

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWNSHIP OF HAYCOCK, COUNTY OF BUCKS,  
COMMONWEALTH OF PENNSYLVANIA, TO MANAGE ITS RIGHTS OF WAY;  
ESTABLISHING A RENTAL FEE; REQUIRING INSURANCE AND INDEMNIFICATION;  
AND CREATING MECHANISMS FOR ENFORCEMENT.**

**WHEREAS**, pursuant to its powers and under the Second Class Township Code, the general supervision of the affairs of the Township of Haycock, County of Bucks, Commonwealth of Pennsylvania, is in the hands of its Board of Supervisors; and,

**WHEREAS**, pursuant to Section 2322 of the Second Class Township Code, the Township of Haycock has authority to provide for conditions, restrictions and regulations concerning the use of any portion of the Township's roads; and,

**WHEREAS**, said Board of Supervisors deems it necessary and advantageous to adopt the within Ordinance.

**NOW THEREFORE BE IT ORDAINED**, the Board of Supervisors of the Township of Haycock, County of Bucks, Commonwealth of Pennsylvania, hereby enacts this Rights of Way Ordinance as provided herein.

**SECTION 1  
SHORT TITLE**

This Ordinance shall be known as the "Haycock Township Rights of Way Ordinance"

**SECTION 2  
DEFINITION OF TERMS**

**2.1 TERMS.** For the purpose of this Ordinance, the following terms phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

**A. "Affiliate"** means a Person (i) with a direct or indirect ownership interest in the subject entity of five (5%) percent or more or which controls such interest, including forms of ownership such as general, limited, or other partnership interests, direct ownership interests, limited liability companies and other forms of business organizations and entities but, not including corporations, (ii) with a stock interest in the subject entity where the subject entity is a corporation and such stockholder or its nominee is an officer or director of the Grantee or who directly or indirectly owns or controls five (5%) percent or more of the outstanding stock, whether voting or non-voting; or (iii) which controls Grantee and/or, is controlled by, or is under common control with such Person or entity.

**B. "Cable Service"** shall have the same meaning as used in the Communications Act.

**C. “Communications Act”** means the Communications Act of 1934, as amended as of the time of enactment of this Ordinance.

**D. “Communication Antenna”** means any device used for the transmission of radio, television, wireless telephone, pager, commercial mobile radio service or any other wireless communications signals.

**E. “Equipment”** means any tangible asset used to install, repair, or maintain a Facility in the Public Way.

**F. “Exempt”** means a service which is provided to residences or businesses within the Service Area, but which is exempt from the provisions of this Ordinance under Section 4.2 of this Ordinance.

**G. “Facility”** means any tangible asset in the Public Way used or required to provide a Non Exempt service to residences or businesses within the Service Area. Facility includes poles, conduits, pipe and other structures or devices in a Public Way.

**H. “Grantee”** means a person who enjoys a non-exclusive privilege to occupy or use a Public Way to provide Non Exempt service under this Ordinance and who is in continuous compliance with this Ordinance.

**I. “Gross Revenue”** means all gross revenue of Grantee or any Affiliate of Grantee derived from the use or occupancy of Public Ways for the provision of Non Exempt services to Persons having a residence or place of business in the Service Area. “Gross Revenue” shall include amounts earned, regardless of: (i) Whether the amounts are paid in cash, in trade, or by means of some other benefit to Grantee or its Affiliates; (ii) whether the services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; and/or (iii) how the amounts are initially recorded by Grantee or its Affiliates. “Gross Revenue” shall not be a net of: (a) expense, including but not limited to any operating expense; capital expense; sales expense; or commission; (b) any accrual, including, without limitation, any accrual for commissions; or (c) any other expenditure, regardless of whether such expense, deduction, accrual, or expenditure reflects a cash payment. “Gross Revenue” shall not be double counted, viz., “Gross Revenue” which has been included as Gross Revenue of both Grantee and an Affiliate but which sum is included in Gross Revenue due solely to a transfer of funds between Grantee and the Affiliate shall not be counted for purposes of determining Gross Revenue.

**J. “Non Exempt”** means a service which is provided to residences or businesses within the Service Area, but which is not exempt from the provisions of this Ordinance under Section 4.2 of this Ordinance.

**K. “Person”** means (i) any natural person, sole proprietorship, partnership, association, limited liability company, corporation or other form of organization authorized to do business in the Commonwealth of Pennsylvania and (ii) provides or seeks to provide one or more Non Exempt services to residences or businesses in the Service Area. A governmental entity or a municipal authority is not a “Person”.

**L. “Public Way”** means the surface of, and the space above and below, any public street, unopened right of way, highway, turnpike, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way held by the Township in the Service Area. Public Way shall also mean any easement now or hereafter held by the Township within the Service Area for the purpose of public travel and/or for utility and/or public service use dedicated for compatible uses.

**M. “Right-of-Way”** means the land set aside for use as a street, alley, or other means of travel as established by the Commonwealth or other appropriate governing authority and currently in existence.

**N. “Service Area”** means the present municipal boundaries of the Township, and shall include any additions thereto by annexation or other legal means.

**O. “Street”** a public or private way used or intended to be used for passage or travel by motor vehicles. Streets are further classified by the functions they perform:

1. Thoroughfares

- a. Expressway – designed for large volumes of high-speed traffic with access limited to grade-separated intersections.
- b. Arterial Highways – designed for large volumes of high speed traffic with access to abutting properties restricted.
- c. Collector Highways – designed to carry a moderate volume of fast-moving traffic from primary and secondary streets to arterial highways, with access to abutting properties restricted.

2. Local Streets

- a. Primary Streets – designed to carry a moderate volume of traffic, to intercept rural roads and secondary streets, to provide routes to collector highways, and to provide access to abutting properties.
- b. Rural Roads and Secondary Streets – designed to provide access to abutting properties and to primary streets.
- c. Marginal Access Street – a secondary street parallel to and adjacent to an expressway, arterial highway, or collector highway and which provides access to abutting properties and protection from through-traffic.

3. New development streets are classified as local streets unless a Traffic Impact Study determines that they are streets of a higher order.

**P. “Township”** means the Township of Haycock, County of Bucks, Commonwealth of Pennsylvania, or the lawful successor, transferee, or assignee thereof

### **SECTION 3 REGISTRATION**

Each Person, other than on a transitory basis, who occupies or uses or seeks to occupy or use a Public Way to provide a Non Exempt service to residences or businesses within the Service Area, or places any Equipment or Facility in a Public Way other than on a transitory basis, including Persons with installation and maintenance responsibilities by lease, sublease or assignment, must register with the Township. Registration is accomplished by filing with the Township a completed Provider Certification in the form shown at Appendix “A” to this Ordinance. [*we will have to prepare the Appendix “A” later*]

### **SECTION 4 GRANT OF ORDINANCE; EXEMPTIONS**

**4.1 GRANT.** It shall be unlawful for any Person to construct, repair, remove, relocate or perform any work on or use any Facilities or any part thereof in a Public Way unless in compliance with this Rights of Way Ordinance. Continuous compliance with this Rights of Way Ordinance grants to Grantee a non-exclusive privilege to construct, repair, remove, relocate or perform any work on or use any Facilities or any part thereof in the Public Ways within the Service Area and to occupy or use the Public Ways for the purpose of providing Non Exempt service to residences or businesses within the Service Area.

**4.2 EXEMPTIONS.** Except as noted in 4.2.11 and 4.2.12 below, this Rights of Way Ordinance shall not apply to occupation or use of the Public Ways to provide:

1. The transportation of passengers or property or both as a common carrier by means of elevated street railway, inclined plane railway, railroad, street railway or underground street railway, trackless-trolley omnibus or by any combination of such means.
2. The transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances for the public.
3. The production, generation, manufacture, transmission, storage, distribution or furnishing of natural or artificial gas, electricity, steam, air conditioning or refrigerating service or any combination thereof to or for the public.
4. The diverting, developing, pumping, impounding, distributing or furnishing of water from either surface or subsurface sources to or for the public.
5. The collection, treatment or disposal of sewage for the public.
6. The conveyance or transmission of messages or communications except as set forth in paragraph 4.3, by telephone or telegraph for the public.
7. The diverting, pumping or impounding of water for the development or furnishing of hydroelectric power to or for the public.

8. The transportation of oxygen or nitrogen, or both, by pipeline or conduit for the public.
9. Any ancillary service reasonably necessary or appropriate for the accomplishment of services specified in one (1.) through eight (8.) above.
10. Cable Service.
11. Occupation or use of the Public Ways by persons or entities identified above shall be required to post a security bond or other cash surety in the amount of one hundred ten percent (110%) of the construction costs associated with repair and restoration of the Public Ways as determined by the Township Engineer.

**4.3 WIRELESS TELECOMMUNICATION FACILITIES NOT EXEMPT.** This Ordinance does not exempt any person or corporation who or which furnishes, installs or maintains wireless telecommunication facilities, including the installation of communications antenna which are regulated pursuant to the Haycock Township Zoning Ordinance (“Zoning Ordinance”) as may further be revised in the future.

**4.4 NOT A CABLE SYSTEM.** This Ordinance does not authorize a Person to provide Cable Service. A Person seeking to provide Cable Service must obtain permission from the Township under separate legislation of the Township.

**4.5 NOT A POLE ATTACHMENT AGREEMENT.** This Ordinance does not authorize the Grantee to attach to any pole or other structure in a Public Way, devices for the intentional transmission or radiation of radio frequency emissions or energy through the ether by any means now known or hereafter developed.

## **SECTION 5 LOCATION OF FACILITIES**

**5.1 INSTALLATION OF NEW FACILITIES.** Subsequent to the enactment of this ordinance all new facilities services shall be installed underground with the exception of those facilities described in Sections 5.2 and 5.3 of this Ordinance.

**5.2 CO-LOCATION OF FACILITIES.** Facilities may be co-located on facilities, including poles that exist on or before the enacted date of this ordinance including above ground facilities. Specifically, facilities may be co-located within the rights-of-way of those roads described as arterial highways, collector highways, primary streets, rural roads and secondary roads and marginal access streets in paragraph 2.1.N of this Ordinance.

**5.3 INSTALLATION OF NEW FACILITIES ON MAJOR ROADS.** Facilities, including poles, may be installed above ground subsequent to the enactment of this Ordinance if they are installed within the right-of-way of those roadways described as arterial highways or collector highways in paragraph 2.1.N. above. No new poles shall be installed closer than one hundred and fifty feet (150’) to an existing or proposed pole location.

**5.4 COMPLIANCE WITH OTHER ORDINANCE REQUIREMENTS.** The authorization of the installation of facilities hereunder shall not exempt an Applicant from compliance with the requirements of any other Ordinance of Haycock Township, including the Zoning Ordinance.

## **SECTION 6 STANDARDS OF SERVICE**

**6.1 CONDITIONS OF STREET OCCUPANCY.** All Facilities and Equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

**6.2 RESTORATION OF PUBLIC WAYS.** If during the course of Grantee's construction, operation, and/or maintenance of its Facilities and Equipment there occurs a disturbance of any Public Way by Grantee, Grantee shall, at its expense, replace and restore such Public Way in accord with the specifications set forth in Section 506 of the Haycock Township Subdivision and Land Development Ordinance.. If Grantee excavates the surface of any Public Way, Grantee shall be responsible for restoration of the Public Way and its surface within the area affected by the excavation. The Township reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which is inadequate. The reasonable cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Public Way shall be properly safeguarded for the prevention of accidents.

**6.3 TREES AND SHRUBBERY.** The Grantee shall notify Township and all affected property owners regarding Grantee's need to trim trees or other natural growth upon and overhanging Public Ways so as to prevent the branches of such trees from coming in contact with its Facilities or Equipment. Trimming shall be limited to the area required to clear its Facilities or Equipment.

**6.4 SAFETY REQUIREMENTS.** All such work in the Public Ways shall be performed in accordance with applicable safety codes and technical requirements.

**6.5 MAPS.** Prior to beginning any construction of Facilities, Grantee shall provide the Township with a construction schedule for work in the Public Ways which schedule shall be updated as changed. Upon completion of initial construction and upon completion of construction of any modification to its Facilities, Grantee shall provide the Township with a map showing the location of its installed Facilities, in the Public Ways. Such maps shall be provided in both paper forms, as well as in an electronic format for placement on the Township's GIS system. Annually thereafter, Grantee shall provide a map to the Township showing the location of Grantee's Facilities in the Public Ways on a scale of one hundred fifty feet (150') per inch or whatever standard scale the Township adopts for general use.

**6.6 EXCAVATIONS.** Grantee may make excavations in Public Ways for any Facility subject to obtaining approval from the Bucks County Conservation District for design of erosion and sedimentation control measures to be implemented during construction activity for those projects which involve 1,000 square feet or more of earth disturbance. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the Township, and give appropriate notices to any other licensees and/or permittees of the Township, and/or other units of government owing or maintaining facilities which may be affected by the proposed excavation.

**6.7 RESERVATION OF TOWNSHIP PUBLIC WAYS.** Nothing in this Ordinance shall be construed to prevent the Township or other agency of government or municipal authority from constructing sewers, grading, paving, repairing and/or altering any street and/or laying down, repairing and/or removing water mains and/or constructing and/or establishing any other public work or improvement. If any of the Grantee's Facilities or Equipment interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's Facilities or Equipment shall be removed or replaced in the manner the respective Township or other agency of government or municipal authority shall direct. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the Township or other agency of government or municipal authority, the Township or other agency of government or municipal authority may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by the Township or other agency of government or municipal authority due to Grantee's delay.

**SECTION 7**  
**RENTAL[SAM1]**

**7.1 RENTAL**

A. In consideration of occupying or using the Public Ways under this Ordinance, Grantee shall pay to Township a rental equal to five (5%) percent of Gross Revenue.

B. The rental shall be assessed on a calendar quarterly basis and shall be payable to the Township no later than forty-five (45) days after the expiration of the calendar quarter for which payment is due. Grantee shall file with the Township a complete and accurate statement, under notarial seal, at the end of each calendar year quarter certified as true and correct by a representative notarial seal, at the end of each calendar year quarter certified as true and correct by a representative of Grantee, authorized to make such certification, explaining how the payment was calculated. In connection with the rental payment due on February 14th, the Grantee shall also submit to the Township, on that date or no later than six (6) months thereafter, a detailed statement by an officer of the Grantee certified by the Grantee's independent certified public accountant verifying the accuracy of the Gross Revenue and rental payments for the previous calendar year, with a detailed breakdown and explanation of the calculation by each month.

C. Grantee shall keep accurate books of account which shall clearly support the calculation of rentals and describe in sufficient detail the amounts attributable to each specific component of Gross Revenue. Such books of account and all supplemental information and source documents in support thereof including, but not limited to, third party remittances and contract documents, shall be made available to the Township and its authorized representatives for examination at a location in Bucks County, Pennsylvania, at any time during regular business hours on ten (10) days' prior written notice and from time to time for the purpose of verifying or identifying rentals owed to the Township. Grantee shall exercise its best efforts to obtain financial records of Affiliates for the Township for the purpose of verifying the accuracy of the rental payments. Township shall have the right to examine and to recompute any amounts determined to be payable under this Ordinance provided, however, that such examination shall take place within forty-eight (48) months following the close of each year. Any additional amount due to Township as a result of the examination and recomputation shall be paid within thirty (30) days following written notice to Grantee by the Township, which notice shall include a copy of the examination report. In

the event that said examination determines that funds are owed to the Township in an amount in excess of two (2%) percent, the cost of said examination shall be borne by the Grantee and reimbursed to Township within thirty (30) days following written notice to Grantee.

D. In the event that any rental or other payment is not made or the requisite documentation and certification is not provided on or before the applicable dates heretofore specified, interest shall be compounded daily and set at the one-year United States Treasury Bill rate existent on the date payment was due, plus three (3) percentage points. Any amount recomputed to reflect correct payment due shall bear interest as described from the date such payment was originally due.

**SECTION 8  
INSURANCE, INDEMNIFICATION AND BONDS OR OTHER SURETY**

**8.1 INSURANCE, INDEMNIFICATION AND BONDS OR OTHER SURETY.**

A. Grantee shall save the Township, its agents, employees and elected and appointed officials, harmless from and against all claims, damages, losses and expenses, including reasonable attorney’s fees, sustained on account of any suit, judgment, execution, claim or demand whatsoever arising out of the construction, leasing, operation or maintenance of the Grantee’s Equipment, Facilities, and services specified by this Ordinance, whether or not any act or omission complained of is authorized, allowed and/or prohibited by the Ordinance and the rights granted thereunder.

B. (1) Grantee shall obtain and maintain in full force and effect throughout the term of this Ordinance insurance with an insurance company licensed to do business and doing business in the Commonwealth of Pennsylvania and acceptable to the Township. All companies will be required to be rated A-VII or better by A.M. Best or A better by Standard and Poors. Grantee shall provide Township with proof of such insurance so required.

(2) Grantee shall obtain and maintain in full force and effect, at Grantee’s sole expense, insurance coverage in the following types and minimum amounts:

<u>Type</u>	<u>Amount</u>
a. Worker’s Compensation & Statutory Employers Liability	\$100,000/\$500,000/\$100,000
b. Commercial General (public) - liability to include coverage for the following where the exposure exists:	
Premises operations	Combined single limit for
Independent Contractors	Bodily injury and property
Products/completed operations	Damages \$2,000,000 per
Contractual liability	Occurrence or its equivalent
Explosion, collapse and	
Underground property damage	

- c. Comprehensive Vehicle insurance coverage for loading and unloading hazards for:

Owned/leased vehicles	Combined single limit of bodily injury
Non-owned vehicles	and property damage \$1,000,000 per
Hired vehicles	occurrence or its equivalent

(3) The Township shall receive without expense copies of certificates of insurance evidencing coverage stated above.

(4) Grantee agrees that with respect to the above-required insurance, all insurance certificates will contain the following required provisions.

- a. Name the Township and its officers, employees, board members and elected and appointed officials as additional insured parties (as the interests of each insured may appear) as to all applicable coverage (except worker's compensation);

- b. Provide for sixty (60) days written notice to the Township for cancellation, non-renewal, or material change;

- c. Provide that all provisions of this Ordinance concerning liability, duty, and standard of care, including the Indemnity provisions, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.

(5) Companies issuing the insurance policies shall have no recourse against the Township for payment of any premiums or assessments which all are set at the sole risk of the Grantee. Insurance policies obtained by Grantee shall provide that the issuing company waives all right of recovery by way of subrogation against the Township in connection with any damage covered by these policies.

C. (1) Grantee shall obtain and maintain, at its sole cost and expense, and file with the Township, a corporate surety bond with a surety company authorized to do business in the Commonwealth of Pennsylvania in the amount of fifteen percent (15%) of Grantee's estimated costs to secure Grantee's performance of its obligations and faithful adherence to all requirements of this Ordinance.

(2) No action, proceeding or exercise of right with respect to such bond shall affect the Township's rights to demand full and faithful performance under this Ordinance or limit Grantee's liability for damages.

(3) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the Township of Haycock, by registered mail, of written notice of such intent."

D. All expenses of the above-noted insurance and bond shall be paid by the Grantee.

E. The insurance policies mentioned herein shall contain an endorsement stating the following:

Should any policies of insurance be cancelled or coverages be reduced, before the expiration date of said policies of insurance, the issuer shall deliver sixty (60) days advance written notice to the Township.

F. Neither the provisions of this Ordinance nor any insurance accepted by the Township pursuant hereto, nor any damages recovered by the Township thereunder, shall be construed to excuse faithful performance by the Grantee and/or limit the liability of the Grantee under the Ordinance issued hereunder and/or for damages, either to the full amount of the bond or otherwise.

## **SECTION 9 ENFORCEMENT AND TERMINATION OF ORDINANCE**

**9.1 GENERAL.** In addition to all other rights, remedies and powers reserve and/or retained by the Township under this Rights of Way Ordinance or otherwise, the Township reserves the right to bring a civil action to collect any sums due to Township by Grantee and/or forfeit or revoke all privileges of Grantee under this Ordinance in the event of willful or repeated violation of this Ordinance.

**9.2 PENALTIES.** Any Person which commits or suffers the violation of this Ordinance, shall, upon being found liable in a civil enforcement proceeding commenced by the Township, pay a fine of Six Hundred Dollars (\$600) plus all court costs, including reasonable attorneys' fees incurred by the Township. A separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of this Ordinance which is found to have been violated. In addition, the Township also may enforce this Ordinance by an action brought in equity.

## **SECTION 10 MISCELLANEOUS PROVISIONS**

**10.1 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.** The Grantee shall at all times be subject to the exercise of the police power of the Township. The Grantee shall comply with all lawful ordinances, codes, laws, rules and regulations of the Township, County of Bucks, Commonwealth of Pennsylvania, and the United States of America which are now in effect or hereafter enacted.

**10.2 CONFLICT.** Whenever the requirements of this Ordinance are in conflict with other requirements of the ordinances of the Township of Haycock, the most restrictive, or those imposing the highest standards shall govern. Privileges granted by this Ordinance do not constitute a waiver or impairment of the rights of the Township at law or equity now or henceforth existing to proceed versus Grantee for enforcement of the Ordinance or violation of this Ordinance or ordinances of the Township.

**10.3 EFFECTIVE DATE.** This Ordinance shall become effective five (5) days after the date of its enactment.

**10.4 SEVERABILITY.** The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts of provisions of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have not been adopted if such illegal, invalid or unconstitutional section, clause, sentence or part of a provision had been included herein.

**DULY ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

**ATTEST:**

**BOARD OF SUPERVISORS OF  
HAYCOCK TOWNSHIP**

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