TOWNSHIP OF LOWER MAKEFIELD
ZONING HEARING BOARD
MINUTES – OCTOBER 2, 2008

A special meeting of the Zoning Hearing Board of the Township of Lower Makefield was held in the Municipal Building on October 2, 2008. Chairman Malinowski called the meeting to order at 7:15 p.m.

Those present:

Zoning Hearing Board:	David Malinowski, Chairman Paul Bamburak, Vice Chairman Gregory J. Smith, Secretary (joined meeting in Progress) Jerry Gruen, Member Anthony Zamparelli, Member Keith DosSantos, Alternate Member
Others:	Nancy Frick, Director Zoning, Inspector & Planning Robert Habgood, Code Enforcement Officer David Truelove, Township Solicitor James Majewski, Township Engineer Matt Maloney, Supervisor Liaison

APPEAL #08-1480 – COMCAST OF LEVITTOWN, INC.

Mr. Malinowski read into the record portions of the Ordinance and Cable TV Franchise Agreement. He stated Ordinance #537 which was adopted 2/1/06 grants a Franchise to Comcast and "authorizes Comcast of Levittown to construct and operate a cable system in, along, among, upon, across, above, over, under, and in any manner connected with public ways within the Franchise area; and for that purpose to erect, install, construct, repair/replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any public way and all extensions thereof; in addition thereto such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or improvement as may be necessary or pertinent to the cable system." He stated in the Cable Television Franchise Agreement which is incorporated as part of the Ordinance, Section 2.1 in the grant of authority essentially says the same thing and adds: "nothing in this Franchise shall be construed to prohibit the grantee from offering any service over its cable system that is not prohibited by Federal, State, or local law." He stated it is also in Section 3: "incumbent upon the Cable, the Grantee, 3.1 construction, installation, and maintenance of the cable system shall be performed in a safe, thorough, and reliable manner using materials of good and durable quality." He noted that safety was an issue at the last Hearing.

Mr. Malinowski stated it seems after reading the Agreement and the Ordinance that the Cable Company can erect these boxes virtually anywhere they want, so he feels it is incumbent upon the Township to present evidence to the Board as to why this is not so if this is what the Township believes. He stated he would like to refocus on the Appeal from the determination of the Zoning Officer, putting in abeyance for now the Application for the Variance.

Mr. Truelove stated there are other terms of the Agreement that have to be read into the record for interpretation, and he believes the Ordinance and the Franchise Agreement are listed as Exhibit C-5. He stated he has prepared internally a memorandum and he will highlight some of their points to demonstrate that they believe it is still the Applicant's responsibility to go forward and request Permits and also to comply with other provisions of the Zoning Ordinance. He stated he will in the future submit a Memorandum if the Zoning Hearing Board so desires and he would like to expand on this before they proceed any further since he did not know that this was where they were going to go this evening.

Mr. Truelove stated the Franchise Agreement has been codified as a Municipal Ordinance. Section 2.1 of the Agreement authorizes Comcast to construct and operate a cable system in and among the areas described by Mr. Malinowski. He stated under the explicit terms of the Agreement, Section 3.1 states: "the Grantee shall be responsible for obtaining at its own cost and expense all Permits, Licenses, or other forms of approval or authorization necessary to construct, operate, maintain, or repair the cable system or any part thereof prior to the commencement of any such activity." He stated the same Section goes on to say: "All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee (Comcast) for the use in the cable system in accordance with the terms and conditions of the Franchise Agreement shall be located so as to minimize the interference with the proper use of the public ways and the rights and reasonable convenience of property owners who own property that adjoins any such public way."

Mr. Truelove stated Comcast has not sought Permits for the above-ground pedestals boxes that are at issue. Mr. Malinowski asked Mr. Garton, attorney for the Applicant, if this was correct, and Mr. Garton stated they submitted Applications for Permits that were denied by the Township. Mr. Truelove stated they will present testimony as to why they were denied.

Mr. Truelove stated in the Franchise Agreement, Section 2.4 specifically states: "nothing in this Franchise Agreement shall be construed as a Waiver of any Codes or Ordinances of general applicability promulgated by the Franchising Authority." He stated the Township is the Franchising Authority. He stated this is Section A 206-4 subsection B. He stated therefore the specific Franchise Agreement explicitly states that the General Zoning Provisions such as Codes Section 200-68 which prohibits above-ground construction in certain locations remains in effect. He stated this is, in many instances

the reverse of what is anticipated; and you would think that the specific controls the general; however, in this case the specific incorporates the general and still leaves to the Township by the specific and explicit wording of the Franchise Agreement the right to still enforce the Codes and Ordinances of general applicability. He stated this would then go back to the Township's right to enforce those provisions of the Zoning Ordinance. He stated it is their position that the right is still reserved in the Township, and this is why they are present and it is still the burden of the Applicant to go forward.

Mr. Toadvine stated what the Chairman was indicating was he would like the focus of the Hearing this evening to proceed on the Appeal from the determination of the Zoning Officer as when there is an Appeal from the determination of the Zoning Officers, it is the Township's burden to go forward to establish the actual issuance of the Cease and Desist. He stated this may be stipulated to if Mr. Truelove and Mr. Garton would like to discuss this. He stated the initial burden would be on the Township to set forth the methods used to issue the Cease and Desist and what that was based on. Once that burden has been established, it would then be up to the Applicant to present testimony as to why they feel the Cease and Desist was issued in error.
Mr. Gregory J. Smith joined the meeting at this time.

Mr. Garton stated it may take longer to determine what the Stipulation might be as opposed to having Mr. Truelove present his Witnesses. Mr. Truelove stated he would offer Ms Frick and he would be willing to do this if necessary.

Mr. Garton noted 11.3 of the Franchise Agreement which states "this Franchise Agreement including all Exhibits embodies the entire understanding of the Agreement of the Franchising Authority and Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements, and communications whether written or oral. This Franchise Agreement supersedes all Ordinances, or parts of Ordinances that are in conflict with the provisions of this Franchise Agreement."

Ms. Nancy Frick was sworn in and stated she is employed by Lower Makefield Township and is the Director of Zoning, Inspections, and Planning and has held this position since 1985. Her responsibilities include overseeing everyday workings of the Planning, Zoning, and Building Departments, issuance of Building Permits, Subdivision, and Zoning Hearing Board Appeals. This includes Applications for Zoning relief submitted by Applicants.

Mr. Truelove asked Ms. Frick if she received Applications from Comcast to erect pedestal boxes in various parts of the Township in the last year to year and a half, and Ms. Frick stated she did. This does come under her purview as the Director of Zoning, Inspection, and Planning. Ms. Frick stated they submitted Building Permit Applications. Mr. Truelove asked the relief requested in the Applications. Mr. Frick stated they were requesting to install above-ground pedestal boxes throughout the Township. She was not

given a specific list of areas anticipated for the boxes to be erected, and she stated it was very hard to determine from what was submitted and many hours were spent trying to coordinate the list submitted to the Plans that were submitted since they did not match up.

Mr. Truelove asked Ms. Frick if she had communication with Comcast officials during this process, and Ms. Frick stated they had numerous meetings, e-mails, and phone conversations trying to get a complete and accurate list of where these pedestal boxes were being installed and upgraded. Mr. Truelove asked if it was always the same official from Comcast with whom she was having communication, and Ms. Frick stated it was Mr. Jeter or his assistant. Mr. Truelove asked if she would get the same information all the time or would it sometimes be different, and Ms. Frick stated it was sometimes different.

Mr. Truelove asked how many pedestal boxes were being requested to be erected, and Ms. Frick stated it ranged from over twenty to over seventy.

Mr. Truelove stated at some point, Ms. Frick made a decision to deny the request, and Ms. Frick agreed. Mr. Truelove asked the reasons for denial, and Ms. Frick noted her letter regarding above-ground structures not to be located within the right-of-way; and added she relied on provisions of the Zoning Ordinance to do this. Mr. Truelove asked Ms. Frick if she is familiar with the Franchise Agreement and Cable Ordinance, and Ms. Frick stated she is; and she denied the Permit request. She relied on the language within the Zoning Ordinance and the Franchise Agreement to make this determination.

Mr. Toadvine stated he feels the Cease and Desist should be marked separately even though it was incorporated in the Application. The letter dated 2/12/08 written to Brian Jeter, Senior Director of Government and Community Affairs Comcast and signed by Nancy R. Frick, Zoning Officer and Director of Zoning, Inspections, and Planning was marked as Exhibit T-1.

Mr. Truelove stated he has been advised by Ms. Frick that there were two other prior Cease and Desist letters issued. The one dated 10/2/07 written to Brian Jeter was marked as Exhibit T-2 and the one dated 11/5/07 written to Brian Jeter was marked as Exhibit T-3. Copies of these were made available to Mr. Garton.

Mr. Malinowski asked if it is the Township's position that, even though in the Franchise Agreement it indicates that the Agreement supersedes the Ordinances, that in fact the Agreement does not. Mr. Truelove stated because the Ordinance itself incorporates the general Ordinances, he would agree that there is some conflicting verbiage in the Ordinance; but he feels the language he referenced is stand-alone information and he would submit that but for Section 11.1 the other provisions would be applicable and indeed are applicable because they are specifically incorporated and allowed. He stated it

is their position that the enforcement provisions of the general Zoning Ordinance are still applicable and enforceable.

Mr. Toadvine asked Mr. Garton if he had any objection to the introduction of T-1, and Mr. Garton stated they have no objection to this, and it was received by the client. After review of T-2 and T-3, Mr. Garton stated they acknowledge having received the two Exhibits and have no objection to these being introduced. Mr. Truelove asked if T-1, T-2 and T-3 set forth the reasons for the actions taken on behalf of the Township with respect to the Applications, and Ms. Frick stated they do.

Mr. Garton noted Exhibit T-2 dated 10/2/07 and asked if the basis for the rejection of the Application was grounded on Section 200-68A and 200-89E, and Ms. Frick agreed. Mr. Garton asked if there was any other basis for denial set forth in the letter, and Ms. Frick stated there was not. Mr. Garton noted T-3 and asked Ms. Frick if she used the same two Sections of the Zoning Ordinance as the basis for this denial as well, and Ms. Frick stated the 10/2 letter was not in fact a Notice of Violation in accordance with the Township Ordinances so it was re-done on 11/5 to include the Appeal process which is a requirement of the Township. Mr. Garton stated when Mr. Toadvine identified Exhibit T-2 as a Cease and Desist – it was not a Cease and Desist; and Ms. Frick stated it was an Enforcement Letter based on the Permits which were submitted. Mr. Garton asked the difference between T-2 and T-3, and Ms. Frick stated in accordance with the Township Zoning Ordinance the 11/5 letter meets the requirements for a violation notice and the 10/2 letter does not. Mr. Garton asked Ms. Frick if she would agree that the 11/5 letter grounds the denial on the same two Sections of the Zoning Ordinance, and Ms. Frick agreed. Mr. Garton stated T-3 offers no other reason for denial other than the two Sections of the Zoning Ordinance, and Ms. Frick stated this is incorrect. She noted the last paragraph on the first page which requires them to have them removed within ten days which was not in the previous letter sent to the Applicant on 10/2. Mr. Garton stated this is premised on her conclusion that this is a violation of the Zoning Ordinance, and Ms. Frick agreed. Mr. Garton stated the basis for taking action were the two Sections of the Ordinance noted, and Ms. Frick agreed.

Mr. Brian Jeter was sworn in. He stated he is employed by Comcast as a Senior Director of Government Affairs for Comcast in Bucks County. He has the opportunity to re-negotiate Franchise Agreements for the company, and compliance of those Agreements falls under his purview. He also lobbies local, State, and Federal elected officials on tele-communication policy and legislation. He has been with Comcast for eleven years. One of the areas for which he is responsible is Lower Makefield Township.

He is familiar with the process Comcast utilizes with respect to its interaction with Lower Makefield concerning their efforts to construct certain pedestals in the Township. Mr. Garton asked when this process began, and Mr. Jeter stated it began in December, 2006 when they had a meeting with their internal staff including the construction team

with the Township Manager, Terry Fedorchak. The meeting with the Township Manager was 12/10/06 when they provided a general overview of what they anticipated to be the improvement project not only in Lower Makefield but in the surrounding communities as well. They had discussions about rear to front easement re-location of their cable facilities and also discussed the installation of above-ground pedestal facilities as part of the project. The next meeting took place on 1/4/07 with Township Manager, Terry Fedorchak, himself, and other Comcast construction staff and engineers and they gave a similar overview and again advised what their intentions were with regard to the improvement project and how they felt it would benefit the residents of the Township. Mr. Jeter stated they also mailed notice to Mr. Fedorchak on 1/18/07 providing their customary letter to the Municipal Managers that they are conducting an improvement project or work within the Township, notifying them of the intention to do work. This notice includes information on where they are doing work, how the crews will be identified, general hours of when they will be in the community, and a description of the type of work they are doing. It would also advises how the Township could contact them if they had any questions or concerns.

Mr. Jeter stated they mailed another notice to Mr. Fedorchak on 4/18/07 indicating that they were going to proceed with the project during a specific time period. The same type of details as noted in the 1/18 letter were in this letter as well. Mr. Garton asked if they received a response from the first or second letter to Mr. Fedorchak, and Mr. Jeter stated they did not. He stated the time frame they had advised the Township did slide somewhat. He stated they were doing aerial work and were not yet doing any underground work in the Township although they were working on the improvement project. He stated they send a third notice to the Township dated 6/11/07 indicating that they were going to begin doing some underground improvements including potentially above-ground facilities. They did not get any response from the 6/11/07 letter. He stated in this letter they also indicated they were going to “door-hang” to advise residents that they were doing underground work. The door hanger indicated not only an 800 number but a local number as well for residents to call if they had a concern about the work or disruptions of service.

Mr. Jeter stated he next received a phone call from the Zoning Office indicating that pedestals were being installed and as a result of that call the Zoning Office asked for a summary of what the project entailed and he did send this by letter on 7/16/07. There were then a series of conversations until August 9 and they indicated what the intent of the project was and what they felt at the time would be the total number of above-ground facilities (pedestals); and at that point in time, they estimated the number to be twenty-five to thirty pedestal installations. Mr. Garton asked why they were giving an estimate as opposed to a specific number; and Mr. Jeter stated they were trying to minimize the number of pedestals as best they could recognizing the scope of the project, and the number fluctuated based on the performance of the plan, improvements that were being made, and whether they needed more amplifiers in the system to make the system work to the best of its ability.

Mr. Garton noted the Cable system being referred to in the Township and asked if it was primarily installed before Comcast became the Franchisee, and Mr. Jeter stated it was. Mr. Garton asked if they had As-Built drawings of the system, and Mr. Jeter stated they did.

Mr. Jeter stated they met with the Zoning Officer on 8/15/07 and at that meeting they were asked to begin the process of submitting Permit Applications to the Township, and the Township advised that they believed that there were pedestals being erected as part of the project and they were told at that point from the Zoning Office that Comcast was in violation of the Zoning Ordinances that were previously referred to in testimony, but that they should move forward and prepare Permit Applications for the Zoning Office to review. He stated he was provided the customary Building Permit Applications and was asked to follow the guidelines of the Application to include Certificates of Insurance, maps; and the Zoning Office advised him how the Applications should be filed out and they were helpful in this respect. He stated they began the process of trying to understand the entire scope of the project and how many pedestals they felt would be installed. Mr. Garton asked if the Application Forms were unique to a cable facility, and Mr. Jeter stated they were not.

Mr. Jeter stated on 8/24/07 there was some additional e-mail questions Comcast had sent to try to better understand the Application process. He stated they tried to move forward with the Township, and he feels the Zoning Office also tried to work with them in order to better understand the process and what the Zoning Office was looking for. He stated they received e-mail correspondence on 9/7 and they had another meeting with the Zoning Officer and her staff on 9/11 regarding the Applications themselves. On 9/13 the Township indicated that they needed the Permit Applications in a timely manner with a date specific.

Mr. Garton asked if they had not already sent some Applications in, and Mr. Jeter stated they had sent some in on August 9. Mr. Garton asked the difference between the Applicants sent in on August 9, and the Applications they were asked to submit by 9/17; and Mr. Jeter stated the Zoning Office wanted to insure that Comcast was including all of the pedestals that were either installed or planning to be installed; and the Township was working with them diligently to try to get those Applications as accurate as they could make them. Mr. Jeter stated they then provided several updates to the Township via e-mails on 9/14 and 9/17 on what they were doing including “ride-outs” where the technical staff actually ride around the Township and verify pedestal locations that were part of the improvement project.

Mr. Garton noted there was a deadline date of 9/17, and he asked what happened when they did not meet the deadline. Mr. Jeter stated they were looking for latitude from the Township on this date considering the volume of work they were looking at in order to compile the Applications and verifying the best they could the exact number. He stated

he advised the Zoning Office that they were not purposely delaying providing the information but were trying to gather all the information including maps and the supplemental material that went with the Applications. He stated they did submit 37 Permit Applications on 9/21 for a total of 76 pedestals installed and/or scheduled to be installed. This 76 is the same number that was the subject of prior Witness testimony.

Mr. Malinowski asked if they were installing pedestals without benefit of a Permit, and Mr. Jeter stated they did. Mr. Malinowski stated the Agreement indicates that they will not install pedestals without a Permit. Mr. Jeter stated this is where the Interpretation comes in as the company felt that they had the right to move forward and install those pedestals as the improvement project continued. He stated they felt they had the right to install the pedestals in order to continue the project and provide the best service they could to the Township residents. Mr. Malinowski stated it appears that Comcast decided to install the pedestals and then apply for the Permits, and Mr. Jeter stated the Zoning Officer directed them to apply for a total number of Permits. They also worked with the Township Zoning Office on trying to do them on a development-wide perspective at the request of the Zoning Officer, and they did file the Applications. Mr. Malinowski asked Ms. Frick if she told them to install pedestals without benefit of a Permit. Mr. Jeter stated they were not told to install the pedestals, they were told to file the Permit Applications.

Mr. Toadvine stated his understanding is that there were 37 Applications for pedestals submitted on 9/21/07 and those 37 Applications covered 76 pedestals, and Mr. Jeter agreed. Mr. Toadvine stated they also indicated there were Permits submitted in August, and Mr. Jeter stated there were a total of 28 pedestals that were discussed, but he does not know the total number of Permits submitted at that time. He stated after discussions with the Township, they went back to determine the total number of pedestals and it came to 37 Applications with a total of 76 total pedestals. The first set of Permits was reviewed with the Township on 8/9/07. Mr. Malinowski asked if those Permits were denied right away, and Mr. Jeter state they led to a discussion between the Zoning Office and his Office of whether or not they could compile a full list of what exactly was going to be installed. He stated there were several meetings and e-mail exchanges between the Township and his Office trying to provide the most accurate information to the Township and they moved forward and submitted the 37 Applications.

Mr. Malinowski asked if pedestals were continuing to be installed while the discussions were taking place even though no determinations had been made on the Applications, and Mr. Jeter stated this is correct for the Applications that were filed in September. He stated they continued the project in order to improve the Cable system.

Mr. Bamburak stated there were discussions about how the Permits should be filled out and he asked if Lower Makefield is the only Township that requires Permits, and Mr. Jeter stated they are. Mr. Bamburak stated the number of boxes seems to change a lot. Mr. Bamburak stated Mr. Jeter indicated that they had engineers study the system,

and he feels the engineers should have been able to determine where the pedestals should be and how many they needed. He asked if they determine the number of pedestals ahead of time through engineering or does technician go around the Township and make the determination in that way. Mr. Jeter stated he feels it is a determination of the project as the project progresses, and they have an estimated number prior to going into a project. He feels this would be a better question for the engineer to answer.

Mr. Garton stated they did not start pedestal work until they gave notification to the Township Manager in January, April, and June, and Mr. Jeter agreed.

Mr. Garton asked what happened after 9/21 when the Permits were submitted, and Mr. Jeter stated there were follow-up questions on 9/24 from the Township and they responded to those questions. He stated much of this dialogue was via e-mail. On 9/28 the Zoning Officer had specifically asked about specific locations, and he believes that this is part of what they submitted. On October 2 they received the letter which was marked as Exhibit T-2. Mr. Jeter stated after they received T-2, they stopped installing pedestals as they wanted to work out the issues. They then received the 11/5 notice which was marked as Exhibit T-3. He stated they then reached out to the Township Manager, Terry Fedorchak, and met with him on 11/27 to discuss the next steps based on the two letters provided from the Zoning Office. At that time Mr. Fedorchak requested that they provide a system summary of what the improvement project was about including the pedestal installations. On December 4, they e-mailed some preliminary information and also requested a follow-up meeting with the Township Manager. They met with him on 1/22/08, and at that time Mr. Fedorchak indicated he needed further details – a summary of the project; and on 1/25/08 they sent this project summary by e-mail to the Township Manager in detail.

Mr. Jeter stated on 2/12/08 they received a third notification from the Zoning Ordinance related to the violations from the previous two notices. His office followed up with the Township Manager based on their previous meetings in January and asked Mr. Fedorchak the next steps based on the notices they had received from the Zoning Office. They had not received a response from Mr. Fedorchak regarding their previous communications to him. On 2/19/08, they requested a meeting with Mr. Fedorchak and the Zoning Officer to try to determine what they could do to resolve the issue regarding the violations. On 2/27/08 Mr. Fedorchak did respond and on 3/6/08 Comcast filed the fee in order to go before the Zoning Hearing Board. Mr. Jeter stated they met with the Township on 3/7/08 and they were advised that they must go before the Zoning Hearing Board. On 3/18/08 they had a follow-up meeting with Supervisor Caiola and the Township Manager to try to find a way to resolve the issue.

Mr. Garton stated he understands that thereafter there were several communications between Comcast's house counsel and the Township solicitor, and Mr. Jeter agreed with the end result being that Comcast is now before the Zoning Hearing Board.

Mr. Garton stated after they received the notice about stopping work, they did in fact stop work, and Mr. Jeter agreed.

Mr. Truelove asked Mr. Jeter if the notes he is referring to are notes he prepared, and Mr. Jeter agreed.

Mr. Truelove stated Mr. Jeter described some of the meetings starting in 12/06 as being "informal," and Mr. Jeter stated he did not recall stating this and stated he indicated that they requested meetings with the Township Manager in order to discuss the project.

Mr. Truelove asked if they knew that Mr. Fedorchak was not the Code Enforcement Officer and asked if Mr. Fedorchak discussed with them specifically any of the requirements of the Zoning Ordinance. Mr. Jeter stated to his knowledge he did not discuss them specifically.

Mr. Truelove stated Mr. Jeter indicated earlier that Lower Makefield is the only Township that requires them to get Permits, and he asked if this is the only Township within Mr. Jeter's jurisdiction or of any Comcast jurisdiction; and Mr. Jeter stated it is the only one that requires Permits within his jurisdiction which includes all of Bucks County and a small portion of Montgomery County. Mr. Truelove stated there may be other Municipalities which require a Permit, and Mr. Jeter stated he can only speak to his jurisdiction.

Mr. Truelove asked if Mr. Jeter was familiar with the prior litigation between Lower Makefield and Comcast's predecessor company when he joined Comcast eleven years ago, and Mr. Jeter stated he was not aware of it when he joined the company. He did become aware of this eventually. Mr. Truelove asked if he had learned that it had been contentious litigation, and Mr. Jeter stated he did learn this.

Mr. Truelove asked Mr. Jeter if he ever exchanged e-mails or letters with Mr. Fedorchak up to 1/07; and Mr. Jeter stated to his knowledge they did not prior to 2007.
Mr. Truelove asked if he had met with Ms. Frick or the Township engineer prior to 1/07, and Mr. Jeter stated they did not.

Mr. Truelove stated Mr. Jeter indicated that up until 4/07, Comcast had never provided any details as to where the pedestals were going to be installed or the number of pedestals; and Mr. Jeter stated he feels there were discussions between the Parties on the project and what they anticipated the number might be.

Mr. Truelove stated Mr. Jeter indicated that the first time he mentioned that underground installations might occur was sometime in June of 2007, and Mr. Jeter stated they notified the Township Manager of this on 6/11/07. Mr. Truelove stated this was the first time that there was discussion about what the actual pedestal installations would look like, and

Mr. Jeter agreed. Mr. Truelove stated this was after this time that the meetings started to occur with Ms. Frick and others in the Township , and Mr. Jeter agreed.

Mr. Truelove stated Ms. Frick indicated there were meetings on 7/19/07 and 9/10/07 and Mr. Jeter agreed. Mr. Truelove asked if during those meetings there was discussion when Ms. Frick was present that there was the necessity for Permitting, and Mr. Jeter agreed that this was discussed. Mr. Truelove asked Mr. Jeter if he recalled that there were discussions when the Township, in an effort to help Comcast reduce the costs of Permitting, proposed that they could have development-wide Permitting where one Application would be per development provided they provided information to the Township on the specific locations they anticipated pedestals to be installed in each development, and Mr. Jeter agreed that he did recall this. Mr. Truelove stated there were numerous times when Ms. Frick and others in the Township would specifically ask Comcast the number of pedestals to be installed because Permits were required and the locations, and Mr. Jeter agreed that this is correct. Mr. Truelove asked Mr. Jeter if he would agree that the numbers changed, and Mr. Jeter agreed this is correct. Mr. Truelove stated there were numerous communications with Ms. Frick either by telephone or e-mail, and Mr. Jeter agreed. Mr. Truelove asked if in those communications it is fair to say that Ms. Frick became frustrated by the changing number of pedestals that were proposed from time to time, and Mr. Jeter agreed.

Mr. Truelove asked if Mr. Jeter specifically objected in writing to the requirement that Permits were required, and Mr. Jeter stated he did not write anything.

Mr. Truelove asked if after 10/2/07 there were any more pedestals installed in Lower Makefield, and Mr. Jeter stated to his knowledge they continued with the aerial portion of the project, but they did not continue any more underground work. Mr. Truelove again asked if it is his testimony that from 10/2/07 until today, there have been no pedestals installed by Comcast based upon Exhibit T-2, and Mr. Jeter agreed.

Mr. Truelove asked Mr. Jeter if he is in the field checking out pedestals, and Mr. Jeter stated he is not. Mr. Truelove asked if he has specific knowledge that there were no pedestals installed after 10/2/07 other than what was represented to him, and Mr. Jeter stated pending resolution of this issue, he respectfully asked that the construction team cease and desist installing pedestals and that any related work be reviewed with him so that he could review it with the Township. Mr. Truelove asked Mr. Jeter if he has any idea how many pedestals were installed from the time they began conversations with Mr. Fedorchak up until 10/2/07; and Mr. Jeter stated to his knowledge there were 76 installed. Mr. Truelove asked Mr. Jeter if he has seen the Application which was filed before the Zoning Hearing Board, and Mr. Jeter stated he has. He asked if the 76 pedestals which were installed are the 76 pedestals which are referenced in the Application. Mr. Jeter stated the 76 pedestals that are referenced in the document would

include 24 to 26 pedestals which were not installed that were scheduled to be installed but were stopped as a result of pending action from the Township Zoning Officer. He estimated that they installed about 50 to 52. Mr. Truelove stated he previously indicated that 76 were installed, but actually it was 50 to 52 which were installed and 24 to 26 were scheduled to be installed but were not, and Mr. Jeter agreed.

Mr. DosSantos asked if the 76 boxes represents the entire scope, and Mr. Jeter agreed. Mr. DosSantos stated they had mentioned that the number had changed from 12/06 and throughout the process, and he asked the reason the number continued to change. Mr. Jeter stated they were trying to make every effort to minimize the number of pedestals recognizing that these were a problem in Lower Makefield and they were working the project "piece by piece" to limit the number of pedestals and that number was adjusted every time they went to a street location and they had to consider if they could reduce the number of amplifiers that were needed in this location. Sometimes they were able to reduce them and sometimes it was found that they were needed in those specific locations in order for the system and the project to have the fullest effect they needed to have. Mr. DosSantos asked if the number was ever higher than 76, and Mr. Jeter stated internally they did look at this as there are hundreds of vaults in the Township. Mr. DosSantos asked if they ever reduced the number through their discussions with Ms. Frick and asked if the number proposed was ever higher than 76, and Mr. Jeter stated he is not sure if they gave an exact number but there were references to the fact that because of the number of vaults that are in the Township, based on the build by the previous cable operator, that they could have installed more to make the system work better; and they went back and reviewed the project to try to minimize the number of above-ground pedestals as best they could.

Mr. DosSantos asked if this is the first time Comcast has ever submitted Permit Applications to Lower Makefield, and Mr. Jeter stated to his knowledge there have been none since he has been involved in Lower Makefield which was since 12/05.

Mr. Zamparelli asked if there is any box that they use that would have a lower profile than the ones that are currently used around the Township. Mr. Jeter stated as part of the Application, they submitted three types of pedestals of differing sizes and shapes. He stated depending on the equipment in the field, the amplifier determines what unit would cover it. Mr. Zamparelli asked the dimensions of the boxes, but Mr. Jeter did not have this information.

Mr. Toadvine stated Mr. Jeter referred to letters to Mr. Fedorchak dated 1/18/07, 4/18/07, and 6/11/07, and asked if these could be made available; and Mr. Garton stated these could be made available to be made part of the record. Mr. Truelove agreed to look into this with Mr. Fedorchak as well.

Mr. Gruen asked Mr. Jeter if he wrote the letters to Mr. Fedorchak, and Mr. Jeter stated he did. Mr. Gruen asked if he could recall what was in the letters, and Mr. Jeter stated he indicated that they were doing an improvement project that would increase service reliability and give Comcast the ability to launch future products. He indicated the timeframe as to when they would be in the Township conducting the project including the dates. He indicated that the crews will be properly identified and he indicated the hours they would be working in the Township. He also advised that there may be service interruptions during the day. He also provided numbers where he or the coordinator who works with him could be reached if a resident were to contact the Township. He stated the information was relatively consistent in each of the notifications. The 6/11 notification also indicated that they would be doing some underground improvements which could include above-ground facilities. He stated this was the point when they knew that they would have to install above-ground pedestals as part of the project.

Mr. DosSantos asked if there was any discussion of above-ground pedestals from December, 2006 to June, 2007, and Mr. Jeter stated there was discussion, but prior to that they were doing aerial improvements and to his knowledge the under-ground vault to pedestal improvements did not occur until June or after.

Mr. Gruen asked if the letters could be described as courtesy letters, letting the Township know that they were going to be doing work in the Township. He asked if he specifically indicated that they were going to do new construction, adding pedestals, or just wire maintenance. Mr. Jeter stated they gave a brief general overview of what the project would entail. He stated in the 6/11 letter they indicated it would include underground work and this is how it was discussed with Mr. Fedorchak prior to that notification. Mr. Gruen stated underground work could mean changing transformers and changing wires and does not necessarily mean installing pedestals. Mr. Jeter stated they did mean that it would involve installing pedestals. Mr. Gruen stated the Township Manager would not necessarily know this, but Mr. Jeter stated he feels the Township Manager understood the scope of the project based on the previous meetings they had with him. He stated they did try to address the concerns of the Township Manager regarding the scope of the project.

Mr. DosSantos asked if Mr. Fedorchak ever gave them a response to the three letters, and Mr. Jeter stated they did not get a response from Mr. Fedorchak. Mr. DosSantos asked if he ever got a response from anyone from the Township, and Mr. Jeter stated the next step was communication from the Zoning Office which was on 7/12.

Mr. DosSantos asked for a copy of the door hangers that were put out. He asked if they had any mention of the above-ground pedestals; but Mr. Jeter could not recall and stated he would have to look at the actual door hanger.

Mr. Garton stated the project involved more than 76 pedestals, and Mr. Jeter agreed. He stated they also replaced spans of cable throughout the Township, did several aerial improvements which included replacing line extenders, taps, and other electronic devices that are generally above the ground up on the poles, and this was the bulk of the project for the months February through June.

Mr. Zamparelli asked if they are trying to move the lines that are between the houses up front as well, and Mr. Jeter stated initially they did want to do this, but this was a concern of Mr. Fedorchak because the current phone provider in the Township undertook this task prior to Comcast as part of their upgrade. He stated Comcast considered this further because of Mr. Fedorchak's concern and they identified that they could improve the system without doing a rear easement to front easement relocation. They felt this would be more intrusive to the Township residents because there would have been a significant amount of this work that needed to be done in the Township and they tried to find other alternatives to improve the plan. One of those alternatives required them to bring vaults out of the ground and place pedestals. They communicated this to Mr. Fedorchak and he did share his concern about this in December and January.

Mr. Gruen asked Mr. Jeter if he is part of the design team, and Mr. Jeter stated he gets his information from the engineers and the construction group. Mr. Gruen stated he would like to hear from one of the engineers, and Mr. Garton stated they do intend to have an engineer testify.

Mr. Malinowski stated those who requested Party Status now have the right to cross-examine the witness with regard to his testimony.

Ms. Sandy Goldberg, University Drive, stated Mr. Jeter mentioned that there was a map of the previous installations, and Mr. Jeter stated he did not testify to this. Ms. Goldberg stated she would like to see a map because in Sandy Run there are no pedestals in the right-of-way from the previous installation which leads her to believe that they do not have to put them in the right-of-way now. Mr. Jeter stated he could check to see what maps they have, although they would have to be concerned with what details are on the map which could involve proprietary information.

Mr. Smith stated he recalled that during the testimony Mr. Jeter indicated he had As-Builts, and Mr. Jeter stated he feels they do have As-Built maps.

Ms. Goldberg stated Mr. Jeter indicated that they put notices to the residents on their doors, and she stated she never received one. She asked what the procedure would be if a resident were to call about a concern. Mr. Jeter stated the procedure Comcast would follow if a resident were to call would be to have the resident identify themselves, where they live, and what the specific issue may be. He stated they would then take this

concern back to the Project Manager and the construction staff and evaluate based on the concern if they can accommodate the resident's concern. He stated this is what they did whenever they received calls or received communication from the Township Manager or Zoning Office, and they tried to reach out to the residents and tried to work them as best as they could.

Ms. Goldberg stated ten years ago they spent three years on this issue, and what they requested was that they put it underground or out of sight and this is why they had the Permit process. She stated she is very concerned that this process broke down and if she had gotten a notice on her door, she would have called the Township. She asked how the communication broke down. She asked who checks to make sure that the notices are put on the doors, and Mr. Jeter stated their teams door hang generally and it was included in the communications to Mr. Fedorchak. He stated they put the notices on the door three days prior to any work happening. He stated he will provide a sample copy of the door hanger. He stated he feels there were two numbers listed – a before 5:00 p.m. number and an after 5:00 p.m. number and they also had an 800 number and a local number. He stated they did have a minimal number of residents who contacted them directly. He stated the door hanger indicated that Comcast crews would be working in the neighborhood and it probably had something related to the improvement project. He stated it also indicated the times the crews would be working in the neighborhood and the numbers to be called with questions or concerns. The door hanger was specific to the project as opposed to a generic door hanger.

Mr. Gruen stated he heard Mr. Jeter indicate that the contractors put up the door hangers and asked who does this work – Comcast employees or the contractors; and Mr. Jeter stated for this project it was a combination of both, and to his knowledge the bulk of the underground work was contractor related. Mr. Gruen stated the testimony is that the contractors were told to put up the door hangers, and Mr. Jeter stated he believes they were asked internally to place the door hangers three days in advance. Mr. Gruen asked if anyone from Comcast checks that this was done, and Mr. Jeter stated while he is not sure of this, he could look into it.

Mr. Bernie Goldberg, 1304 University Drive, stated he understands that they applied for 76 pedestals, and he asked if this is all of the pedestals that are being built, and Mr. Jeter stated they submitted 37 Applications totaling 76 pedestals. Mr. Goldberg asked if Mr. Jeter recalls from the first Zoning Hearing Board meeting that he advised him of a box that was open and showed him a picture of it, and Mr. Jeter stated he is familiar with this. Mr. Goldberg stated it was at 1186 Temple Drive, and Mr. Jeter stated he does not recall the exact address. Mr. Goldberg stated this pedestal is not on the Application.

Mr. Goldberg presented two exhibits and asked that they be marked Gold 2 and Gold 3.

Mr. Goldberg stated the box at 1186 Temple Drive was installed last summer. He stated he showed pictures of that box at the last meeting as it was a safety problem as the box was open. He stated it is not on the Application and he submits that there are other boxes that are not on the Application and he will prove this.

Mr. Goldberg presented an Exhibit that was an attachment to the Settlement Agreement in 1996 (Gold #2) and the purpose of showing this is because Mr. Jeter referenced three types of pedestals, and he stated this Exhibit shows the three types including the size. He stated Exhibit Gold #3 shows a pedestal that has been installed throughout the Township which is not on the original Application for Permits nor on the new Application. Copies of these Exhibits were made this evening.

A short recess was taken at this time.

The meeting was reconvened and Mr. Goldberg stated it is not his intention tonight to question this Witness and give testimony, but it is his intention to have a very brief discussion about testimony he gave and question what he said and the veracity of his statements proving that it may not be factual. Mr. Malinowski stated Mr. Goldberg may ask Mr. Jeter questions with regard to his testimony, and Mr. Goldberg stated that is what he is doing.

Exhibit Gold 2 was provided which is a picture of the pedestals, and Exhibit Gold 3 is a pictures of a pedestal.

Mr. Goldberg stated Mr. Jeter testified that there are three kinds of pedestals that they made Permits for, and Mr. Jeter stated there are three kinds of pedestals that he is aware of that they supplied copies of as to what the design of the pedestal would look like as part of the Permit Application. Mr. Jeter was shown Exhibit Gold 2 and asked if these were the three pedestals they applied for, and Mr. Jeter stated he feels they look familiar. Mr. Goldberg asked where in the Application did they apply for the pedestal shown in Exhibit Gold -3, and Mr. Jeter stated he is not familiar with the pedestal shown.

Mr. Goldberg stated the pedestal shown in Exhibit Gold -3 is erected throughout the Township. He stated it is also the pedestal that was installed at 1186 Temple Drive. Mr. Jeter stated he feels this is a power supply unit and not a pedestal. He stated he is not an engineer and they could wait for the engineer to describe the difference between a pedestal and power supply unit.

Mr. Goldberg asked if all the pedestals they are applying for on the Applications, and Mr. Jeter stated to his knowledge they are. Mr. Goldberg stated 1186 Temple Drive is not on the list and Mr. Jeter knew about 1186 because he told him about it at a prior Hearing. Mr. Goldberg stated 1186 is not on the Application. Mr. Jeter stated he did not have the Application before him. Mr. Goldberg stated the Board can look, but it is not.

Mr. Garton stated the Application speaks for itself. Mr. Goldberg stated Mr. Jeter knew about 1186 because he told Mr. Jeter about it, and Mr. Jeter agreed that he was told about it, and they have since repaired it. Mr. Goldberg stated they did not apply for a Building Permit for 1186, and Mr. Jeter stated the list stands as it is. Mr. Goldberg asked if 1186 is on the list, and Mr. Malinowski stated this has been asked and answered. Mr. Goldberg stated it is not on the list.

Mr. Goldberg stated they also do not have any Applications for this kind of box which Mr. Jeter calls a power supply, and Mr. Jeter stated he only knows what they submitted as part of the Application. He stated the picture shown by Mr. Goldberg shows the three kinds they submitted along with the Permit Application.

Ms. Regina Gebka, University Drive, stated she had requested Party status. She asked which residents received the door hanger notices for work to be done, and Mr. Jeter stated it would be the residents in areas where the vault to pedestal relocations were occurring. He stated there were several door hanger notifications that occurred during the course of the project including the aerial project. Ms. Gebka stated she is not concerned with the aerial project. Ms. Gebka asked if only the resident who would be getting the pedestal in front of their home would get the notice or would everyone on the street, and Mr. Jeter stated to his knowledge, they would notify everyone on the street that they were doing work in the area. Ms. Gebka stated she did not receive a notice.

Mr. Garton objected to her testimony, and Mr. Malinowski sustained.

Ms. Gebka asked when the notices go out, and Mr. Jeter stated normally they door hang three days prior to any construction work that would occur. Ms. Gebka asked if there is a list of to whom notices were provided, and Mr. Jeter stated they hung the door hangers where the activity was occurring. Mr. Toadvine asked if there is a list that shows every homeowner that received a door hanger, and Mr. Jeter stated he does not have this list. Ms. Gebka asked if this is contracted out or does Comcast do this, and Mr. Jeter stated it is a combination of both, but the physical work itself is contracted out. Ms. Gebka asked if there is any follow up to see if the door hangers were put up. Mr. Jeter stated there is no follow up on this.

Ms. Gebka asked the number of pedestals remaining to be installed in Sandy Run I and II, and Mr. Jeter to his knowledge they would have 24 to 26 that have not yet been done. Ms. Gebka asked if this is only new equipment that is going in or are they utilizing the old pedestals that were in place, and Mr. Jeter stated all 76 were existing vaults that had equipment in them that they raised or want to raise out and place a pedestal there. He stated it is an existing vault that is in the ground with equipment in it, and they will take the equipment and vault out and replace it with a pedestal. Ms. Gebka stated they are basically elevating everything that is currently in the ground, and Mr. Jeter agreed.
Ms. Gebka asked about the “bullets” that are in the Township. She stated she has a bullet

in her rear yard from the last upgrade. She asked if this bullet will be removed and is this part of their plan for maintenance, and Mr. Jeter stated he is not sure. He stated this would be a company decision whether it would remain or not.

Ms. Gebka stated Mr. Jeter had indicated that they were not moving the lines from the back yard to the front, but she stated this had already been done and asked why this would be brought up again. Mr. Jeter stated he does not know her specific street but there are several streets where rear easement to front easement was initially what they wanted to do, but they did not proceed with this. He is not sure when this was done at her property. He stated they stopped that project and moved forward with the general aerial improvement project and the limited number of pedestals that they were able to place as part of the improvement project.

Mr. Steve Autin, 1573 Silo Road, stated Mr. Jeter testified that Comcast began the process in December, 2006, and Mr. Jeter agreed. Mr. Autin asked if he is aware whether the Comcast attorney contacted the Zoning Hearing Board or Lower Makefield before that date with regard to the project, and Mr. Jeter stated they did not. Mr. Autin noted the notes that Mr. Jeter referred to this evening, and asked if he prepared them.
Mr. Jeter stated he did. Mr. Autin asked if his attorney helped him prepare them, and Mr. Jeter stated he did not. Mr. Autin stated Mr. Truelove had asked if he referred to a file to prepare his notes, and Mr. Jeter stated he did. Mr. Autin asked if he still has the file, and Mr. Jeter stated he does. Mr. Autin asked that the file be provided to Mr. Jeter's Counsel so that it could be produced later. Mr. Garton stated to the extent that it relates to the entries that are in the notes that Mr. Jeter testified from, they will produce the items related thereto; but the entire file is not the subject of these proceedings. Mr. Autin stated it will be when they take their trip to District Court.

Mr. Autin stated Mr. Jeter testified that the improvement plan was for 76 existing vaults, and Mr. Jeter agreed. Mr. Autin stated Comcast does have the technology to put its equipment underground, and Mr. Jeter stated they have vaults in the ground today and they want to remove those vaults and install pedestals. Mr. Autin asked if the equipment that is in the vaults the same equipment that will go in the pedestals, and Mr. Jeter stated in most cases this is correct. Mr. Autin asked if Mr. Jeter is aware that Comcast has existing pedestals in the Township, and Mr. Jeter agreed. Mr. Autin stated Mr. Jeter indicated that it was Comcast's intent to minimize the number of pedestals; and Mr. Jeter stated as part of the improvement project they tried to minimize as many pedestals as they could. Mr. Autin stated the minimization applies only to new pedestals and not removing the existing pedestals that will be obsolete if the project goes forward.
Mr. Autin asked if Comcast has any plan to remove existing pedestals, and Mr. Jeter stated they do not to his knowledge. Mr. Autin stated by existing pedestals, he means the pedestals that will be rendered useless or obsolete by the installation of the new system.

Mr. Garton objected adding that there was no testimony that they would be rendered obsolete. Mr. Malinowski sustained the objection.

Mr. Autin asked if Comcast plans to use all its existing pedestals if the improvement goes forward as planned, and Mr. Jeter stated they would continue to use them to his knowledge. Mr. Autin stated if Comcast completes its plan as proposed to the Township there will be no pedestal unused in the network, and asked Mr. Jeter if this is correct.

Mr. Malinowski stated this question was asked and answered twice. Mr. Autin asked for leniency noting Mr. Malinowski opened the meeting by saying "Comcast can insert the pedestals wherever they want," and he feels Mr. Malinowski is in a position before the Township with a particular bias. Mr. Malinowski stated he read from the Ordinance and from the Franchise Agreement. Mr. Malinowski stated questions may be asked of the witness related to his testimony.

Mr. Autin asked Mr. Jeter if he prepared notes contemporaneously with the meetings he had with the Township, and Mr. Jeter stated he did from time to time. Mr. Jeter asked if these notes are in his file, and Mr. Jeter stated they likely would be.

Mr. Autin stated Mr. Jeter had previously stated that he understood that Comcast had the right to install the approximately 52 pedestals that have been installed so far, and Mr. Jeter agreed. Mr. Autin asked the basis for this belief, and Mr. Jeter stated it is the Franchise Agreement with the Township. Mr. Autin asked if there is anything else that supports his belief, and Mr. Jeter stated it is codified by the Ordinance which accompanied the Franchise Agreement – Ordinance 357. Mr. Autin asked if there is anything else that supports his belief, and Mr. Jeter stated there is not other than the Franchise Agreement and the Ordinance. Mr. Autin asked if this is the exhaustive list, and Mr. Jeter stated this is what he is aware of.

Mr. Autin asked if Comcast contracted out the task of hanging the door hangers to those residents who were going to have a pedestal installed on their property, and Mr. Jeter agreed. Mr. Austin asked to whom this contract was awarded.

Mr. Garton objected as irrelevant, and Mr. Malinowski sustained. Mr. Autin objected to the ruling.

Mr. Truelove stated Mr. Jeter testified that there was a list of the people on whose houses the door hangers were placed, and Mr. Jeter stated it would be the list they came up with of those individuals where pedestals were installed or future pedestals would be installed and the list would include those residents and the residences that were surrounding those impacted. Mr. Truelove stated Mr. .Jeter testified that he personally did not have the list, and Mr. Jeter stated he does not have that list. Mr. Truelove asked if there is a list at Comcast somewhere, and Mr. Jeter stated he does not know. Mr. Truelove asked through Counsel that Mr. Jeter make an inquiry as to whether that list exists.

Mr. Truelove asked if there is a sample of the door hangers, and if so he would ask through Counsel that one of those be supplied. Mr. Garton stated they have already agreed to provide that.

Mr. Truelove stated Mr. Goldberg asked in reference to Gold 2 about the power supply unit, and it was noted Gold 3 was the power supply. Mr. Truelove stated the power supply is not a pedestal, and Mr. Jeter stated it is a power supply. Mr. Truelove stated the Applications submitted were for 76 pedestals and not for power supplies, and Mr. Jeter agreed. Mr. Truelove asked how many power supplies have been erected or installed within the last two to three years, but Mr. Jeter did not have this information.
Mr. Truelove asked if he is aware that there are some that have been installed or erected, and Mr. Jeter stated he is not aware of them. Mr. Truelove asked if what he was shown in Gold 3 would refresh his recollection that at least one power supply has been erected or installed in the last two to three years, and Mr. Jeter stated he cannot support the validity of when exactly it was installed, but he can state that it is a power supply unit. Mr. Truelove asked Mr. Jeter if he would agree that it is an above-ground structure, and Mr. Jeter agreed.

Mr. Truelove asked of the 76 pedestals that have been applied for by Permit, did any of those involve rear easement to front easement pedestal erection, and Mr. Jeter stated they did not to his knowledge.

Mr. Gruen asked if it is correct that the notices are given three days prior to the work being done, and Mr. Jeter agreed. Mr. Gruen asked if they feel a resident's concerns could be resolved in three days, and Mr. Jeter stated they would try to make every effort they could; and if there was work scheduled he would go back to the project manager and would try to work with the resident in an effort to resolve whatever issue they may have and he feels this could be done in that timeframe.

Mr. Zamparelli asked if Comcast ever mails these notices rather than putting them on doors; and Mr. Jeter stated while they could consider this moving forward, they felt the best method was to door hang at the time of the project and this is what they have done in similar projects.

Mr. Jerry Scheliga was sworn in and stated he is employed by Motorola. He stated he is an electrical engineer having graduated from Temple University in 1978. He was a design engineer at Infinetics working on circuit design for one year and then an applications engineer for Vishay Intertechnology where he was an applications engineer working on high-reliability projects where there were technical needs beyond the products they provided, and his job was to either improve the products to function in unusual situations or help people understand what their devices could do. These devices were electronic parts – resistors, potentiometers. He worked at that position for approximately five years. He then worked for Gerald Electronics beginning in 1983

which became a portion of General Instrument which ultimately was purchased by Motorola in 2001 His initial responsibility was to represent all the products made over the time including set-top boxes, amplifiers, etc.

Mr. Malinowski stated at this point in the Hearing, they are considering the Cease and Desist. Mr. Garton stated as to the Cease and Desist component, he has no further evidence to present. Mr. Toadvine asked how long it will take to question this witness, and Mr. Garton estimated it could take thirty minutes. Mr. Truelove stated his intention was to present Ms. Frick although he was not necessarily prepared to do this. He stated he could have her go through her file to present their position on some of the testimony Mr. Jeter gave and he estimates this would take until the conclusion at 10:00 p.m. Mr. Malinowski asked Mr. Garton to hold this witness until they get to that portion of the Application.

Ms. Nancy Frick was called and it was noted that she was previously sworn.
Mr. Truelove stated while Ms. Frick will be referring to a number of documents, e-mails, and letters during her testimony, he does not have copies of these available this evening; but will make them available following the meeting.

Ms. Frick stated in her capacity as the Zoning, Inspection, and Planning Director in Lower Makefield, she first became familiar with the Comcast pedestal issue on 7/11/07.

Mr. Truelove asked if it is customary for her to maintain files on projects in the Township, and she stated it is. He asked if she maintained a file on this matter, and she stated she did. She stated she has this file with her this evening and maintains that all the important documents and communications are in this file. This project is numbered as Zoning Hearing Board Appeal #08-1480.

Ms. Frick stated she opened up the file because she received a copy of an e-mail from Terry Fedorchak to Brian Jeter that read as follows: "I think we may have a problem. You are installing above-ground pedestal boxes in Sandy Run II Development within Township right-of-ways. You do not have a Permit for this, and I believe it is a violation of our previous agreement with Comcast. You need to immediately send your staff to the Township Building to discuss this with our Zoning Officer, Nancy Frick. I advise you to stop work immediately."

Mr. Truelove asked what happened after that initial communication, and Ms. Frick stated she called Brian Jeter and left a voice mail to contact her, and asked Mr. Habgood, the Code Enforcement Officer, to go out and take some pictures of some locations because on the same day she received a call from Bernie Goldberg that they were doing work in his neighborhood. She stated the pictures Mr. Habgood took are in the file. Mr. Truelove stated they will produce those photos later. Ms. Frick stated the photos reflect what they called in the 90's "lobster boxes."

Mr. Truelove stated Mr. Jeter testified that from the time he was responsible for Comcast Government relations from December 2005 to the present, he had never applied for Permits, and Ms. Frick agreed. Mr. Truelove asked Ms. Frick if she was familiar with Comcast representatives before December, 2005, and Ms. Frick stated she was.
Mr. Truelove stated at a previous Hearing Mr. McIntyre was present, and Ms. Frick agreed and stated she was familiar with him from the 1990's as he was involved with the previous Zoning Hearing Board Application and from making Application subsequent to those meetings for Building Permits with Brenda McCullough who was with Time Warner at the time. Time Warner was the predecessor to Comcast for the area where cable service was being provided in Lower Makefield. Mr. Truelove asked up until what time were Permits being requested for any work by Mr. McIntyre, Ms. McCullough, or someone on their behalf, and Ms. Frick stated it was up to and including 2002.
Mr. Truelove asked if this included pedestal installations, and Ms. Frick stated it did.
Mr. Truelove asked if since that time, until she became familiar with this project under discussion, was Ms. Frick aware that any pedestals that were installed or erected in the Township, and Ms. Frick stated she was not.

Mr. Truelove asked what was done once Mr. Habgood took pictures of pedestals in Sandy Run, and Ms. Frick stated she had a phone conversation with Mr. Jeter, and he followed up with a letter to her dated 7/16/08 after they made contact on 7/12/08.
Ms. Frick read the letter dated 7/16/08 as follows: "Following up our conversation of the 12th regarding the Comcast improvement project in the Township, thank you for taking the time to talk to me. As I explained, the project has been underway in the Levittown cable system for several months impacting nine Municipalities. The purpose of this project is to enhance system reliability and launch future enhanced services like Comcast Digital Voice and phone service. The project focuses on aerial cable and some underground cable facilities or equipment if required. Customers will benefit from the improvements particularly with the future launch of advanced services. Earlier this year company representatives met with Terry Fedorchak, Township Manager, in an informal meeting to discuss the upcoming project. At that meeting, Comcast only provided preliminary information. Mr. Fedorchak requested specific information such as the time the project would begin; and equally as important, he shared particular concerns about the underground portion of the project given the experience with the previous cable operator during the early 1990s. Keeping in mind the concerns Mr. Fedorchak shared, Comcast engineers re-designed the project to keep customer impact at a minimum particularly rear easement relocation of cable facilities, vaults, and pedestals. As a result of the re-design, Comcast would no longer need to relocate the rear easement facilities and would limit the amount of underground work required to improve the cable system. As requested by Mr. Fedorchak, Comcast notified the Township on 4/18 and 6/11 with details regarding the project. Under separate cover, I have forwarded copies of those notifications. These notices provided details about the project and mentioned the possibility of removing underground facilities which unfortunately can cause service interruptions for customers and limit our ability to launch advanced services like CDV. In addition to the notices,

Comcast provides the Township with daily street sheets highlighting the specific locations of where company construction and contractors are working and samples of customer notices such as door hangers which are placed on homes three days prior to construction activity. That said, last week Mr. Fedorchak's office brought to our attention two customer complaints – University Drive and Sandy Run about the removal of underground vaults which were replaced with above ground pedestals. Once notified, Comcast contacted the concerned residents and ceased all underground work in order to work with the Township regarding the possibility of future above ground pedestals. In conclusion the company understands the possibility that requirements may exist in the Township regarding above ground facilities in the Municipal right-of-way and equally as important the concerns from residents about these facilities. However, in order to continue to improve cable system reliability and launch future advanced services, the company may need to replace some underground facilities with above ground pedestals. The company is more than willing to work with the Township via Permits, etc. in order to for us continue the underground portion of the project. I will contact you to schedule a meeting next week so we can further discuss this matter, specifically the underground portion of the project…."

Mr. Truelove stated he mentioned notices to residents in the letter, and asked if she ever saw any notices that were supplied to residents, and Ms. Frick stated she did not. Mr. Truelove stated he also mentioned door hangers, and asked Ms. Frick if she had ever seen any copies of these; and she stated she did not. Mr. Truelove stated he also mentioned daily street sheets, and asked if she was every supplied copies of these, and Ms. Frick stated she was not.

Mr. Truelove asked the next communication with Mr. Jeter or anyone else from Comcast with respect to this issue. Ms. Frick stated she and Mr. Habgood, the Code Enforcement Officer, met with Mr. Jeter on 7/19/07 to find out what kind of work they were doing. She stated they were going to cease all pedestal upgrade work. They indicated they re-designed the project four to five months ago. Mr. Truelove asked how many pedestals had been installed up to that time, but Ms. Frick stated she did not know. Mr. Truelove asked if she was supplied any numbers from Comcast as to how many they felt had been installed, and Ms. Frick stated she had requested this information from Mr. Jeter numerous times, but she had not received this to date.

Ms. Frick stated she called Mr. Jeter on Friday, August 10, and Mr. Jeter responded on Monday, August 13, and he advised that on Monday or Tuesday he would be dropping off at the Township the Permit Applications, maps, and some materials that had previously been discussed. Ms. Frick stated the next correspondence was from Janet Steiner, who she understands is Mr. Jeter's assistant, who sent an e-mail as follows: "I've almost finished the Applications – it's Friday August 24. I have a couple of questions for you. I have divided them by development per your suggestion as they are all in the Municipal right-of-way. I have placed the information 'Lower Makefield

Township' on the Permits and have typed a list of street addresses where the work will be performed. Do I attach it to the front or the inside? Also what do I put under Identification under the owner portion of the Application. I previously put Comcast there. We were thinking we were the owners of the equipment being replaced, but you told me that was incorrect. Please advise."

Mr. Truelove stated Ms. Steiner mentioned doing Permits on a development-wide basis and he asked Ms. Frick if she had a discussion with Mr. Jeter about this, and Ms. Frick stated she did many times. Ms. Frick stated when they had worked out the previous Settlement Agreement there were four different types of Permits they had to get – Sandy Run Permits, Upgrade, Future Permits, and New Construction. She stated they got them for the entire development, paid one fee, one Application, one map with all of them for that development noted on it. She stated she described this to Mr. Jeter as when they did this before it seemed to go very smoothly for the Township and the Applicant and she felt this would be a good way to handle it.

Ms. Frick stated she e-mailed answers to Ms. Steiner on August 24 that they did not have to attach the typed sheet, and putting the list inside the Permit jacket was fine, if the equipment was to be in the right-of-way of a Township-owned road, the Township would be listed as owner and if the equipment was going on private property, the individual property owner would be listed." Ms. Steiner e-mailed back that they would have the Applications completed early next week.

Ms. Frick stated there was an e-mail from Terry Fedorchak to Mr. Jeter dated 8/17 which indicated that they made an attempt to submit Permits for 28 pedestals and they would discuss this further. She stated Mr. Fedorchak responded by e-mail on 9/6 as follows: "Brian, Comcast continues to install the above-ground boxes and you have not followed through with your promise to submit Permits for these structures. Many are in the Township right-of-way and we have not given you permission to erect these structures. Please advise me of your intentions."

Mr. Truelove asked if the Applications referred to in Ms. Steiner's 8/24 e-mail were submitted, and Ms. Frick stated they were not. Mr. Truelove asked Ms. Frick if, as of that time, she had any idea as to how many more pedestals had been installed without Permits, and Ms. Frick stated she did not. Mr. Truelove asked if she was aware that more were being installed, and Ms. Frick stated she was aware of this since she received a message from Ann Peavey, 1161 University Drive, who called on 9/6 and indicated that she felt the agreement was that the boxes would not be put above ground. She had called Comcast but did not get a response, and she asked to speak to someone at the Township. Ms. Frick stated she did return her call that day. Mr. Truelove asked if either Ms. Frick or Mr. Habgood went out to confirm that there were more pedestals being constructed between August 17 and September 6; and Ms. Frick stated if they were advised of a

location, they did go out to the property and take pictures. Mr. Truelove stated he understands that Ms. Frick and Mr. Habgood, apart from clerical help, are the Zoning and Code Enforcement Office, and Ms. Frick agreed.

Mr. Truelove asked what occurred after 9/6, and Ms. Frick stated there was an e-mail from Mr. Jeter to Mr. Fedorchak dated 9/6 as follows: "Terry, I am sorry to hear this information from you. I am aware that we continued to place the pedestals since Nancy notified about the first two about a month ago. In fact, I have the Permits on my desk, ready to be submitted pursuant to the changes that Nancy suggested. We plan to submit them next week. I will check with our construction group and report back to you. Again I apologize, but it was not intentional." Ms. Frick stated the next communication was an e-mail from Mr. Jeter to Mr. Fedorchak dated 9/7 as follows: "Sorry I noticed a miscommunication in my response below. Please note that I was not aware that Comcast continued to place pedestals in the Township right-of-way. To my knowledge we stopped that construction activity pending the submission of the Permits.

Ms. Frick stated she e-mailed Mr. Jeter on 9/7, which read as follows: "I just wanted to clarify that my last correspondence with Comcast took place with your assistant on Friday, August 24 via e-mail. In that correspondence, she had a couple of questions which I answered that same day. Her reply to me responding to her questions was, 'Got it – we should have them completed early next week,' which would have been the beginning of the week of August 27. We are now almost another two weeks past that date. Again, if you need anything additional, please feel free to contact me, otherwise we await your submittal."

Ms. Frick stated she then received an e-mail from Mr. Jeter dated 9/7 which read, "Nancy, thanks for the follow-up and yes you spoke with Janet. We had an unanticipated delay in obtaining some of the information you suggested or required that we include with the Permit Applications. I will submit the Applications next week."

Ms. Frick stated she sent an e-mail on 9/7 to Mr. Jeter as follows: "Brian, I left you a voice mail message minutes ago and am trying to set up a meeting early next week with David Truelove, Township staff, and Comcast. It looks like Tuesday, September 11 at 2:15 would work for all involved on our end. Please get back to me to confirm same as soon as possible." Mr. Truelove asked the purpose of this meeting, and Ms. Frick stated she believes that it was to go over once again when these Permit Applications were going to be submitted and try to get exact information as to what they were doing, where they were doing it, and what kind of installations they were doing. She stated the meeting did take place on September 10 with Brian Jeter, Bill Beckman of Comcast, David Truelove, herself, and Bob Habgood. Prior to that meeting they did get a response as to when Comcast could make the meeting. Mr. Truelove asked Mr. Beckman's role, and Ms. Frick stated he is the Construction Manager. The meeting took place in the Township Building for approximately one and a half hours. By the end of the meeting,

she felt it was understood that the Township needed definitive locations and definitive information with regard to exactly what would be installed where including the development, how many pedestals, and the kind of boxes. Mr. Truelove stated this was the same information requested previously, and Ms. Frick agreed. She stated the Township requested that this information be provided as soon as possible. She added they tried to get exactly how many would be replaced in the Sandy Run Development and how many were located in the Township right-of-way. She stated in her notes it indicates that there were about 30 in the Township right-of-way and about 14 in Sandy Run.

Mr. Malinowski stated when these discussions were taking place, did the Township advise Comcast that they were opposed to this and did not feel they had the right to put the pedestals in the right-of-way; and Ms. Frick stated the Township told them this from day one. Mr. Malinowski stated it appears that Comcast knew all along that the Township's position was that they could not put these in the right-of-way, and Ms. Frick agreed. Mr. DosSantos asked if this is in any of the e-mails, and Ms. Frick reminded about the e-mail from Mr. Fedorchak that said, "you cannot put them in the right-of-way." Ms. Frick stated when she became aware of this issue, Comcast did not know whether they were going in rear yards, right-of-ways, what type of installations they were; and she was trying to get all along what was going in where. She stated she feels they started with 28 boxes and it got up to 82 and she could never get a total, and they will see in future e-mails how she became frustrated.

Mr. DosSantos asked Ms. Frick when was the first time that she was aware that an installation had taken place, and Ms Frick stated it was 7/11/07 when she was called by a resident. She stated as a result of the call, she did speak to Mr. Fedorchak and he sent the e-mail to Mr. Jeter, and Ms. Frick then opened up a file on this matter.

Following the 9/10 meeting with Mr. Jeter, Ms. Frick stated she received an e-mail from Brian Jeter dated 9/13 as follows: "Nancy, I was out of the office yesterday and traveling today. Please e-mail me if I can answer any questions or concerns. Bill and I are still working on information we discussed last week." Ms. Frick stated she received another e-mail from Mr. Jeter dated 9/13 as follows: "Nancy as a follow-up to my below e-mail, I understand that you spoke with Bill (Beckman) yesterday. We are continuing to do a field survey based on the information discussed at Tuesday's meeting. That said, it is likely that we will not have all the information collected by Friday. Therefore I will contact you Monday and let you know when next week we will provide all the applicable information. In the meantime please contact Bill or I with any questions." Ms. Frick sent back an e-mail that same day reporting that the reason she had contacted Mr. Beckman because she was unable to contact Mr. Jeter by either an office or cell phone number. She also added, "Brian, as you are aware the Township has been patiently awaiting your submittal of these Permit Applications for the new above-ground structures since our first meeting regarding this matter took place which was on 7/19/07 almost two months ago.

The Township needs to be in receipt of these Permit Applications by Monday, September 17, 2007 3 p.m. at the latest. Again, if you need anything additional from the Township in this regard, please feel free to contact me."

Ms. Frick stated again on 9/13 she received an e-mail from Mr. Jeter that stated: "Hello I'm traveling on business and will have limited access to e-mail. I will return to the office on Friday, and respond at that time. If the message is urgent, you can reach me on my cell." Ms. Frick e-mailed back indicating she would await his e-mail the next day and also advised she left a message with Ms. Steiner but had not received a response. Ms. Frick stated she sent Mr. Jeter an e-mail on Friday, September 14 advising of the inability to contact him through his cell phone. Mr. Jeter responded by e-mail with his cell phone number, and Ms. Frick again e-mailed back indicating that she was unable to get through to him at that number.

Mr. Truelove stated he feels this testimony is going to take more time to get through Ms. Frick's file. There was discussion on when the matter should be continued. Mr. Toadvine stated they will have to have at least one more meeting and they are running into time constraints. He asked Mr. Garton if he was willing on behalf of the Applicant to waive the requirements under the MPC to complete the case within 100 days, and Mr. Garton agreed. Mr. Toadvine stated he assumes the waiver of the time limits would continue provided the Township is diligent in continuing to schedule meetings to accommodate both the Township and Comcast, and Mr. Garton agreed.

Mr. Goldberg stated he understands that at this point they are deciding on the Cease and Desist, and Mr. Malinowski agreed. He stated there are two parts to the Appeal – the first being the determination of the Zoning Officer and the second is the Application for the Special Exception in that if the Zoning Hearing Board agrees that the Zoning Officer was correct, they are requesting a Variance in order to install the pedestals.

After discussion, it was agreed to continue the matter to Thursday, October 30th at 7:00 p.m. Mr. Bamburak moved, Mr. DosSantos seconded and it was unanimously carried to continue the matter to Thursday, 10/30/08 at 7:00 p.m.

There being no further business, Mr. Smith moved, Mr. Gruen seconded and it was unanimously carried to adjourn the meeting at 10:00 p.m.

Respectfully Submitted,

Gregory J. Smith, Secretary