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

In Re:

Application of T-Mobile Northeast LLC : No. C - 1 - 09
for Conditional Use Approval :

DECISION AND ORDER

AND NOW, this 28th day of July, 2009, the Board of Supervisors of East Fallowfield Township hereby grants, subject to the conditions specified hereinbelow, the application of T-Mobile Northeast, LLC for conditional use approval pursuant to Section 1733 of the East Fallowfield Township Zoning Ordinance of 2002 (the "Zoning Ordinance") to allow the co-location of antennas on the existing wireless communication monopole facility and the installation of radio-related equipment on the ground within the presently fenced area on the property located at 2264 Strasburg Road, 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 dated May 15, 2009 and received by the Township on May 15, 2009 (the "Application"), T-Mobile Northeast, LLC (the "Applicant") requested approval by the Board of Supervisors of East Fallowfield Township ("Board" and the "Township" respectively) for conditional use approval to allow co-location of antennas on the existing wireless communication monopole facility and the installation of radio-related equipment on the ground within the presently fenced area on the property located at 2264 Strasburg Road. The property consists of approximately 2.38 acres and is located within the PF – Public Facilities Zoning District. The property is also known as UPI (tax parcel) no. 47-8-10.01.E., and is legally owned by East Fallowfield Township.

Notice of the scheduling of a public hearing for June 23, 2009, was published in the Daily Local News, a newspaper of general circulation in the Township, on June 2 and June 9, 2009,

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and the public hearing was opened pursuant to public notice on June 23, 2009. At the conclusion of the hearing on June 23, 2009, the record was closed. The Applicant's case in support of the Application was presented to the Board through the testimony of Scott Dolley, project manager, of Smartlink; Philip Burtner, P.E., tower and site designer, of CMX; together with the presentation of certain documentary exhibits. Christopher H. Schubert, Esquire of Riley, Riper, Hollin and Collagreco, 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 June 23, 2009, 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 §§1902 & 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

   B-4 - Copy of the East Fallowfield Township Zoning Ordinance, as amended;

   B-5 - East Fallowfield Township Planning Commission recommendations to the Board of Supervisors;

   A-1 - Conditional Use Application;

   A-2 - Affidavit of service of notice**;**

   A-3 – Curriculum Vitae of Yebi T. Fesseha;

   A-4 – FCC license of T-Mobile;

   A-5 - Propagation map for existing coverage;

   A-6 - Propagation map for proposed coverage;

A-7 - Aerial Photograph;

A-8 - Lease agreement;

A-9 - Site Plan, prepared by CMX dated April 28, 2009 and last revised May 7, 2009;

A-10 - Structural report prepared by Tower Engineering Professionals, Inc. dated April 17, 2009;

2. The Applicant is T-Mobile Northeast, LLC, the sub-licensee of the property located in the Township of East Fallowfield at 2264 Strasburg Road (the "Property").

3. The Property is owned by the Township, consists of 2.38 total acres, and is located within the PF – Public Facilities Zoning District.

4. The Property is currently developed with an existing wireless communications monopole facility, and a compound on the ground secured by a fence, and served by a grass-paved driveway (the "Existing Facility").

5. The Existing Facility is owned by TowerCo. Assets, LLC and is located on land leased from the Township.

6. The Applicant plans to co-locate wireless communication antennas on the existing monopole tower and to install a total of five radio-related equipment cabinets on a 4' x 28' concrete pad located within the fenced in yard.

7. The Applicant is the lessee of a 4' x 28' area within the fenced yard.

8. The proposed antennas shall be at a maximum height of 140 feet.

9. The Applicant will initially install one radio-related equipment cabinet and install one additional radio-related equipment cabinet, up to a maximum of five, on an as needed basis.

10. The Applicant is licensed by the Federal Communication Commission ("FCC") to provide the wireless communication services.

11. The proposed antennas' radio frequency emissions will be within the FCC guidelines.

12. The height of the existing tower does not meet the requirements to come under the jurisdiction of the Federal Aviation Administration.

13. The co-location of the proposed antennas negates the need for erecting an antenna support structure in another location.

14. No building shall be constructed on the site.

15. The proposed concrete pad is located within the 25' property line setback established under the Zoning Ordinance.

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

17. The Applicant did not submit a proposed maintenance schedule for its facilities.

18. The Applicant did not submit a soils report.

19. The Applicant agreed to remove the proposed antennas and radio-related equipment cabinets from the existing facility within six months after cessation of their use.

20. The Applicant agreed to submit financial security in the form of a bond to secure the removal of the antennas and cabinets to the satisfaction of the Township.

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21. The Applicant agreed to submit for recording a declaration of covenants to allow the Township access to and removal of the proposed antennae and cabinets within six months after cessation of their use in a form acceptable to the Township.

22. The Applicant agreed to contract with an independent engineer to perform an annual inspection of the facility and to submit a report of the annual inspection to the Township.

23. By the instant Application, the Applicant seeks to obtain conditional use approval to allow the co-location of antennas on the existing wireless communications monopole facility and the installation of radio-related equipment on the ground within the presently fenced area**.**

III. Conclusions of Law

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

2. The placement of the proposed concrete pad within the 25' property line setback is in violation of Section 1733.E. of the Zoning Ordinance, unless approved by the Board of Supervisors pursuant to Section 1733.C. of the Zoning Ordinance.

3. Approval of the Application as conditioned hereinbelow is consistent with the evidence of record and the criteria and standards specified in Sections 1733, 1903, and 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 Section 1902.E. and 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. The proposed concrete pad shall be located within the fenced in area of the Existing Facility outside of the 25' property line setback. If the Applicant cannot locate the proposed concrete pad within the fenced in area and outside the 25' property line setback, the Applicant may negotiate a lease to expand the fenced in area to allow the location of the proposed concrete pad outside of the 25' property line setback area and within the expanded security fencing.

3. By January 31st of each subsequent year after the instillation of the new antennas pursuant to this Decision and Order, the Applicant, as an operator of a wireless communication facility, shall submit to the Township an annual inspection report and pay the established registration fee as required under §1773.AA of the Zoning Ordinance.

4. No building permit shall be issued until the Applicant submits a soils study as required under §1773.O. 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.

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

6. No building permit shall be issued until the Applicant has submitted sufficient financial security for the removal of the proposed antennas and cabinets, to the satisfaction of the Township.

7. No building permit shall be issued until the Applicant has submitted a proposed maintenance plan as required by §1733.U of the Zoning Ordinance, to the satisfaction of the Township.

8. The Applicant shall be allowed to install a maximum of five (5) equipment cabinets. The Applicant shall initially install only one equipment cabinet, and may install the other allowable equipment cabinets on an as needed basis.

9. 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.

10. 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.

11. 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 **28th** day of **July, 2009**.

BOARD OF SUPERVISORS
EAST FALLOWFIELD TOWNSHIP

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George Broadbent, Chairman

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Chris Makely, Vice Chairman

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Chris Amentas, Member

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Gary Barach, Member

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Garth Monaghan, Member

ATTEST:

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Denise Miller, Secretary

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