

HOWE TOWNSHIP, FOREST COUNTY, PENNSYLVANIA
ORDINANCE NO. 07-4

WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

I. PURPOSE

The telecommunications Act of 1996 affirmed Howe Township's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Howe Township Supervisors find that Wireless Telecommunications Facilities may pose a unique hazard to the health, safety, public welfare and environment of its inhabitants. The Supervisors also recognize that facilitating the development of wireless service technology can be an economic development asset to and of significant benefit to the township and its residents. The intent of this Ordinance is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of Applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of Howe Township.

II. TITLE

This Ordinance may be known and cited as the Howe Township Wireless Telecommunications Facilities Ordinance.

III. DEFINITIONS

For purposes of this Ordinance and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment, storage sheds or cabinets.
2. **"Applicant"** means any Person submitting an Application to Howe Township for a Special Use Permit for Wireless Telecommunications Facilities.
3. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not limited to radio, television, cellular, paging, Personal Telecommunications services (PCS), and microwave Telecommunications.
4. **"Application"** means the form approved by the Howe Township Supervisors, together with all necessary and appropriate documentation that an Applicant submits in order to obtain a Special Use Permit for Wireless Telecommunications Facilities.

5. **"Co-Location"** means the use of the same Telecommunications Tower or structure to carry two or more Antennae for the provision of wireless services by two or more persons or entities.
6. **"Commercial Impracticability" or "Commercially Impracticable"** shall have the meaning in this Ordinance and any Special Use Permit granted hereunder as the circumstance which may excuse the Applicant or holder from performing a requirement where these three conditions exist:
 1. A contingency must occur;
 2. Nonoccurrence of the contingency must have been a basic assumption on which the requirement was made; and
 3. Performance must thereby be made "impractical" because of including but not limited to excessive and unreasonable cost.
7. **"Completed Application"** means an Application that contains all information and/or data necessary to enable the Supervisors to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact of Wireless Telecommunications Facilities on the Township in the context of the permitted land use for the particular location requested.
8. **"FAA"** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
9. **"FCC"** means the Federal Communications Commission, or its duly designated and authorized successor agency.
10. **"Free Standing Tower"** means a Tower that is not supported by Guy Wires and ground anchors or other means of attached or external support.
11. **"Guy Wires"** means any support wires for a Tower.
12. **"Guyed Tower"** means a Tower supported by Guy Wires.
13. **"Height"** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna.
14. **"Monopole Tower"** means a cylindrical self-supporting i.e. not supported by Guy Wires, communications tower constructed as a single spire.
15. **"NIER"** means Non-Ionizing Electromagnetic Radiation.
16. **"PCS"** See definition of Personal Telecommunications Service.

17. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
18. **"Personal Telecommunications Service" or "PCS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
19. **"Special Use Permit"** means the official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities granted or used by Howe Township.
20. **"State"** means the State of Pennsylvania.
21. **"Supervisors"** means the Howe Township Supervisors.
22. **"Survey"** means a land survey containing the seal and certification of a properly licensed professional engineer or professional land surveyor.
23. **"Telecommunications"** means the transmission and reception of audio, video, data and other information by wire, radio frequency, light and other electronic or electromagnetic systems.
24. **"Telecommunications Structure"** means a structure used in the provision of services described in the definition of "Wireless Telecommunications Facilities."
25. **"Temporary"** means in relation to all aspects and components of this Ordinance something intended to, or that does, exist for fewer than ninety (90) days.
26. **"Township"** means Howe Township.
27. **"Wireless Telecommunications Facilities" or "Telecommunications Tower" or "Telecommunications Site"** means a structure, facility or location designated, or intended to be used as, or used to support, Antennas, as well as Antennas or any functional equivalent equipment used to transmit or receive signals. It includes without limitation, the tower compound, Free Standing Towers, Guyed Towers, Monopole Towers, Lattice Towers and similar structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an Antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, Personal Telecommunications services, or microwave Telecommunications, but excluding those used exclusive for fire, police and other dispatch Telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar Telecommunications.

IV. POLICY AND DESIRED GOALS

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the Township's health, safety, public welfare, environmental features and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the Supervisors hereby adopt an overall policy with respect to Special Use Permits for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. Implementing an Application process for Person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
2. Establishing a policy for examining an Application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
3. Establishing reasonable time frames for granting or not granting a Special Use Permit for Wireless Telecommunications facilities, or recertifying or not recertifying, or revoking the Special Use Permit granted under this Ordinance.
4. Promoting and encouraging, wherever possible, the sharing and/or Co-Location of Wireless Telecommunications Facilities among service providers; and
5. Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner as to minimize adverse aesthetic impacts to the health, safety and welfare of the Township, its residents, and their property.

V. SPECIAL USE PERMIT APPLICATION AND OTHER REQUIREMENTS

A. Special Use Permits shall not be required for Co-Locations on Towers existing prior to the adoption of this Ordinance, or Co-Locations on Towers for which a Special Use Permit has already been granted under this Ordinance. However, should such additional Co-Location require significant modification to the existing site plan, including but not limited to additional ground facilities or Towers, such modifications shall be approved in the manner prescribed in this Ordinance

B. All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Ordinance. The Supervisors are the official designated agency or body of the Township to whom Applications for a Special Use Permit for Wireless Telecommunications Facilities shall be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking a Special Use Permit for Wireless Telecommunications Facilities.

C. An Application for a Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same, which person must be a duly authorized agent of the Applicant with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the Application. At the discretion of the Supervisors, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction.

D. Applications not meeting the requirements stated herein or which are otherwise incomplete, shall be rejected by the Supervisors.

E. The Applicant shall include a statement in writing:

1. That the Applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without Exception, unless specifically granted relief by the Supervisors in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and federal ordinances, rules and regulations;

2. That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State of Pennsylvania.

F. No Wireless Telecommunications Facilities shall be installed or constructed until the site plan is reviewed and approved by the Supervisors and the Special Use Permit has been issued.

G. All new Wireless Telecommunications Facilities requiring a new supporting tower to be erected shall use a Monopole Tower, unsupported by Guy Wires, unless waived by the Supervisors. All Applicants for the construction or installation of new Wireless Telecommunications Facilities shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the State. Where this section calls for certification, such certification shall be by a licensed professional engineer registered in the state, acceptable to the Township, unless otherwise noted. The Application shall include, in addition to the other requirements for the Special Use Permit, the following information.

1. Documentation that demonstrates the need for the Wireless Telecommunications Facilities to provide service primarily within the Township and its police jurisdiction;

2. Name, address and phone number of the person preparing the report.

3. Name, address and phone number of the property owner, operator, and Applicant, to include the legal form of the Applicant.

4. Street address and tax map parcel number of the property;

5. Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines reflected on a Survey;

6. Location of nearest residential structure;
7. Location of nearest habitable structure;
8. Location of nearest school;
9. Location of nearest public park;
10. Location of any places where minor children are known to congregate within one (1) mile;
11. Location, size and height of all structures on the property which are the subject of the Application;
12. Location, size and Height of all proposed and existing Antennae and all appurtenant structures;
13. Type, locations and dimensions of all proposed and existing landscaping, and fencing;
14. The number, type and design of the Telecommunications Tower(s) Antenna(s) proposed and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;
15. The make, model and manufacturer of the Tower and Antenna(s);
16. A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials color and lighting;
17. The frequency, modulation and class of service of radio or other transmitting equipment;
18. Transmission and maximum effective radiated power of the Antenna(s);
19. Direction of maximum lobes and associated radiation of the Antenna(s);
20. Applicant's proposed Tower maintenance and inspection procedures and related system of records;
21. Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC;
22. Certification that the proposed Antenna(s) will not cause interference with existing Telecommunications devices, which certification shall be reviewed by a licensed engineer registered in the State.
23. A copy of the FCC license applicable for the use of Wireless Telecommunications Facilities;
24. Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site;
25. Propagation studies of the proposed site and all adjoining proposed, in-service or existing sites.
26. Applicant shall disclose in writing any agreement in existence prior to submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunications Tower that it constructs.
27. Certification and statement that appropriate space has been reserved on the tower for public safety at no cost to the public safety entity. The Township will provide the specific requirements for such public safety usage, if any, after the pre-Application meeting (see "X", this heading).

H. In the case of a new Telecommunications Tower, the Applicant shall be required to submit with the Application a written report, together with copies of written requests and responses for shared use, demonstrating its efforts to secure shared use of existing Telecommunications Tower(s) or use of existing buildings or other structures within the Township.

I. The Applicant shall furnish written certification that the Telecommunication Facility, foundation and attachments are designed and will be constructed ("As Built") to meet all location, County, State and Federal structural requirements for loads, including wind and ice loads, as required by any relevant building code.

J. The Applicant shall furnish written certification that the Wireless Telecommunications Facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.

K. If requested by the Supervisors, the Applicant shall furnish a Visual impact assessment which shall include:

1. A zone of visibility map reflecting the visibility at the time of the application which shall be provided in order to determine locations where the tower may be seen;

2. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Township including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. The Supervisors, acting in consultation with its consultants or experts, may provide guidance concerning the appropriate key sites at a pre-Application meeting (see "X", this heading).

3. An assessment of the visual impact of the Tower base and accessory buildings from abutting and adjacent properties and streets.

L. Any and all representations made by the Applicant to the Supervisors, on record, during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Supervisors.

M. The Application shall include a separate report which demonstrates in writing and/or by drawing how the Applicant shall effectively screen from view its proposed Wireless Telecommunications Facilities base and all related facilities and structures.

N. All utilities from Wireless Telecommunications Facilities sites shall be installed underground and in compliance with all laws, ordinances, rules and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. The Supervisors may waive or vary the requirements of underground installation of utilities whenever, in the option of the Supervisors, such variance or waiver shall

not be detrimental to the health, safety, general welfare and environment including the visual and scenic characteristics of the area.

O. All Wireless Telecommunications Facilities Applications shall contain an adequate demonstration that the Facility be sited so as to have the least adverse visual effect on the environment and its character, and the residences in the area of the Wireless Telecommunications Facilities sites, including but not limited to a landscaping plan.

P. Both the Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.

Q. At a Telecommunications Site, an access road and parking shall be provided to assure adequate emergency and service access. 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 vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

R. A person who holds a Special Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify and/or restore the permitted Wireless Telecommunications Facilities in strict compliance with all current technical, safety and safety-related codes adopted by the Township, County, State or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

S. The holder of a Special Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable rule, regulation or ordinance, and must maintain the same, in full force and effect, for as long as required by the Township or other governmental entity or agency having jurisdiction over the Applicant.

T. The Township may require, at the applicant's expense, an environmental review of the proposed project in combination with its review of the Application under this Ordinance.

U. An Applicant shall submit to the Supervisors the number of copies of the Completed Applications determined to be needed at the pre-Application meeting (see "X", this heading).

V. The applicant shall include an examination of the feasibility of designing a proposed Telecommunications Tower to accommodate future demand for at least two (2) additional commercial uses including future Co-Locations. The Telecommunications Tower shall be structurally designed to accommodate at least two (2) additional Antenna Arrays equal

to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates to the satisfaction of the supervisors that the provision of future shared usage of the Telecommunications Tower is not technologically feasible, or is Commercially Impracticable and creates an unnecessary and unreasonable burden, based upon:

1. The foreseeable number of FCC licenses available for the area;
2. The nature of the Wireless Telecommunications Facilities site and structure proposed which cannot feasible be adapted to shared use;
3. The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
4. Available space of existing and approved Telecommunications Towers.

W. The Application shall include a letter of intent to the Supervisors committing the owner of the proposed new Tower and his/her successors in interest, to negotiate in good faith for shared use of the proposed Tower by other Telecommunications providers in the future. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the Special Use Permit. The letter shall commit the new Tower owner and their successors in interest to:

1. Respond within 60 days to a request for information from a potential shared-use Applicant;
2. Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
3. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a prorata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.

X. Unless waived by the Supervisors, there shall be a pre-Application meeting before the Supervisors. Such pre-Application meeting shall occur prior to the public hearing. The purpose of the pre-Application meeting will be to address issues which will help to expedite the review and permitting process. A pre-Application meeting may also include a site visit if required.

Where the Application is for the shared use of an existing Telecommunications Tower(s) or other high structure, the Applicant should seek to waive any section or subsection of this Ordinance that may not be required. Following the pre-Application meeting, the waiver requests, if appropriate, will be decided by the Supervisors. Costs of the consultants to prepare for and attend the pre-Application meeting will be borne by the Applicant.

Y. The holder of a Special Use Permit shall notify the Township of any intended modification of a Wireless Telecommunication Facility and shall apply to the Township to modify, relocate or rebuild a Wireless Telecommunications Facility.

Z. In order to better inform the public in the case of a new Telecommunications Tower, the Applicant shall hold a "balloon test" as follows: Applicant shall, on two separate dates, arrange to fly, or raise upon a Temporary mast, a minimum of a three (3) foot diameter brightly colored balloons at the maximum Height of the proposed new Tower. The dates, times and location of this balloon test shall be advertised, by the Applicant, in each of the two weeks preceding in the Warren Times Observer. The Applicant shall inform the Supervisors in writing, of the dates and times of the tests, at least fourteen (14) days in advance. The balloons shall be flown for at least eight consecutive hours sometime between 7:00 am and 4:00 p.m. of the dates chosen. The primary date shall be on a weekend, but the second date may be on a weekday.

AA. The Applicant shall include an analysis, completed by a qualified individual or organization, to determine if the Telecommunications Tower, and/or existing structure intended to support wireless facilities, requires lighting under Federal Aviation Regulations. This requirement shall be for any new tower, or for an existing structure or building where the proposed Wireless Telecommunications Facility increases the Height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related Correspondence shall be provided in a timely manner. The Supervisors shall be provided copies of all such filings, responses, and related correspondence.

VI. LOCATION OF WIRELESS TELECOMMUNICATIONS FACILITIES

A. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and three (2) being the lowest priority.

1. On existing Telecommunications Towers or other tall structures;
2. On other property in the Township.

If the proposed property site is not the highest priority listed above, then the Application shall include a detailed explanation as to why a site of a higher priority was not selected.

B. An Applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An Application shall address Co-Location as an option and if such option is not proposed, the Applicant must explain why Co-Location is Commercially Impracticable. Agreements between providers limiting or prohibiting Co-Location, shall not be a valid basis for any claim of Commercial Impracticability or hardship.

C. Notwithstanding the above, the Supervisors may approve any site located within an area in the above list of priorities, provided that the Supervisors find that the proposed site is in the best interest of the health, safety and welfare of the Township and its inhabitants.

D. The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has been, is, or will be considering, reviewing or planning for Wireless Telecommunications Facilities in the Township.

E. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Howe Township Supervisors may disapprove an Application upon a finding that granting the Application will not be in the best interest of the health, safety and welfare of the Township, its residents or their property and setting forth the basis for such finding, which may include but is not limited to the following:

1. Conflict with safety and safety-related codes and requirements;
2. Conflict with traffic needs or traffic ordinances, or definitive plans for changes in traffic flow or traffic ordinances;
3. Conflict with the historic nature of a neighborhood or historical district;
4. The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a land use designation;
5. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Township, or employees of the service provider or other service providers;
6. Conflicts with the provisions of this Ordinance.
7. An unreasonable adverse affect on surrounding property values.

VII. SHARED USE OF WIRELESS TELECOMMUNICATIONS FACILITIES AND OTHER STRUCTURES

A. Shared use of existing Wireless Telecommunications Facilities shall be preferred by the Township, as opposed to the construction of a new Telecommunications Tower. Where such shared use is unavailable, locations of Antennas on other pre-existing structures shall be considered and preferred. The Application shall include a comprehensive report inventorying existing Towers and other appropriate structures within four (4) miles of any proposed new Tower Site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.

B. An Applicant intending to share use of an existing Telecommunications Tower or other structure shall be required to document the existing binding commitment of the owner of the Telecommunications Tower to share use. In the event an Application to share the use of an existing Telecommunications Tower does not increase the Height of the Telecommunications Tower, the Supervisors may waive such requirements of the Application required by this Ordinance which are not relevant to a Co-Location on an existing Telecommunications Tower.

C. Such shared use shall consist only of the minimum Antenna array technologically required to provide service within the Township, to the extent practicable, unless good cause is shown.

VIII. HEIGHT OF TELECOMMUNICATIONS TOWER(S)

A. The Application shall include documentation justifying to the Supervisors the total Height of any Telecommunications Tower, Facility and/or Antenna and the basis therefore. Such justifications shall be to provide service within the Township, to the extent practicable, unless good cause is shown.

B. Telecommunications Towers shall be no higher than the minimum Height necessary. Unless waived by the Supervisors upon good cause shown, the maximum Height shall be one hundred-ten (110) feet.

C. The maximum Height of any Telecommunications Tower and attached Antennas constructed after the effective date of this Ordinance shall not exceed that which shall permit operation without artificial lighting of any kind, in accordance with Township, County, State, and/or any federal statute, code, rule or regulation.

IX. VISIBILITY OF WIRELESS TELECOMMUNICATIONS FACILITIES

A. Wireless Telecommunications Facilities shall not be artificially lighted or marked unless permitted or refined in accordance with the Ordinance.

B. Telecommunications Towers shall be of a galvanized finish, or painted with a rust preventive paint of an appropriate color to harmonize with the surroundings as approved by the Howe Township Supervisors, and shall be maintained in accordance with the requirements of this Ordinance.

C. If lighting is required, the Application shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines of the parcel on which the Wireless Telecommunications Facilities are located.

X. SECURITY OF WIRELESS TELECOMMUNICATIONS FACILITIES

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specific requirements are as follows:

1. All Antennas, Towers and other supporting structures shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and

2. Transmitters and telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

XI. SIGNAGE

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet and, no less than three (3) square feet, to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point on the site. The sign shall not be lighted unless permitted by the Supervisors. The sign shall be approved by the Supervisors before installation. No other signage, including advertising, shall be permitted on any facilities, Antennas, Antenna supporting structures or Antenna Towers, unless otherwise required by law.

XII. LOT SIZE AND SETBACKS

Wireless Telecommunications Facilities shall be located at least 500 feet from any residence.

XIII. RETENTION OF EXPERT ASSISTANCE AND REIMBURSEMENT BY APPLICANT

A. The Howe Township Supervisors may hire any consultant and/or expert necessary to assist the Supervisors in reviewing and evaluating the Application and any requests for recertification.

B. An Applicant shall deposit with the Township, funds sufficient to reimburse the Township for all reasonable costs of the consultant and expert evaluation and consultation with the Supervisors in connection with the review of any Application. The initial deposit shall be \$7,500.00. These funds shall accompany the filing of an Application and the Township will maintain a separate escrow account for all such funds. The Township's consultants/experts shall bill or invoice the Township no less frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this escrow account has a balance less than \$2,500.00, Applicant shall immediately, upon notification by the Township, replenish said escrow account so that it has a balance of at least \$2,500.00. Such additional escrow funds must be deposited with the Township before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Township is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the Applicant. The total amount of funds which can be required of Applicant shall not exceed \$10,000.00.

XIV. EXCEPTIONS FROM A SPECIAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES

A. No Person shall be permitted to site, place, build, construct, modify, or prepare any site for the placement or use of Wireless Telecommunications Facilities as of the effective date of this Ordinance without having a Special Use Permit for Wireless Telecommunications Facilities.

B. All Wireless Telecommunications Facilities legally existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however, that any modification to existing Wireless Telecommunications Facilities must comply with this Ordinance.

XV. ACTION ON AN APPLICATION FOR A SPECIAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES

A. The Supervisors will undertake a review of an Application pursuant to this Ordinance in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.

B. Once a Special Use Permit is issued, no additional permits or approvals from the Township, except as provided in this Ordinance, shall be required by the Applicant for the Wireless Telecommunications Facilities on the property.

C. After formally considering the Application, the Supervisors may approve or deny an Application. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the Special Use Permit shall always be upon the Applicant.

D. If the Supervisors approve the Special Use Permit, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Supervisors' action, and the Special Use Permit shall be issued within thirty (30) days after such approval.

E. If the Supervisors deny the Special Use Permit, then the Applicant shall be notified of such denial and the reasons therefore in writing within ten (10) calendar days of the date of the Supervisors denial.

XVI. RECERTIFICATION OF A SPECIAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES

A. At any time, not sooner than twelve (12) months and not later than six (6) months prior to the five (5) year anniversary date of the effective date of the Special Use Permit and all subsequent fifth anniversaries of the effective date of the Special Use Permit, the owner of a Special use Permit for Wireless Telecommunications Facilities shall submit a signed written request to the Howe Township Supervisors for recertification. In the written request for recertification, the owner of such Special Use Permit shall note the following:

1. The name of the holder of the owner of the Special Use Permit for Wireless Telecommunications Facilities;
2. If applicable, the file number of the original Application for the Special Use Permit;

3. The date of the original granting of the Special Use Permit;
4. Whether the Wireless Telecommunications Facilities have been moved, relocated, rebuilt, or otherwise modified since the issuance of the Special Use Permit and if so, in what manner;
5. If the Wireless Telecommunications Facilities have been moved, relocated, rebuilt or otherwise modified, then whether the Supervisors approved such action, under what terms and conditions, and whether those terms and conditions were complied with;
6. Any requests for waivers or relief of any kind whatsoever from the requirements of this Ordinance;
7. That the Wireless Telecommunications Facilities are in compliance with the Application and in compliance with all applicable codes, ordinances, rules and regulations;
8. Recertification that the Telecommunications Tower and attachments as designed and constructed ("As Built") continue to meet all local, County, State and Federal Structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified professional engineer licensed in Pennsylvania.
9. A list of all Co-Locations.

B. If, after such review, the Supervisors determine that the permitted Wireless Telecommunications Facilities are in compliance with all applicable statutes, local laws, codes, rules and regulations, then the Township shall issue a recertification of Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, laws, local ordinances, codes, rules and regulations. If, after such review, the Supervisors determine that the permitted Wireless Telecommunications Facilities are not in compliance with all applicable statutes, local ordinances, codes, rules and regulations, then the Supervisors may refuse to issue a recertification of a Special Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the Applicant receives written notice of such decision by the Supervisors. Any such decision shall be in writing and supported by substantial evidence contained in a written record.

C. If the Applicant has submitted all of the information requested by the Supervisors and required by this Ordinance, and if the Supervisors do not complete its review, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the granting of the Special Use Permit, or subsequent fifth anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Special Use Permit for up to six (6) months, in order for the Supervisors to complete its review.

D. If the holder of a Special Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification within the times specified in subsection (A) of this section, then any authorizations granted under the Special Use Permit shall cease to exist on the date of the fifth anniversary of the original Special Use Permit, or subsequent fifth anniversaries as applicable, unless the holder of the special Use Permit adequately demonstrates to the Supervisors that extenuating circumstances prevented a timely recertification request. If the Supervisors agree that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a late recertification request in the time permitted by the Supervisors.

XVII. EXTENT AND PARAMETERS OF SPECIAL USE PERMIT FOR WIRELESS TELECOMMUNICATIONS FACILITIES

The extent and parameters of a Special Use Permit for Wireless Telecommunications Facilities shall be as follows:

1. Such Special Use Permit shall be non-exclusive and freely transferable. However, if there is a substantial change of the physical facilities the person must seek approval from the Township as outlined in this Ordinance.
2. Such Special Use Permit may, following a hearing upon due prior notice to the Applicant be revoked, canceled, or terminated for a violation of the conditions and provisions of this Ordinance.

XVIII. APPLICATION FEE

A. At the time that a Person submits an Application for a Special Use Permit for a new Telecommunications Tower or modifications to an existing Telecommunications Tower, such Person shall pay a non-refundable Application fee of \$5,000.00 to the Township. If the Application is for a permit for Co-Locating on an existing Telecommunications Tower or high structure, where no increase in Height of the Tower or structure is required, the non-refundable fee shall be \$2,000.00. These fees shall include the cost of the building permit.

B. No Application fee is required in order to recertify a Special Use Permit for Wireless Telecommunications Facilities, unless there has been a modification of the Wireless Telecommunications Facilities since the date of the issuance of the existing Special Use Permit for which the conditions of the Special Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply.

XIX. PERFORMANCE SECURITY

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall at its cost and expense be jointly required to execute and file with the Township a bond or other form of security acceptable to the Township in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the Supervisor to assure the faithful performance of the terms and conditions the Special Use Permit. The full amount of the

bond or security shall remain in full force and effect until the removal of the Wireless Telecommunications Facilities, and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of this Ordinance and shall entitle the Supervisors to revoke the Special Use Permit after prior written notice to the Applicant and after a hearing upon due prior notice to the Applicant.

**XX. RESERVATION OF AUTHORITY TO INSPECT WIRELESS
TELECOMMUNICATIONS FACILITIES**

A. In order to verify that the holder of a Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and ordinances, laws and regulations, and other applicable requirements, the Township may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted Telecommunications Site.

B. The Township shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including Towers, Antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the Township with respect to an inspection, or if violations of this Ordinance are found to exist, in which case the holder, lessee or licensee shall reimburse the Township for the cost of the inspection.

C. Payment of such costs shall be made to the Township within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed, said reimbursement payment must still be paid to the Township and the reimbursement shall be placed in an escrow account established by the Township specifically for this purpose, pending the final decision on appeal.

XXI. NIER LEVELS

The NIER levels at the Telecommunication Site shall at all times be within the threshold levels adopted by the FCC. The holder of a Special Use Permit shall, during the month of December in each calendar year, certify in writing to the Township the NIER levels at the site and that such levels are or are not within the threshold levels adopted by the FCC.

XXII. LIABILITY INSURANCE

A. A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain the following insurance coverages covering the Telecommunications Facilities and Site as long as the property is used as a Wireless Telecommunications Facility.

1. Commercial General liability insurance covering personal injuries, death and property damage of \$1,000,000 per occurrence/\$2,000,000 aggregate;
2. Automobile liability coverage of \$1,000,000.00 per occurrence/\$2,000,000 aggregate;
3. Workers compensation and disability insurance in the amounts required by the laws of Pennsylvania.

B. The Commercial General Liability insurance policy shall specifically include the Township and its officers, employees, committee members, attorneys, agents and consultants as additional named insureds.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed and in good standing to do business in Pennsylvania.

D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Township with at least thirty (30) days prior written notice of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the Supervisors at least fifteen (15) days before the expiration of the insurance.

F. The Applicant shall provide a copy of each of the policies or certificates of insurance representing the insurance in the required amounts.

XXIII. INDEMNIFICATION

A. Any Application for Wireless Telecommunication Facilities that is proposed for Township property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the Applicant, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Township, and its officers, employees, committee members, attorneys, agents, and consultants from any and all liabilities, judgments, penalties, damages, costs, charges and cost of defense arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which arise or might arise directly or indirectly out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operations, maintenance, repair, installation, replacement, removal, or restoration of said Wireless Telecommunications Facilities. With respect to the liabilities, judgments, penalties, damages costs, charges and cost of defense referenced herein, these include, but are not limited to, reasonable attorneys' fees, consultants' fees, and expert witness fees.

XXIV. FINES AND PENALTIES

A. If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance, then the Township shall notify the holder of the Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. If the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Township, may at its sole discretion, order the violation remedied within twenty-four (24) hours.

B. After the lapse of the time period to remedy, as contained in the preceding paragraph, and upon conviction of a violation of this Ordinance before a District Justice by a summary proceeding, the person shall be sentenced to pay a fine not less than Five Hundred Dollars (\$500.00) and not exceeding One Thousand Dollars (\$1,000.00), and in default of payment thereof, may be sentenced to the County jail for a period not exceeding thirty (30) days. All of said proceedings and sentencing shall be in accord with the provisions of the Second Class Township Code and as the same shall be amended.

C. In addition to these penalties, any violations of this Ordinance or any failure to comply with the requirements of this Ordinance shall be grounds for immediate suspension or revocation of any and all Special Use Permits issued under this Ordinance held by the person or entity who has violated the provisions of this Ordinance, regardless of the number of Special Use Permits or locations involved. It is the intent of this subsection, without limiting its generality, to grant to the Supervisors the right to suspend or revoke any and all Special Use Permits held by a permittee when any violation of this Ordinance or the Special Use Permit occurs at any Telecommunications Facilities operated by the permittee pursuant to a Special Use Permit for Telecommunications Facilities issued by the Supervisors.

XXV. REMOVAL OF WIRELESS TELECOMMUNICATIONS FACILITIES

A. Under the following circumstances, the Township may determine that the health, safety, and welfare interests of the Township warrant and require the removal of Wireless Telecommunications Facilities.

1. Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period whichever occurs first, except for periods caused by Acts of God, in which case, repair or removal shall commence within 90 days;

2. Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;

3. Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization.

4. The Special Use Permit for Wireless Communication Facilities has been revoked or not recertified and such condition continues for a period of 180 days.

5. Any other reason for which the Township has substantial recorded evidence that the Wireless Telecommunication Facility has become an unreasonable hazard to the health, safety, and/or welfare of the Township, its citizens, and/or their property.

B. If the Township makes such a determination as noted in subsection (A) of this section, then the Township shall notify the holder of the Special Use Permit that said Wireless Telecommunications Facilities are to be removed.

C. The holder of the Special Use Permit, or its successors or assigns, shall, at the holder's cost, dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the Township

D. If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received notice, then the Township may order officials or representatives of the Township to remove the Wireless Telecommunications Facilities at the sole expense of the owner. The owner shall receive ten (10) days notice prior to such removal.

E. If the Township removes or causes to be removed, Wireless Telecommunications Facilities and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the Township may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

F. Anything in this Section to the contrary notwithstanding, the Supervisors may at their sole discretion approve one Temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more than ninety (90) days, which may not be renewed or extended during which time a suitable plan for the sale, removal, conversion, or relocation of the affected Wireless Telecommunications Facilities shall be developed and carried out by the holder of the Special Use Permit, subject to the approval of the Supervisors and an agreement to such plan shall be executed by the holder of the Special Use Permit and the Township. If such a plan is not developed, approved, and executed within the ninety (90) day time period, then the Township may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this section.

XXVI. RELIEF

Any Applicant desiring relief or exemption from any aspect or requirement of this Ordinance may request such from the Supervisors at a pre-application meeting, provided that the relief or exemption is contained in the original Application for a Special Use Permit, or in the case of an existing or previously granted Special Use Permit, a request for modification of its Tower and/or facilities. Such relief may be Temporary or permanent, partial or complete, at the sole discretion of the Supervisors. However, the burden of proving the need for the requested relief or exemption is solely on the Applicant. The Applicant shall bear all costs of the Supervisors or the Township in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Supervisors. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the health, safety and welfare of the Township, its residents and other service providers.

XXVII. APPEALS

A person shall have thirty (30) days from the date of the decision to appeal the decision rendered by the Supervisors in accordance with sections XV, XVI, XXV or XXVI of this Ordinance. The Notice of Appeal must be in writing and must state the specific reasons that the Supervisors decision is being appealed. In the event of such an appeal, the person shall be entitled to a hearing before the Township Supervisors within thirty (30) days of the date on which the Notice of Appeal is received by the Township, and the person shall be entitled to present witnesses and evidence on it's behalf at this hearing. The person shall then have thirty (30) days from the date on which a decision is rendered following a hearing to appeal the Supervisors decision to the Court of Common Pleas.

XXVIII. REVIEW BY THE HOWE TOWNSHIP SUPERVISORS

A. The Supervisors may at any time conduct a review and examination of this entire Ordinance or any portion thereof.

B. If after such a review and examination of this Ordinance, the Supervisors determine that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, then the Supervisors may take whatever measures are necessary in accordance with applicable law in order to accomplish the same.

C. Notwithstanding the provisions of subsections (A) and (B) of this Section, the Supervisors may at anytime, and in any manner (to the extent permitted by Federal, State or local law), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

XXIX. ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS

A. To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of the Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding Height, lighting, security, electrical and RF emission standards.

B. To the extent that applicable rules, regulations, standards and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding Height, lighting, and security are changed and/or are modified during the time that the property is used as a Wireless Telecommunications Facility, then the holder of the Special Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the Supervisors.

XXX. CONFLICT WITH OTHER LAWS OR ORDINANCES

Where this Ordinance differs or conflicts with other laws, rules and regulations, the more restrictive or protective shall apply.

XXXI. GOVERNMENTAL ENTITIES

Wireless Telecommunications Facilities owned by the Township, county, the board of commissioners, the county school district, the county board of education, the state or the United States government, are not subject to the provisions of this Ordinance.

XXXII. SEVERABILITY

If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any Application thereof to any person or circumstance, is declared void, unconstitutional, or invalid for any reason, then such work, phrase, sentence, part, section, subsection, or other portion, for the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all Applications therefore, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

XXXIII. REPEALER

All Ordinances or parts of Ordinances of this Township not in accordance with this Ordinance are hereby repealed insofar as they affect this Ordinance.

XXXIV. EFFECTIVE DATE

This Ordinance shall be effective 48 hours upon its adoption.

ADOPTED as an Ordinance of Howe Township this 12th day of September, 2007.

ATTEST: (Seal)

Majorie E. Villarreal

HOWE TOWNSHIP SUPERVISORS

Kay M. O'Rourke

RA Summers

Larry L. Lofley