



September 21, 2020

Michael L. Nestico, Esq.
Borough Manager
Borough of Tarentum
318 E. Second Avenue
Tarentum, PA 15084

***RE: Tarentum Borough: Proposal for Legal Services Pertaining to Pole Attachments
and Related Telecommunications Services***

Dear Michael:

Thank you for your time in the phone last week to discuss various telecommunications issues that have arisen in Tarentum Borough—namely, communications attachments to Borough poles, wireless facilities in the public rights-of-way, and leases for certain cell towers on Borough property. Our law firm, which has specialized in telecommunications issues on behalf of municipalities for 22 years, is well qualified to assist the Borough with each of these issues. The following is a scope of services for each of these services followed by our fees.

Pole Attachment Agreement

There are significant benefits available to the Borough from a pole attachment agreement. The key to receiving these benefits is to know the law, understand the Borough's specific procedures, and negotiate firmly to obtain these benefits from companies that attach their wires and equipment to Borough poles. Some of the more important potential benefits include: improved permitting process, enhanced public safety, compliance with engineering specifications, legal protections, and recurring revenue for the Borough.

Our understanding is that you have begun to prepare a pole attachment agreement to be utilized with all attaching companies. Our scope of services for this aspect of the project would be to review and revise the draft agreement. After you have reviewed the revised draft, there will most likely be follow-up calls to receive Borough comments and answer any questions. We will incorporate the suggested comments as appropriate and finalize the agreement.

We would then be available to negotiate (or assist you in negotiating) final pole attachment agreements with those companies. Our understanding is that there are at least three such attaching companies—Comcast, Verizon and Salsgiver. We have significant experience negotiating pole attachment agreements. After tentative agreement with each company has been

Michael Nestico
Tarentum Borough
September 21, 2020

reached, we will report to you on the substantive provisions of the deal. If it is acceptable, we will draft a recommended resolution authorizing approval of each agreement.

Wireless Facilities Ordinance

Our law firm reviewed the Borough's current wireless ordinance ("Ordinance") at Chapter 265-501.J of the Borough Code (entitled "Communications Towers") and found that: 1) the Ordinance does not address wireless facilities in the public rights-of-way, which is where virtually all new facilities are being installed; and 2) certain provisions in the Ordinance regarding cell towers do not comply with federal law.

The industry and regulatory landscape for wireless facilities today is dramatically different than it was even a few years ago. For example, in 2018 the Federal Communications Commission ("FCC") issued its Third Report and Order ("Order") that placed certain limits on and authorized new tools for local management of wireless poles and antennae in the public rights-of-way. In addition, last month the PA Supreme Court decided the case of *Crown Castle v. PUC* that directly impacts wireless facilities regulation by the Borough. The wireless industry has also become more aggressive in placing new facilities in the public rights-of-way.

Due to these changes, we recommend that the Borough amend the current Ordinance to address these new facilities in the public rights-of-way, and to provide legal protections for the Borough. In addition, we recommend the preparation of specific design guidelines, as permitted by the FCC Order, for new poles and antennae in the public rights-of-way, so that these new facilities are neither unsightly nor obtrusive.

The scope of services for this aspect of the project will be as follows. We will first schedule a conference call with appropriate Borough officials regarding their preferences for the amendments and design guidelines. We will draft the amendments and design guidelines consistent with those preferences, federal law, and the recommendations described above. We will then submit them to the Borough for review and comment. After the drafts have been reviewed, there will most likely be follow-up calls to receive Borough comments and answer any questions. We will incorporate the suggested comments as appropriate and will also be available to answer questions from the Borough.

Cell Tower Leases

Our understanding is that there are three cell towers on Borough property, all of which are governed by lease agreements. As we discussed, we will perform an initial review of these leases free of charge to determine whether improvements can be made to any of the leases to increase revenues and/or enhance legal protections for the Borough. If so, the Borough will decide whether or not to utilize our services to attempt to negotiate these improvements with the applicable wireless providers. We have extensive experience negotiating cell tower leases on behalf of municipalities.

Michael Nestico
Tarentum Borough
September 21, 2020

Other Consulting Services

In addition to the scope of services outlined above, our firm will be available to assist the Borough with any other telecommunications issues that may arise. These may include, but are not limited to, reviewing and making recommendations regarding specific pole attachment or wireless facility applications; advice regarding federal or state treatment of specific regulatory matters; or responding to requests or communications from specific providers. This aspect of the engagement will be performed on an as-needed basis as determined by the Borough.

Cost of Services

In accordance with our normal practice and the Code of Professional Conduct applicable to attorneys in Pennsylvania, I would like to outline our fee arrangement. This project will be performed on an hourly basis at the blended rate of \$250 per hour. Without first seeing the Borough's current draft pole attachment agreement or current cell tower leases, it is not possible to estimate in advance the exact number of hours that will be necessary to complete those phases of the project. With respect to the wireless ordinance project, given that we have reviewed the Borough's current ordinance, we estimate that the preparation of amendments to the Ordinance and the drafting of the design guidelines, including all aspects of the project as described above, will incur approximately 20 hours or \$5,000.

The estimate above does not include the unlikely possibility of extraordinary services requested by the Borough outside the scope of services described herein or any significant unforeseeable developments. While we do not expect that travel will be necessary for this project and travel is not included in our estimate, our travel time is billed at one-half our hourly rate or \$125 per hour. We do not bill for mileage. These fees do not include expenses, such as copying and postage charges, which are kept to a minimum. We bill on a monthly basis and ask that our bills be paid within thirty (30) days of receipt.

If the terms of this engagement are acceptable, please sign this letter and return a copy to me. Thank you again for your consideration and please feel free to contact me if you have any questions or concerns.

Sincerely yours,

Daniel S. Cohen

Accepted on Behalf of Tarentum Borough:

Signature: _____

Print: _____

Title: _____

Date: _____