**Solicitor's draft 1-5-11**

**BEFORE THE BOARD OF SUPERVISORS OF**
**EAST FALLOWFIELD TOWNSHIP,**
**CHESTER COUNTY, PENNSYLVANIA**

**In Re:**

**Application of Metro PCS : No. C - 4 - 10**
**Pennsylvania, Inc. :**
**For Conditional Use Approval :**

# DECISION AND ORDER

AND NOW, this 25th day of January, 2010, the Board of Supervisors of East Fallowfield Township hereby grants, subject to the conditions specified hereinbelow, the application of Metro PCS Pennsylvania, LLC for conditional use approval pursuant to §§ 27-1733, 27-1902, 27-1903 and 27-1904 of Chapter 27 of the Township of East Fallowfield Code of Ordinances (the "Code"), said Chapter 27 being the codification of the East Fallowfield Township Zoning Ordinance (the "Zoning Ordinance"), to allow the location of an 145 foot "Forth Worth" wireless communication antennas mount on the southern most existing PECO electric transmission tower on the property located south of the intersection of Route 82 and Newlinville Road, and related equipment on a 10 foot by 16 foot concrete pad, and enters the following factual findings, conclusions and discussions of reasoning in support of the grant of the Application.

## I. Background of the Application

By application received August 18, 2010 ("Application"), Metro PCS Pennsylvania, LLC ("Applicant") requested approval by the Board of Supervisors of East Fallowfield Township ("Board" and the "Township" respectively) for conditional use approval to allow the location of wireless communication antennas on an existing electric transmission tower and the installation of radio-related equipment on the ground on a proposed 10 foot by 16 foot concrete pad on the property located at the intersection of Route 82 and Newlinville Road. The property consists of approximately 86.31 acres and is located within the MU Multi Use Zoning District. The property is also known as UPI (tax parcel) no. 47-4-84, and is legally owned by Philadelphia Electric Company.

Notice of the scheduling of a public hearing for September 28, 2010, was published in the Daily Local News, a newspaper of general circulation in the Township, on September 5 and September 12, 2010, and the public hearing was originally opened pursuant to public notice on September 28, 2010. The hearing was then continued to October 6, 2010. At the conclusion of the hearing on October 6, 2010, the hearing was continued to October 20, 2010. On October 20, 2010, the hearing was continued on the record without any testimony until November 30, 2010. At the conclusion of the hearing on November 30, 2010, the record was closed. The Applicant's case in support of the Application was presented to the Board through the testimony of Thomas Dymant, for site acquisition, of Air Associates; Andrew Petersohn, radio frequency engineer, of dBm Engineering, P.C.; Nick Berte, P.E., civil engineer, of Dewberry-Goodkind, Inc.; and Petros E. Tsoukalas, P.E., civil engineer, of Dewberry-Goodkind, Inc.; together with the presentation of

certain documentary exhibits. Nicholas A. Cuce, Jr., Esquire of Riley Riper Hollin & Colagreco, represented the Applicant; its Solicitor, Vincent M. Pompo, Esquire of Lamb McErlane PC, represented the Board.

The record in this matter consists of the transcribed notes of testimony taken at the public hearing conducted on September 28, 2010, October 6, 2010, October 20, 2010 and November 30, 2010, together with the documentary exhibits marked for identification and admitted into the record by the Board. This Decision and Order is promulgated pursuant to Zoning Ordinance §§ 27-1902 & 27-1903.B. and the enabling provisions of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10101 et seq.

## II. Findings of Fact

1. During the public hearing, the following exhibits were presented into the record:

B-1 - Public Notice;
B-2 - Proof of Publication;
B-3 - Affidavit of posting Notice;
B-4 - Copy of the East Fallowfield Township Zoning Ordinance and Subdivision and Land Development Ordinance;
B-5 - Letter from the Chester County Planning Commission dated September, 10, 2010;
B-6 - Letter from Chris Della Penna, P.E. dated September 21, 2010;
B-7 - Letter from Chris Della Penna, P.E. dated November 29, 2010;
A-1 - Application dated August 17, 2010;
A-2 - Affidavit of Service of Notice;
A-3 – Information handout;
A-4 - Lease documentation and Deed;
A-5 – Photographs of structure and Aerial Photograph;
A-6 - Curriculum Vitae of Traian Popescu;
A-7 - FCC license of Metro PCS Pennsylvania, LLC;
A-8 - Propagation map of Property;
A-9 - Propagation map of surrounding site with subject site;
A-10 - Propagation map of surrounding site without subject site;
A-11 - Radio frequency emissions report prepared by Kenneth R. Foster & Associates dated September 13, 2010;.
A-12 - Interference analysis report prepared by Metro PCS dated September 13, 2010;
A-13 - Curriculum Vitae of Nick Berte, P.E.;
A-14 - Site Plan prepared by Dewberry-Goodkind, Inc. dated July 22, 2010 and last revised August 5, 2010;
A-15 – Aerial map;

A-16 - Structural Analysis Report, prepared by Paul J. Ford and Company dated June 3, 2010;

A-17 - TOWAir report prepared by Metro PCS;

A-18 - Curriculum Vitae of Andrew Petersohn, P.E.;

A-19 - Ground elevation map;

A-20 - Traffic volume 2008 annual daily average;

A-21 - Curriculum Vitae of Peter Tsoukalas, P.E.;

A-22 - Letter from Dewberry-Goodkind, Inc. dated November 24, 2010;

A-23 – Site Plan last revised date November 24, 2010.

2. The Applicant is Metro PCS Pennsylvania, LLC, the licensee of the property located in the Township of East Fallowfield at the intersection of Route 82 and Newlinville Road (the "Property").

3. The Property consists of 86.31 total acres, and is located within the MU Multi Use Zoning District.

4. The Property is currently developed with an existing PECO substation and electric transmission towers, and served by a gravel driveway (the "Existing Facility").

5. The Applicant plans to locate six wireless communication antennas on the southern most existing electric transmission tower by way of a "Fort Worth" mounting pole and to install four radio-related equipment cabinets on a 10' x 16' concrete pad.

6. The Applicant is the lessee of a 10' x 16' area for the concrete pad to be enclosed with a fence (the "Leased Area").

7. The existing electric transmission tower stands 135 feet.

8. The proposed antennas, as measured by the top of the antenna, shall be at a maximum height of 145 feet.

9. Access to the Leased Area shall be through an extension of the 10' wide gravel driveway serving the Property from Route 82.

10. The location of the proposed antennas substantially improves the wireless communication services provided by the Applicant.

11. The location of the proposed antennas on the existing transmission tower negates the need for erecting an antenna support structure in another location.

12. The Applicant did not submit a soils study as required under §27-1773.15. of the Zoning Ordinance or a report verifying the stability of the foundation design certified by a licensed structural engineer.

13. The Applicant has agreed to construct a six-foot high chain link fence around the Leased Area.

14. The Applicant is licensed by the FCC to provide the wireless communication services.

15. The proposed antennas' radiofrequency emissions will be within the Federal Communication Commission guidelines.

16. No building shall be constructed on the site.

17. There is sufficient off-street parking for maintenance vehicles.

18. The "Fort Worth" mounting pole shall blend into the transmission by being painted the identical color as the transmission tower. No screening by landscape is proposed for this project.

19. The project requires the installation of stormwater management facilities.

20. The Applicant submitted a proposed maintenance schedule for its facilities.

21. By the instant Application, the Applicant seeks to obtain conditional use approval to allow the location of antennas on the existing electric transmission tower and the installation of radio-related equipment on the ground on the proposed 10' x 6' concrete pad on the Leased Area**.**

## III. Conclusions of Law

1. The Board has jurisdiction of this Application for conditional use approval.

2. Approval of the Application as conditioned hereinbelow is consistent with the evidence of record and the criteria and standards specified in §§ 27-1733, 27-1903, and 27-1904 of the Zoning Ordinance.

## IV. Order

The Board finds and concludes that the Applicant will have met the requirements of the Zoning Ordinance for conditional use approval, if, and only if, the Application is amended and supplemented in accordance with the conditions specified hereinbelow. In granting the Application, the Board has relied upon the testimony, plans and exhibits presented by the Applicant in this proceeding and said testimony, plans, exhibits and documentary evidence are hereby incorporated as additional conditions of approval, the Applicant being strictly bound by all the representations made in the testimony, plans, and exhibits and documentary evidence.

The following conditions are imposed and attached pursuant to Section 603 (c)(2) of the Municipalities Planning Code and Zoning Ordinance §§ 27-1902.E. and 27-1903.B. Any violation of the conditions during or following construction will be treated as a violation of the Zoning Ordinance. For the purpose of this Decision and Order, and specifically the following conditions, the term "Applicant" shall include the Applicant's successors and assigns and interests with respect to the Property and the Application:

1. Any material deviation or change from the testimony, plans and exhibits presented on behalf of the Applicant, or from this decision and any conditions imposed hereby shall require an amendment to this decision and order by the Board of Supervisors following proper application and hearing.

2. No building permit shall be issued until the Applicant obtains a letter from the Township Engineer, stating his satisfaction with all outstanding engineering issues as provided on the Township Engineer's letter dated November 29, 2010.

3. By January 31st of each subsequent year after this Decision and Order, Applicant, as operator of a wireless communication facility shall submit to the Township an annual inspection report as required under §27-1773.14 of the Zoning Ordinance.

4. By January 31st of each subsequent year after this Decision and Order, Applicant, as operator of a wireless communication facility shall submit to the Township an annual report and shall pay the registration fee established by the Board, as required under §27-1773.27 of the Zoning Ordinance.

5. No building permit shall be issued until the Applicant submits a soils study as required under §27-1773.15. of the Zoning Ordinance or a report verifying the stability of the foundation design certified by a licensed structural engineer, to the satisfaction of the Township.

6. No building permit shall be issued until the Applicant obtains a letter from the Township Engineer, stating his satisfaction with the Structural Analysis Report.

7. No building permit shall be issued until the Applicant has submitted sufficient financial security for the removal of the proposed antennas and cabinets and provided in recordable form a declaration of covenants authorizing the Township to enter the Property and remove the antennas and cabinets or parts thereof, to the satisfaction of the Township.

8. No building permit shall be issued until the Applicant's proposed maintenance plan as required by §27-1733.21 of the Zoning Ordinance, has been found to be satisfactory to the Township. The maintenance plan shall include, but not limited to, maintenance provisions for addressing the vegetation growth near the entrance on Route 82, to the satisfaction of the Township Engineer. Any reference to evergreen screening and dead tree removal shall be deleted from the maintenance plan.

9. No building permit shall be issued until the Applicant submits a set of the latest revised plans with signatures, certifications, and/or seals, to the satisfaction of the Township Engineer.

10. No building permit shall be issued until the Applicant submits appropriate easements or other recordable documentations that memorializes all the Applicant's rights and obligations to the shared driveway, parking spaces, and facility, including but not limited to maintenance of the vegetation at the entrance of the shared driveway along Route 82, to the satisfaction of the Township Solicitor.

11. No building permit shall be issued until the Applicant submits in recordable form a stormwater management maintenance facilities agreement in a form similar to the Township's form agreement, to the satisfaction of the Township Solicitor.

12. The Applicant shall execute and provide to the Township a recordable, notarized copy of a memorandum containing a metes and bounds description of the Property in question and stipulating the terms and conditions of this approval and shall consent to the recording by the Township in the office of the Recorder of Deeds of Chester County within sixty (60) days following the date of this Decision and Order.

13. The Applicant shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Zoning Ordinance.

14. Within thirty (30) days of the date on which this Decision and Order, the Applicant shall reimburse all of the Township's expenses for the review of this application, including but not limited to legal and professional consultant fees, and thereafter, the Applicant shall reimburse all of the Township's expenses for the implementation of these conditions of approval, within thirty (30) days of invoicing.

**ADOPTED** and **ORDERED** this **25th** day of **January, 2010**.

**BOARD OF SUPERVISORS**
**EAST FALLOWFIELD TOWNSHIP**

_____
**Chris Amentas, Chairman**

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**Chris Makely, Vice Chairman**

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**George Broadbent, Member**

**Gary Barach, Member**

**Mark Toth, Member**

**Attest:**

**Denise Miller, Secretary**