of Pennsylvania; provided that Person does not include or apply to the Township or to any department or agency of the Township.

11. Right-of-Way or ROW—the surface of and space above and below any real property in the Township in which the Township has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to, all Streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the Township, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for Utility

purposes, but excluding lands other than streets that are owned by the Township. The phrase "in the Right(s)-of-Way" and means in, on, over, along, above and/or under the Right(s)-of-Way.

12. *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.

13. *Substantially Change*—(1) any increase in the height of a Wireless Support Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, except that the mounting of the proposed Wireless Communications Facility may exceed the size limits set forth herein if necessary to avoid interference with existing antennae; or (2) any further increase in the height of a Wireless Support Structure which has already been extended by more than 10% of its originally approved height or by the height of one additional antenna array.

14. *Tower-Based Wireless Communications Facility (Tower-Based WCF)*—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 Tower-Based WCFs.

15. *Township*—Penn Township, Perry County, PA

16. *Wireless*—transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals.

17. *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.

18. *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 ROW or other Township owned land or property.

19. *Wireless Support Structure*—a freestanding structure, such as a Tower-Based Wireless Communications Facility or any other support structure that could support the placement or installation of a Wireless Communications Facility if approved by the Township.

SECTION IV. **Repealer**

The following terms, conditions and provisions of Section 1637 (Commercial Communication Tower) of the Penn Township Zoning Code, are hereby REPEALED and REPLACED by provisions set forth under Sections V through XII of this Ordinance.

SECTION V. **General Requirements for All Tower-Based Wireless Communications Facilities.**

The following regulations shall apply to all Tower-Based Wireless Communications Facilities:

1. Standard of Care. Any Tower-Based WCF 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. Any Tower-Based 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.

2. Wind. Any Tower-Based WCF structures shall be designed to withstand the effects of wind according 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 Code, Section 222, as amended). Such structures must be designed to withstand wind gusts of at least 100 miles per hour.

3. Height. Any Tower-Based WCF shall be designed at the minimum functional height. All Tower-Based WCF applicants must submit documentation to the Township justifying the total height of the structure. The maximum total height of any Tower-Based WCF shall not exceed two hundred fifty (250) feet, which height shall include all subsequent additions or alterations. No Tower-Based WCF shall be of a height that would require attached lighting as required by standards of the Federal Aviation Administration (FAA).

4. Interference. No Tower-Based WCF shall interfere with public safety communications or the reception of broadband, televisions, radio, or other communication services enjoyed by occupants of nearby properties.

5. Public Safety Communications. No Tower-Based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

6. Maintenance. The following maintenance requirements shall apply:

    a. Any Tower-Based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

    b. 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.

    c. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

7. Radio Frequency Emissions. No Tower-Based WCF may, 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.

8. Historic Buildings or Districts. No Tower-Based WCF may be located 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 has been designated by the Township as being of historic significance.

9. Signs. All Tower-Based WCFs 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.

10. Lighting. No Tower-Based WCF shall be artificially lit, except as required by law. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. Such plan shall be reviewed by the Township or its consultant, and shall not be implemented until express approval is provided to the applicant.

11. Noise. Tower-Based WCFs 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.

12. Aviation Safety. Tower-Based WCFs shall comply with all federal and state laws and regulations concerning aviation safety.

13. 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 Tower-Based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Ordinance. The 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. Prior to such review and evaluation, the applicant shall place funds in escrow to reimburse the Township for its costs.

14. Timing of Approval. Within thirty (30) calendar days of the date that an application for a Tower-Based WCF is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. All applications for Tower-Based WCFs shall be acted upon within one hundred fifty (150) days of the receipt of a fully completed application for the approval of such Tower-Based WCF and the Township shall advise the applicant in writing of its decision. If additional information was requested by the Township to complete an application, the time required by the applicant to provide the information shall not be counted toward the one hundred fifty (150) day review period.

15. Non-Conforming Uses. Non-conforming Tower-Based WCFs 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 Ordinance.

16. Removal. In the event that use of a Tower-Based WCF 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 WCFs or portions of WCFs shall be removed as follows:

    a. All unused or abandoned Tower-Based WCFs 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.

    b. 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.

    c. Any unused portions of Tower-Based WCFs, 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 Tower-Based WCF previously removed.

17. 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 Tower-Based WCF, as well as related inspection, monitoring and related costs.

18. FCC License. Each Person that owns or operates a Tower-Based WCF shall submit a copy of its current FCC license, as well as the future renewals of such license, including the name, address, and emergency telephone number for the operator of the facility.

19. Insurance. Each Person that owns or operates a Tower-Based WCF shall provide the Township with a certificate of insurance on an annual basis, 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 Tower-Based WCF.

20. Indemnification. Each Person that owns or operates a Tower-Based WCF 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 Tower-Based WCF. Each Person that owns or operates a Tower-Based WCF 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 Tower-Based WCF. 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.

21. Engineer Signature. All plans and drawings for a tower and antenna shall contain a seal and signature of a professional structural engineer, licensed in the Commonwealth of Pennsylvania.

SECTION VI. Tower-Based Facilities Outside the Rights-of-Way

A. The following regulations shall apply to Tower-Based Wireless Communications Facilities located outside the Rights-of-Way:

1. Development Regulations:

   a. Location. No Tower-Based WCF shall be located within three hundred (300) feet of a residential lot in use, or in any area in which utilities are undergrounded. Tower-Based WCFs shall only be allowed in the following zoning districts by conditional use:

      i. The AR-Agricultural Rural District.
      ii. The C-Commercial District.
      iii. The I-Industrial District.

b. Prohibited in Certain Areas. No Tower-Based WCF shall be located in any district zoned residential, with the exception of those mentioned in Section VI.A.1 of this Ordinance.

c. Distance. No Tower-Based WCF measuring over fifty (50) feet in height shall be situated closer than one thousand (1,000) feet from another Tower-Based WCF measuring over fifty (50) feet in height, such distance being measured as a horizontal distance from structure to structure.

d. Gap in Coverage. An applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators 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 Tower-Based WCFs.

e. Sole Use on a Lot. A Tower-Based WCF is permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements for the applicable zoning district.

   i. Setback. The Tower-Based WCF shall be setback from any residential property line by at least three hundred (300) feet, and from any other property line by at least the height of the Tower-Based WCF plus thirty (30) feet.

f. Combined with Another Use. A Tower-Based WCF may be permitted on a property with an existing use, or on a vacant parcel in combination with another industrial, commercial, institutional or municipal use, subject to the following conditions:

   i. The existing use on the property may be any permitted use in the applicable zoning district, and need not be affiliated with the communications facility.

   ii. Minimum Lot Area. The minimum lot shall comply with the requirements for the applicable zoning district and shall be the area needed to accommodate the Tower-Based WCF and guy wires, the equipment building, security fence, and buffer planting.

   iii. Minimum Setbacks. The Tower-Based WCF and accompanying equipment building shall comply with the requirements for the applicable zoning district, provided that no Tower-Based WCF shall be located within three hundred (300) feet of a lot in residential use or a residential district boundary, or from any other property line by at least the height of the Tower-Based WCF plus thirty (30) feet.

2. Conditional Use Requirements. Applicants for a Wireless Communications Facility shall present testimony and evidence to the Board of Supervisors in support of the following requirements:

    1. The applicant shall present documentation that the facility is designed in accordance with all the standards cited in this Ordinance for wireless communications facilities.

    2. The applicant shall demonstrate that the antenna/tower/pole for the WCF is the minimum height necessary for the service area.

    3. The applicant shall demonstrate that the proposed WCF complies with all State and Federal laws and regulations concerning aviation safety.

    4. The need for additional buffer yard treatments shall be evaluated.

    5. The applicant shall demonstrate that the WCF must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists. That is, the applicant shall demonstrate that there are no other structures, which can accommodate

    6. Where the WCF is located on a property with another principal use, the applicant shall present documentation that the owner of the property has granted an easement for the proposed facility and that vehicular access is provided to the facility.

3. Notice. Upon Township's receipt of an application for a Tower-Based WCF, the Township shall mail notice thereof to the owner or owners of every property zoned residential on the same street within 1,000 linear feet of the site of the proposed facility and of every property zoned residential not on the same street within 500 feet of the proposed facility. The cost of the mailing shall be at applicant's expense.

4. Co-Location. An application for a new Tower-Based WCF shall not be approved unless the Township finds that the wireless communications equipment planned for the proposed Tower-Based WCF cannot be accommodated on an existing or approved structure or building. Any application for approval of a Tower-Based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a two-mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Township that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.

5. Design Regulations:

    a. 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.

b. Any height extensions to an existing Tower-Based WCF shall require prior approval of the Township. The Township reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Township.

c. Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's Antennae and comparable Antennae for future users.

d. Guy wires, if utilized, may not be anchored in any minimum building setback area of the zoning district in which the Tower-Based WCF is located. Guy wires shall not cross or encroach any overhead telephone wires.

6. Surrounding Environs:

a. 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.

b. The WCF applicant shall submit a soil report to the Township complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA Standard 222, as amended, to document and verify the design specifications of the foundation of the Tower-Based WCF, and anchors for guy wires, if used.

7. Fence/Screen:

a. A security fence, including barbed wire at the top of the fence, shall completely surround any Tower-Based WCF, guy wires, or any building housing WCF equipment. All security fences shall be the maximum height permitted in the respective underlying zoning district and comply with the regulations contained in Section 1309 of this Chapter.

b. The applicant shall submit a landscaping plan in accordance with the requirements of the Penn Township Subdivision and Land Development Ordinance.

i. Landscaping, consisting of approved evergreen trees, shall be required at the perimeter of the security fencing. Layout and type of trees permitted shall be as set forth in the Penn Township Subdivision and Land Development Ordinance.

ii. Existing vegetation shall be preserved to the maximum extent possible.

iii. All landscaping and screening shall comply with the regulations contained in Section 1310 of this chapter, as well as Section 512 of the model Subdivison and Land Development Ordinance.

8. Accessory Equipment:

   a. Ground-mounted equipment associated to, or connected with, a Tower-Based WCF shall be underground or screened from public view using Stealth Technologies, as described above.

   b. All 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.

9. Additional Antennae. As a condition of approval for all Tower-Based WCFs, the WCF applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate Antennae on Tower-Based WCFs where technically and economically feasible. The owner of a Tower-Based WCF shall not install any additional Antennae without obtaining the prior written approval of the Township.

10. Access Road. An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to Tower-Based WCF. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. 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. The easement shall be a minimum of twenty (20) feet in width and shall be improved to a width of at least ten (10) feet with dust-free, all weather surface.

11. Parking. For each Tower-Based WCF, there shall be at least one off-street parking space.

12. Bond. Prior to the issuance of a permit, the owner of a Tower-Based WCF outside the ROW shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond or other form of security acceptable to the Township Solicitor, in an amount of $100,000 to assure the faithful performance of the terms and conditions of this Ordinance. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Ordinance, after reasonable notice and opportunity to cure. The bond shall additionally provide that the Township may recover compensatory damages incurred during the removal or demolition of Tower-Based WCFs deemed to be unsafe or hazardous. The owner shall file the bond with the Township.

13. Visual or Land Use Impact. The Township reserves the right to deny an application for the construction or placement of any Tower-Based WCF based upon visual and/or land use impact.

14. Inspection. The Township reserves the right to inspect any Tower-Based WCF to ensure compliance with the provisions of this 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.

SECTION VII. Tower-Based Facilities in the Rights-of-Way

The following regulations shall apply to Tower-Based Wireless Communications Facilities located in the Rights-of-Way:

1. Location.

   a. No Tower-Based WCF shall be located in any area in which utilities are undergrounded.

   b. Tower-Based WCFs shall only be permitted in the following zoning districts:

      i. The AR-Agricultural Rural District.
      ii. The C-Commercial District.
      iii. The I-Industrial District.

   b. Any application proposing the construction of a Tower-Based WCF in the public Rights-of-Way, not within the physical boundaries established in Section VII(A)(1)(b) of this Ordinance, shall be treated as a conditional use application.

2. Conditional Use Requirements. Applicants for a Wireless Communications Facility shall present testimony and evidence to the Board of Supervisors in support of the following requirements:

   1. The applicant shall present documentation that the facility is designed in accordance with all the standards cited in this Ordinance for wireless communications facilities.

   2. The applicant shall demonstrate that the antenna/tower/pole for the WCF is the minimum height necessary for the service area.

   3. The applicant shall demonstrate that the proposed WCF complies with all State and Federal laws and regulations concerning aviation safety.

   4. The need for additional buffer yard treatments shall be evaluated.

   5. The applicant shall demonstrate that the WCF must be located where it is proposed in order to serve the applicant's service area and that no other viable alternative location exists.

3. Gap in Coverage. An applicant for a Tower-Based WCF must demonstrate that a significant gap in wireless coverage exists with respect to all wireless operators 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 Tower-Based WCFs in the ROW.

4. Notice. Upon Township's receipt of an application for a Tower-Based WCF, the Township shall mail notice thereof to the owner or owners of every property zoned residential on the same street within one thousand (1,000) linear feet of the site of the proposed facility and of every property zoned residential not on the same street within five hundred (500) feet of the proposed facility. The cost of the mailing shall be at the applicant's expense.

5. Co-location. An application for a new Tower-Based WCF in the ROW shall not be approved unless the Township finds that the proposed wireless communications equipment cannot be accommodated on an existing structure, such as a utility pole or traffic light pole. Any application for approval of a Tower-Based WCF shall include a comprehensive inventory of all existing towers and other suitable structures within a one-mile radius from the point of the proposed tower, unless the applicant can show to the satisfaction of the Township that a different distance is more reasonable, and shall demonstrate conclusively why an existing tower or other suitable structure cannot be utilized.

6. Time, Place and Manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Tower-Based WCFs 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.

7. Equipment Location. Tower-Based WCFs and accessory 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:

    a. In no case shall ground-mounted equipment, walls, or landscaping be located within twenty-four (24) inches of the face of the curb;

    b. To the fullest extent possible, all junction boxes, splice boxes, and termination points in the public ROW shall be undergrounded in waterproof vaults.

    c. Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.

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

e. Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within ten (10) business days of notice of the existence of the graffiti.

f. Any underground vaults related to Tower-Based WCFs shall be reviewed and approved by the Township.

8. Design Regulations.

a. 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.

b. Any height extensions to an existing Tower-Based WCF shall require prior approval of the Township, and shall not increase the overall height of the Tower-Based WCF to more than fifty (50) feet. The maximum height of a Tower-Based WCF in the ROW shall not exceed fifty (50) feet, including additions and antennae. The Township reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Township.

c. Any proposed Tower-Based WCF shall be designed structurally, electrically, and in all respects to accommodate both the WCF applicant's Antennae and comparable Antennae for future users.

9. Visual or Land Use Impact. The Township reserves the right to deny the construction or placement of any Tower-Based WCF in the ROW based upon visual and/or land use impact.

10. Additional Antennae. As a condition of approval for all Tower-Based WCFs in the ROW, the WCF applicant shall provide the Township with a written commitment that it will allow other service providers to co-locate Antennae on Tower-Based WCFs where technically and economically feasible. The owner of a Tower-Based WCF shall not install any additional Antennae without obtaining the prior written approval of the Township.

11. 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 Tower-Based 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 determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

d. The construction, repair, maintenance or installation of any Township or other public improvement in the Right-of-Way;

e. The operations of the Township or other governmental entity in the Right-of-Way;

f. Vacation of a street or road or the release of a utility easement; or

g. An Emergency as determined by the Township.

12. Compensation for ROW Use. In addition to permit fees as described in Section V.16 above, every Tower-Based WCF in the ROW is subject to the Township's right to fix annually a fair and reasonable compensation 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 Tower-Based WCF 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. The annual ROW management fee for Tower-Based WCFs shall be determined by the Township and authorized by resolution of Township Board and shall be based on the Township's actual ROW management costs as applied to such Tower-Based WCF.

13. Bond. Prior to the issuance of a permit, the owner of a Tower-Based WCF in the ROW shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond, or other form of security acceptable to the Township Solicitor, in an amount of one hundred fifty thousand dollars ($150,000) to assure the faithful performance of the terms and conditions of this Ordinance. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Ordinance, after reasonable notice and opportunity to cure. The bond shall additionally provide that the Township may recover compensatory damages incurred during the removal or demolition of Tower-Based WCFs deemed to be unsafe or hazardous. The owner shall file a copy of the bond with the Township.

SECTION VIII. General Requirements for All Non-Tower Wireless Communications Facilities

A. The following regulations shall apply to all Non-Tower Wireless Communications Facilities that do not substantially Change the physical dimensions of the Wireless Support Structure to which they are attached:

1. Permitted in All Zones Subject to Regulations. Non-Tower WCFs are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township.

2. Standard of Care. Any Non-Tower WCF 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.

3. Wind. Any Non-Tower WCF structures shall be designed to withstand the effects of wind according 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, Standard 222, as amended).

4. Public Safety Communications. No Non-Tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

5. Aviation Safety. Non-Tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.

6. Radio Frequency Emissions. No Non-Tower WCF may, 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.

7. Removal. In the event that use of a Non-Tower WCF 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 WCFs or portions of WCFs shall be removed as follows:

    a. All abandoned or unused WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Township.

    b. If the WCF or accessory facility is not removed within three (3) 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.

8. Timing of Approval. Within thirty (30) calendar days of the date that an application for a Non-Tower WCF is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. Within ninety (90) 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 applicant in writing of such decision. If additional information was requested by the Township to complete an application, the time required by the applicant to provide the information shall not be counted toward the Township's ninety (90) day review period.

9. 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 Non-Tower WCF or $1,000, whichever is less.

B. The following regulations shall apply to all Non-Tower Wireless Communications Facilities that Substantially Change the Wireless Support Structure to which they are attached:

1. Permitted in All Zones Subject to Regulations. Non-Tower WCFs are permitted in all zones subject to the restrictions and conditions prescribed below and subject to the prior written approval of the Township. Non-Tower WCFs shall not be located on any dwelling unit.

2. Standard of Care. Any Non-Tower WCF 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.

3. Compliance with Township Building Code. Any applicant proposing Non-Tower WCFs to be mounted on a building or other structure shall submit evidence from a professional engineer, licensed in the Commonwealth of Pennsylvania, that the proposed installation will not exceed the structural capacity of the building or other structure. The applicant must further provide a detailed construction and elevation drawings indicating how the Non-Tower WCFs will be mounted on the structure for review by the Township Engineer for compliance with the Penn Township Building Code and other applicable laws and regulations.

4. Wind. Any Non-Tower WCF structures shall be designed to withstand the effects of wind according 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-E Code, as amended). Such structures shall be able to withstand wind gusts of up to one hundred (100) miles per hour.

5. Public Safety Communications. No Non-Tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

6. Historic Buildings. No Non-Tower WCF may be located on a building or structure that is listed on either the National or Pennsylvania Registers of Historic Places or is eligible to be so listed, or is listed the official historic structures and/or historic districts list maintained by the Township, or has been designated by the Township as being of historic significance.

7. Aviation Safety. Non-Tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.

8. Maintenance. The following maintenance requirements shall apply:

    a. The Non-Tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

    b. 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.

    c. All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

9. Radio Frequency Emissions. No Non-Tower WCF may, 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.

10. Removal. In the event that use of a Non-Tower WCF 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 WCFs or portions of WCFs shall be removed as follows:

    a. All abandoned or unused WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Township.

    b. If the WCF or accessory facility is not removed within three (3) 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.

11. Timing of Approval. Within thirty (30) calendar days of the date that an application for a Non-Tower WCF is filed with the Township, the Township shall notify the applicant in writing of any information that may be required to complete such application. Within ninety (90) 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 applicant in writing of such decision. If additional information was requested by the Township to complete an application, the time required by the applicant to provide the information shall not be counted toward the Township's ninety (90) day review period.

12. 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 this Ordinance. The 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.

13. Bond. Prior to the issuance of a permit, the owner of a Non-Tower WCF shall, at its own cost and expense, obtain from a surety licensed to do business in Pennsylvania and maintain a bond, or other form of security acceptable to the Township Solicitor, in an amount of thirty five thousand dollars ($35,000) to assure the faithful performance of the terms and conditions of this Ordinance. The bond shall provide that the Township may recover from the principal and surety any and all compensatory damages incurred by the Township for violations of this Ordinance, after reasonable notice and opportunity to cure. The bond shall additionally provide that the Township may recover compensatory damages incurred during the removal or demolition of Non-Tower WCFs deemed to be unsafe or hazardous. The owner shall file a copy of the bond with the Township.

14. 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 Non-Tower WCF, as well as related inspection, monitoring and related costs.

15. Insurance. Each Person that owns or operates a Non-Tower WCF, on an annual basis, 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 Non-Tower WCF.

16. Indemnification. Each Person that owns or operates a Non-Tower WCF 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 Non-Tower WCF. Each Person that owns or operates a Non-Tower WCF 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 Non-Tower WCF. 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.

17. Engineer Signature. All plans and drawings for a Non-Tower WCF shall contain a seal and signature of a professional structure engineer, licensed in the Commonwealth of Pennsylvania.

SECTION IX. Non-Tower Wireless Facilities Outside the Rights-of-Way

The following additional regulations shall apply to Non-Tower Wireless Communications Facilities located outside the Rights-of-Way that Substantially Change the Wireless Support Structure to which they are attached:

1. Development Regulations. Non-Tower WCFs shall be co-located on existing structures, such as existing buildings or Tower-Based WCFs subject to the following conditions:

    a. Non-Tower WCFs shall not be located on any dwelling unit.

    b. Such WCF does not increase the overall height of the Wireless Support Structure to more than two hundred (200) feet.

    c. If the WCF applicant proposes to locate the communications equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.

    d. An eight (8) foot high security fence 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.

2. Design Regulations.

    a. Non-Tower WCFs shall employ Stealth Technology and be treated to match the supporting 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.

    b. Non-Tower WCFs, which are mounted to a building or similar structure, may not exceed a height of twenty (20) feet above the roof or parapet, whichever is higher, unless the WCF applicant obtains a variance.

    c. All Non-Tower WCF applicants must submit documentation to the Township justifying the total height of the Non-Tower structure. Such documentation shall be analyzed in the context of such justification on an individual basis.

    d. Antennae, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension than is reasonably necessary for their proper functioning.

    e. Non-Commercial Usage Exemption. Township citizens utilizing satellite dishes and antennae for the purpose of maintaining television, phone, and/or internet connections at their respective residences shall be exempt from the Design Regulations enumerated in Section IX.2 of this Ordinance.

3. Removal, Replacement, Modification.

   a. The removal and replacement of Non-Tower WCFs and/or accessory equipment for the purpose of upgrading or repairing the WCF is permitted, so long as such repair or upgrade does not increase the overall size of the WCF or the numbers of Antennae.

   b. Any material modification to a wireless telecommunication facility shall require a prior amendment to the original permit or authorization.

4. Visual or Land Use Impact. The Township reserves the right to deny an application for the construction or placement of any Non-Tower WCF based upon visual and/or land use impact.

5. Inspection. The Township reserves the right to inspect any WCF to ensure compliance with the provisions of this 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.

SECTION X. Non-Tower Wireless Facilities in the Rights-of-Way

A. The following additional regulations shall apply to all Non-Tower Wireless Communications Facilities located in the Rights-of-Way:

1. Co-location. Non-Tower WCFs in the ROW shall be co-located on existing poles, such as existing utility poles or light poles.

2. Design Requirements :

   a. 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.

   b. Antennae and all support equipment shall be treated to match the supporting structure. WCFs and accompanying equipment shall be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.

3. Compensation for ROW Use. In addition to permit fees as described above, every Non-Tower WCF in the ROW is subject to the Township's right to fix annually a fair and reasonable compensation 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 Non-Tower WCF shall pay an annual fee to the Township to compensate the Township for its costs incurred in connection with the activities described above. The Annual ROW management fee for Non-Tower WCFs shall be determined by the Township and authorized by resolution of Township Board and shall be based on the Township's actual ROW management costs as applied to such Non-Tower WCF.

4. Time, Place and Manner. The Township shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Non-Tower WCFs 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.

5. Equipment Location. Non-Tower WCFs and accessory 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:

    a. In no case shall ground-mounted equipment, walls, or landscaping be located within 18 inches of the face of the curb;

    b. Ground-mounted equipment that cannot be undergrounded shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Township.

    c. Required electrical meter cabinets shall the screened to blend in with the surrounding area to the satisfaction of the Township.

    d. Any graffiti on the tower or on any accessory equipment shall be removed at the sole expense of the owner within ten (10) business days of notice of the existence of the graffiti.

    e. Any underground vaults related to Non-Tower WCFs shall be reviewed and approved by the Township.

6. 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 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:

a. The construction, repair, maintenance or installation of any Township or other public improvement in the Right-of-Way;

b. The operations of the Township or other governmental entity in the Right-of-Way;

c. Vacation of a street or road or the release of a utility easement; or

d. An Emergency as determined by the Township.

7. Visual or Land Use Impact. The Township retains the right to deny an application for the construction or placement of a Non-Tower WCF based upon visual and/or land use impact.

SECTION XI. Miscellaneous

1. 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.

2. 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.

3. Effective Date. This Ordinance shall become effective five (5) days after enactment by the Board of Supervisors of Penn Township.

ENACTED AND ORDAINED this 28 day of May, 2014.

ATTEST:

PENN TOWNSHIP
BOARD OF SUPERVISORS:

Helen Klenepeter
Secretary

Chairman