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22 South Duke Street
Lancaster, PA 17602
(717) 299-0711

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

PPL ELECTRIC UTILITIES
CORPORATION, FORMERLY KNOWN AS
PENNSYLVANIA POWER & LIGHT CO.,
Plaintiff,

vs.

MAW COMMUNICATIONS, INC. and
FRANK T. WICKOWSKI, PRESIDENT,
Defendants,

and

CITY OF LANCASTER,
Intervenor.

: IN THE COURT OF COMMON PLEAS
: OF LEHIGH COUNTY, PENNSYLVANIA

: CIVIL DIVISION – LAW

: File No. 2017-C-3755

: HON. EDWARD D. REIBMAN

MOTION OF INTERVENOR FOR LEAVE TO FILE CROSS-CLAIM

1. The above-captioned litigation was instituted on December 5, 2017. At that time, the parties were only PPL, MAW, and Frank Wiczowski.
2. The initial scope of the litigation involved PPL's request for declaratory and injunctive relief that MAW and Mr. Wiczowski (hereafter "MAW") were in violation of its pole attachment procedures, as well as ancillary economic relief.
3. By agreement, an order was entered December 22, 2017.
4. Subsequently, PPL brought a petition alleging that MAW was in violation of the agreement, in the form of PPL's Motion to Vacate Stipulation filed February 16, 2018.

5. MAW filed responses to the petition and the City of Lancaster filed a petition for leave to intervene on February 26, 2018.
6. Hearings were held on March 23 and March 28, 2018.
7. At the conclusion of the hearings, on April 13, 2018, the court granted injunctive relief to PPL and granted leave for the City of Lancaster to intervene.
8. Although the City had presented a draft answer as an exhibit to its Petition for Leave to Intervene, due to the fact that the Order of April 13, 2018, was dispositive of the issues raised in the draft answer, the exhibit was never filed of record.
9. Since April, 2018, the parties have attempted to resolve the attachment issues, without success.
10. On December 4, 2018, MAW submitted a series of invoices totaling \$1,263,536.12 to the City of Lancaster. The City responded with an analysis of the invoices by letter on January 23, 2019, and MAW by its counsel sent a response on February 8, 2019.
11. One of the issues respecting the invoices, as more fully detailed in the Answer and Cross-Claim, is that the court's Order of April 13, 2018, is not *res judicata* of whether MAW has been guilty of "negligence or willful misconduct." Those terms are material to the license agreement between the City and MAW because whether the parties are entitled to indemnification or reimbursement of losses depends on whether the conduct at issue constitutes negligent or willful misconduct.
12. MAW takes the position that unless there is a final Order, there is no final judicial determination that MAW is guilty of "negligence or willful misconduct."
13. By filing this pleading, the City of Lancaster seeks a final judicial order to aid in the resolution of its dispute with MAW respecting the invoices.

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14. The City seeks to file Exhibit "A" as its Answer and Cross-Claim.
15. The purpose of the proposed pleading is to obtain declaratory relief with respect to the license agreement between the City and MAW Communications.
16. Allowing the Answer and Cross-Claim would result in the economy of judicial resources because the court is already familiar with the facts of the case and is in a position to issue declaratory judgment based upon the record already made.
17. Allowance of the Cross-Claim will not delay the proceedings because the matters complained of are already of record and the matter can be decided without additional hearings specific to the City's issue.

WHEREFORE, Defendant-Intervenor City of Lancaster prays your Honorable Court for leave to file the Cross-Claim attached hereto as Exhibit "A."

Dated: 4/5/19

ZIMMERMAN, RFANNEBECKER,
NUFFORT & ALBERT, LLP

By: 

Neil L. Albert, Esquire
Attorney for Intervenor
Attorney I.D. No. 23368
22 South Duke Street
Lancaster, PA 17602
(717) 299-0711

VERIFICATION

I, DANENE SORACE, verify that I am the Mayor of the City of Lancaster herein and that I have the authority to sign this Verification on its behalf. I further verify the statements made in the foregoing Petition of Intervenor for Leave to File Cross-Claim are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

DATED: 3/8/19



DANENE SORACE

Neil L. Albert, Esquire
Attorney I.D. No. 23368
Zimmerman, Pfannebecker, Nuffort & Albert, LLP
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PPL ELECTRIC UTILITIES	:	IN THE COURT OF COMMON PLEAS
CORPORATION, FORMERLY KNOWN AS	:	OF LEHIGH COUNTY, PENNSYLVANIA
PENNSYLVANIA POWER & LIGHT CO.,	:	
Plaintiff,	:	CIVIL DIVISION – LAW
	:	
vs.	:	File No. 2017-C-3755
	:	
MAW COMMUNICATIONS, INC. and	:	
FRANK T. WICZKOWSKI, PRESIDENT,	:	HON. EDWARD D. REIBMAN
Defendants,	:	
	:	
and	:	
	:	
CITY OF LANCASTER,	:	
Intervenor.	:	

NOTICE TO PLEAD

TO: MAW COMMUNICATIONS, INC.
FRANK T. WICZKOWSKI, PRESIDENT

You are hereby notified to file a written response to Cross-Claim of City of Lancaster vs. Maw Communications, Inc. and Frank T. Wiczowski, President, within twenty (20) days from service hereof or a judgment may be entered against you.

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT, LLP

Dated: _____

By: _____
Neil L. Albert, Esquire
Attorney for Intervenor
Attorney I.D. No. 23368
22 South Duke Street
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PPL ELECTRIC UTILITIES	:	IN THE COURT OF COMMON PLEAS
CORPORATION, FORMERLY KNOWN AS	:	OF LEHIGH COUNTY, PENNSYLVANIA
PENNSYLVANIA POWER & LIGHT CO.,	:	
Plaintiff,	:	CIVIL DIVISION – LAW
	:	
vs.	:	File No. 2017-C-3755
	:	
MAW COMMUNICATIONS, INC. and	:	
FRANK T. WICZKOWSKI, PRESIDENT,	:	HON. EDWARD D. REIBMAN
Defendants,	:	
	:	
and	:	
	:	
CITY OF LANCASTER,	:	
Intervenor.	:	

**CROSS-CLAIM OF CITY OF LANCASTER vs.
MAW COMMUNICATIONS, INC.
AND FRANK T. WICZKOWSKI, PRESIDENT**

1. The prior pleadings filed in this case are incorporated herein as if set forth at length.
2. This Cross-Claim is being brought pursuant to the Uniform Declaratory Judgments Act, 42 Pa.C.S.A. 7538.
3. Cross-Claimant is Defendant-Intervenor City of Lancaster, 120 North Duke Street, Lancaster, Pennsylvania 17602.
4. Defendants in the action and upon the Cross-Claim are MAW Communications, Inc., a corporation organized and existing under the laws of the

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Commonwealth of Pennsylvania with a principal place of business at P.O. 978, Reading, Pennsylvania 19603, and Frank Wiczowski, president of MAW (hereinafter "MAW").

5. December 23, 2014, the parties entered into a Municipal Carrier Agreement, a true and correct copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference as if set forth at length.

6. Pursuant to that Agreement, the City assigned to MAW the right to utilize its existing cable network for the installation of a new fiber optic cable.

7. A large component of MAW's installation involved attachments to utility poles owned by Plaintiff Pennsylvania Power & Light Company.

8. MAW failed to make the attachments in accordance with industry standards and/or the portal submission procedure mandated by PPL.

9. As a result of MAW's failure, PPL brought the above-captioned action. Following hearings, the court issued an injunction on April 13, 2018.

10. The court's order determined that MAW had violated mandatory PPL procedures respecting the installation of fiber optic cable.

11. On December 4, 2018, MAW submitted a series of invoices totaling \$1,263,536.12 to the City of Lancaster for work allegedly related to the fiber optic network. The invoices are not attached by reason of their bulk, but both parties are in possession of the invoices.

12. On January 23, 2019, the City of Lancaster by its counsel responded to the invoices. A true and correct copy of the City's letter is attached hereto as Exhibit "B" and incorporated herein by reference as if set forth at length.

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13. MAW Communications, Inc. and Frank T. Wiczowski by their counsel responded by letter of February 8, 2019. A true and correct copy of that letter is attached hereto as Exhibit "C" and incorporated herein by reference as if set forth at length.

14. One of the points of disagreement between the parties is noted in the response of MAW Communications in Exhibit "C" as follows:

In reviewing the MCA agreement, there are cross-indemnifications in this matter so long as damages are not the result of "negligence or willful misconduct." I am aware of the final two paragraphs of your letter which indicate that the Order of April 13, 2018 acts a *res judicata* on the merit of MAW's actions. However, the face of the Order itself belies this. The Order explicitly stated it was entered without any prejudice as to the underlying merits of any party's claims, counterclaims, or defenses. Based on our reading, this Order was meant to set forth the dictates the parties must follow during the pendency of the litigation, but in no way was a determination of liability, breach, or any other matter which underlies the claims pending before the Court. As such, the City's position that MAW has any liability related to this litigation is premature, especially in light of the fact no final order has been entered determining that MAW is liable in any form.

Further, absent a finding of negligence or willful misconduct, MAW and the City have agreed to indemnify each other in relation to the MCA for costs incurred. Until such a finding of negligence or willful misconduct is entered, the City is acting prematurely in seeking any payment from MAW in this matter. The April 13th Order is not a final order, does not touch on the merits of the underlying causes of action, and in no way acts as a *res judicata* in the matter.

15. Although the agreement between the City and MAW provides for arbitration, the court's issuance of a final Order is a factual predicate to the arbitration and does not interfere with the ability of the arbitrator to resolve the dispute. Indeed, by

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removing a potential issue, the declaratory relief in this matter would facilitate the arbitration by narrowing the scope of dispute between the parties.

WHEREFORE, Defendant-Intervenor City of Lancaster requests that this matter proceed to a final hearing and that the Court enter a declaratory judgment that MAW has engaged in negligence or willful misconduct as that term is used in the agreement between the parties.

Respectfully submitted,
ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT, LLP

Dated: _____

By: _____
Neil L. Albert, Esquire
Attorney for Intervenor
Attorney I.D. No. 23368
22 South Duke Street
Lancaster, PA 17602
(717) 299-0711

MAW Communications Inc.

***Municipal Carrier Agreement
Between***

MAW Communications, Inc.

And

The City of Lancaster

December 2014

MAW Communications Inc.

This Municipal Carrier Agreement (the "Agreement"), as of December 23, 2014, supersedes all previous agreements between the City of Lancaster, which has a principal place of local governance at 120 North Duke St, Lancaster Pa, 17608 ("Licensee") and MAW Communications, Inc., ("Licensor") having a principal place of business at PO Box 978, Reading PA 19603.

WHEREAS, MAW is a Certified Pennsylvania Public Utility and has easements, conduit rights, pole attachment and license agreements to construct, install, operate, maintain, modify, replace or remove an optical fiber communications network ("Licensor's Network") for the provisioning of communications services, in and around Lancaster, Pennsylvania; and

WHEREAS, Licensee desires a license to use Licensor's Network; and

WHEREAS, Licensor agrees to grant such license subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

As used in this Agreement

1.1 Authorized Use means Licensee may only use Licensor's optical fiber telecommunications network exclusively for Telecommunications Services for the City of Lancaster. For purposes of this definition, this Authorized Use shall be limited to internal telecommunications traffic among its operating entities directly under the control of the City of Lancaster.

1.2 Fiber Optic Facilities means one or more fiber optic strands subject to this Agreement through which an associated light, signal or light communication transmission must be provided to furnish service.

1.3 Access to Licensor's Network means Licensee may, throughout the term of this Agreement, utilize Licensor's Network for the provisioning of Telecommunications Services in accordance with the Authorized Use and the terms and conditions contained herein.

1.4 Hazardous Substances include any substance the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law or any substance which is or becomes defined as "Hazardous Waste," "Hazardous Substance," pollutants, toxic substances, compounds, elements, or chemicals pursuant to the Comprehensive Environmental Response Act (42 U.S.C. § 651 et seq.), as amended, or any other federal, state or local environmental cleanup laws. Hazardous Substances also include asbestos, lead paint, Polychlorinated Biphenyls ("PCBs") and radon gas.

MAW Communications Inc.

1.5 Hazardous Discharge means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping of Hazardous Substances from, in, or onto Licensor's Underground Facilities.

1.6 IRU means the Indefeasible Right of Use for Licensor's Network that is granted to Licensee pursuant to this Agreement.

1.7 Dark Fiber means individual fiber optic strands within a segment of Licensor's Network, specifically Licensor's Fiber Optic Facilities, that are provided without the appropriate optical transmission equipment and that contains no less than eight unused fiber strands, as designated by Licensor.

1.8 Route means a Dark Fiber segment of Licensor's Fiber Optic Facilities that is licensed to Licensee, per the terms and conditions contained herein. Exhibit A shall contain the list of Routes in use throughout the term of this Agreement. The list of Routes in Exhibit A may only be amended upon written approval of both Licensee and Licensor. See Exhibit C.

1.9 Datagrams shall mean: Any user data or digital information, without regard to its origin, whether the data represents information, voice, video, and or audio.

1.10 Competitor shall mean: Any Telecommunications Carrier, Any company, entity, government entity, authority, partnership, etc. that is directly or indirectly involved in the delivery, access to, and or transportation of Datagrams.

1.11 Over Lashed shall mean: Any of Licensee's existing aerial fiber facilities that are over lashed with Licensor's Fiber Optic Facilities.

1.12 Route Outage shall mean: Any of Licensee's Dark Fiber Routes that will not pass coherent photons at either 1310 nm or 1550 nm from Licensee's interface end points.

1.13 Intrinsic Costs shall mean: Costs that are the responsibility of Licensor that are Intrinsic to this Agreement.

2. GRANT OF LICENSE

2.1 Licensor grants to Licensee and Licensee accepts from Licensor an indefeasible right of use for Authorized Use of Licensor's Fiber Optic Facilities along specific Routes (the "IRU"), as provided in this Agreement. Licensee shall have no further right, title or other interest in Licensor's Network or in Licensor's Fiber Optic Facilities. Licensor shall have the right to grant and renew rights to any entity to use Licensor's Network or any other property of Licensor; provided, however, that during the term of this Agreement, Licensor shall have no right to grant and renew any rights to any entity with respect to Licensee's Dark Fiber Strands.

2.2 Throughout the term of this Agreement, Licensee agrees that Licensee will not be a Competitor of Licensor.

MAW Communications Inc.

2.3 Licensee has acquired pole attachments and has erected fiber optic facilities that cannot be used by Licensor. However, under certain circumstances, these facilities can be Over Lashed with Licensor's Fiber Optic Facilities. Therefore, for the term of this Agreement, both Licensor and Licensee agree that Licensor shall maintain, per the terms of this Agreement, all of Licensee's fiber optic facilities that are Over Lashed by Licensor's Fiber Optic Facilities. Licensor shall obtain approval from Licensee for all Pole Attachments that are owned or controlled by Licensee that are to be Over Lashed by Licensor.

3. WORK

3.1 Licensor shall provide, construct and install, the Fiber Optic Facilities within Licensor's Underground Facilities and or Licensor's Aerial Facilities. Licensor covenants that the Routes of the Fiber Optic Facilities in use by Licensee shall be constructed substantially and in all material respects in accordance with Telecommunications industry standards.

3.2 When Licensor gives notice to Licensee that the Fiber Optic Facilities along the Route specified are complete, Licensee shall provide Licensor with notice accepting or rejecting by specifying the defect or failure that is the basis for such rejection of Licensee's Fiber Optic Facilities. If Licensee notifies Licensor of the rejection of a Route segment, Licensor shall promptly take all steps to repair or replace the relevant facilities, and the notification and acceptance process shall be repeated until successful. If Licensee fails to notify Licensor of its acceptance or rejection of the Licensee's Fiber Optic Facilities within fifteen (15) days after Licensee's receipt of notice, Licensee shall be deemed to have accepted Licensor's Fiber Optic Facilities.

4. LICENSE FEE

In exchange for the grant of the IRU hereunder, see Exhibit B. Except as contained in Exhibit B, no further consideration shall be owed by Licensee to Licensor for the grant of the IRU.

5. LICENSE TERM

5.1 The term of the IRU shall commence on the date first above set forth and shall continue for two hundred and forty (240) months, unless earlier terminated as set forth in this Agreement. Additionally, Licensee may extend the term beyond the initial term for four (4), two hundred and forty (240) month increments.

5.2 This Agreement may be terminated (a) at any time by mutual written consent of the parties, (b) by the non-defaulting party upon an uncured event of default in accordance with Section 15.

MAW Communications Inc.

5.3 Upon termination of this Agreement prior to the scheduled expiration of the term, Licensee shall cease use of Licensor's Fiber Optic Facilities within sixty (60) days of the termination date.

5.4 The provisions of Sections 2.2, 9, 12, and 16 shall survive termination or expiration of this Agreement in perpetuity.

5.5 Upon termination of this Agreement, any and all instances as defined in Exhibit C and their associated Routes are null and void.

6. OPERATION AND MAINTENANCE AND EXPANSION

6.1 Licensor and or its assigns shall be solely responsible to provide maintenance of Licensee's Fiber Optic Facilities. See Exhibit B Intrinsic Costs associated with maintaining Licensee's Fiber Optic Facilities. Licensee shall cooperate with and assist, as may be reasonably required, by Licensor in performing said maintenance. In the event of service outages or other maintenance request, Licensor agrees to use best efforts to respond within two (2) hours of time of notice.

6.2 See Exhibit C for Construction, Operation and Expansion.

6.3 Should Licensee perform, authorize, or contract any work on Licensee's Fiber Optic Facilities or within the Licensor's Network not in accordance with the provisions of this Agreement (specifically, without limit, article 6.1 stating Licensor must do the work), Licensor may at its option correct said condition. Licensor shall notify Licensee in writing prior to performing such work whenever practicable. However, when such conditions pose an immediate threat to the physical integrity of Licensor's facilities, Licensor may perform such work and take such action that it deems necessary without first giving notice to Licensee. As soon as practicable thereafter, Licensor shall advise Licensee of the work performed and the action taken and shall endeavor to arrange for re-accommodation of Licensee's Fiber Optic Facilities so affected. Licensee shall promptly reimburse Licensor for all costs per Exhibit B Intrinsic Costs, incurred by Licensor for all such work, action and re-accommodation performed by Licensor.

6.4 Licensor shall be responsible for obtaining and maintaining from the appropriate public or private authority any pole attachment agreements, franchises, licenses, state, local or right-of-way permits or other authorizations required to enter upon the property where Licensor's Network is located and to operate and maintain Licensee's Fiber Optic Facilities in Licensor's Network. Licensee will not engage in any activity that affects Licensor's right-of-way interests without the written permission of Licensor which permission shall not be unreasonably withheld. Licensee is responsible for any and all costs per Exhibit B Intrinsic Costs associated with Licensee's Fiber Optic Facilities.

6.5 Licensee must obtain prior written authorization from Licensor approving any work and the party performing such work before Licensee shall perform any work in or around Licensor's Network.

MAW Communications Inc.

6.6 In the event Licensee receives information that the Fiber Optic Facilities are damaged, it shall notify Licensor as promptly as practicable.

6.7 Licensor shall designate the particular Route of Dark Fiber that will constitute Licensee's Fiber Optic Facilities and the location and manner in which they will enter and exit Licensor's Network. Licensee shall have the right to access Licensee's Fiber Optic Facilities at the end point of each Route segment at a mutually acceptable demarcation point which shall be evidenced by customary documentation signed by both parties.

6.8 Any existing or future Pole Attachments and or new or existing aerial facilities owned by Licensee shall be available for Licensor to utilize by attaching to or by Over Lashing Licensee's aerial facilities. All of Licensee's Pole Attachments and or facilities that are utilized by Licensor shall be maintained by Licensor and governed by the terms of this Agreement. Licensor shall obtain written approval from Licensee for all Pole Attachments that are owned or controlled by Licensee that are to be Over Lashed by Licensor.

6.9 If Licensor moves, replaces or changes the location, alignment or grade of Licensor's Network ("Relocation"), Licensor shall concurrently relocate Licensee's Fiber Optic Facilities. If the Relocation is because of an event of Force Majeure or of the action of any governmental authority, including any taking by right of eminent domain, Licensee shall reimburse Licensor per Exhibit B Intrinsic Costs of the Relocation of Licensor's Network. To the extent Licensor receives reimbursement from a third party that is allocable to Relocation of Licensor's Network it will credit or reimburse Licensee for its proportionate share of the reimbursement. Licensor and Licensee shall cooperatively ensure any required relocations of MAW's Network shall be coordinated to ensure minimal impact to Licensor's and Licensee's Fiber Optic Facilities.

7. OWNERSHIP

Licensee's Fiber Optic Facilities shall at all times remain the sole and exclusive property of Licensor and legal title shall be held by Licensor. Neither the provision or the use of Licensee's Fiber Optic Facilities by Licensor to Licensee hereunder, nor the payments by Licensee contemplated hereby, shall create or vest in Licensee any easement, interest, or any other ownership or property right of any nature in Licensor's Fiber Optic Facilities and or Licensor's Network.

8. EMINENT DOMAIN

Licensee and or its assigns agrees throughout the term of this Agreement, Licensee will not attempt to take Licensor in whole or in any part whatsoever, through eminent domain via any directly or indirectly controlled entity or any entity that may be influenced by Licensee.

MAW Communications Inc.

9. INDEMNIFICATION

9.1 Licensee will indemnify, defend, and hold harmless Licensor and its agents, officers, members, and employees, from any and all losses, damages, incidental or consequential damages, costs, expenses (including reasonable attorney's fees), statutory fines or penalties, actions or claims for personal injury (including death) or damage to property, in any way arising from Licensor's activities undertaken pursuant to this Agreement including, without limitation: the use of Licensee's Fiber Optic Facilities, the installation, construction, operation or maintenance of Licensee's Fiber Optic Facilities, except to the extent caused by the negligence or willful misconduct on the part of Licensor or Licensor's agents, officers or employees.

9.2 Without limiting the foregoing, Licensee assumes all risk for, and agrees to relieve Licensor of any and all liability for loss or damage (and the consequences of loss or damage) to any property of Licensee whether caused by fire, extended coverage perils, or other casualty, except to the extent caused by the negligence or willful misconduct on the part of Licensor's agents, officers or employees.

9.3 Licensor will indemnify, defend, and hold harmless Licensee and its agents, officers, members, and employees, from any and all losses, damages, incidental or consequential damages, costs, expenses (including reasonable attorney's fees), statutory fines or penalties, actions or claims for personal injury (including death) or damage to property, in any way arising from Licensee's activities undertaken pursuant to this Agreement including, without limitation: the use of Licensee's Fiber Optic Facilities, the installation, construction, operation or maintenance of Licensee's Fiber Optic Facilities, except to the extent caused by the negligence or willful misconduct on the part of Licensee or Licensee's agents, officers or employees.

9.4 Without limiting the foregoing, Licensor assumes all risk for, and agrees to relieve Licensee of any and all liability for loss or damage (and the consequences of loss or damage) to any property of Licensor whether caused by fire, extended coverage perils, or other casualty, except to the extent caused by the negligence or willful misconduct on the part of Licensee's agents, officers or employees.

10. INSURANCE

10.1 Throughout the term of this Agreement, each party shall maintain and provide at no expense to the other party reasonably sufficient insurance coverage to protect the other party and its affiliates and employees from liability claims, judgments and demands ("Claims") as provided in this Section. Except as provided in this section, either party may satisfy such requirement to maintain and provide insurance coverage: with respect to Claims by a particular person or entity (or class of persons or entities) by requiring such person or entity (or all members of such class of persons or entities) to release and indemnify the other party and its affiliates and employees from and against such Claims;

10.2 Mandatory Insurance. Notwithstanding the provisions of Section 10.1, but in addition to the requirements thereof, throughout the term of this Agreement: The

MAW Communications Inc.

maintenance of such insurance shall not be an admission that such coverage is necessary, appropriate or required by any of the covenants or provisions of indemnification contained in this Agreement. Each party shall, at no expense to the other party, obtain or cause to be obtained and shall maintain or cause to be maintained in full force and effect, the following insurance policies and coverage with insurers maintaining coverage provisions sufficient to satisfy the requirements set forth below.

a) Workers' Compensation coverage of at least the minimum amount required by statute unless approved as a fully qualified self-insured by the Commonwealth of Pennsylvania;

b) Employer's liability coverage in the minimum amount of Five Hundred Thousand and no/100th Dollars (\$500,000) for bodily injury by accident, each accident; (ii) \$500,000 for bodily injury by disease, each employee, and (iii) \$500,000 aggregate liability for disease;

c) Commercial General Liability coverage written on an occurrence or claims first made basis for bodily injury and property damage in the minimum amount of One Million and no/100th Dollars (\$1,000,000) combined single limit, including, without limitation, coverage for Premises and Operations Liability, Personal Injury Liability, Products and Completed Operations Liability, Blanket Contractual Liability, Broad Form Property Damage; and

d) Comprehensive Vehicle Liability coverage for personal injury (including bodily injury and death) and property damage in the minimum amount of One Million and no/100th Dollars (\$1,000,000) combined single limit, including, without limitation, coverage for all licensed or unlicensed vehicles and/or automotive equipment owned, leased or rented.

The insurance required above may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

The parties shall furnish proof of all such insurance coverage in the form of insurance certificates reasonably acceptable to the other party. Such certificates shall provide for written notice to the appropriate party not less than thirty (30) days prior to the expiration, cancellation or non-renewal of each such policy. A certificate for any coverage written on a claims-made form shall specify any applicable retroactive date and/or any exposure, location, or other cause or claim specifically excluded. All certificates and insurance notices shall be furnished to the parties at the addresses provided in Section 20.

11. COMPLIANCE WITH LAWS

Notwithstanding anything to the contrary in this Agreement, each party shall ensure that any and all activities it performs pursuant to this Agreement shall comply with all applicable laws. Without limiting the generality of the foregoing, each party shall comply with all applicable provisions of i) workmen's compensation laws, ii) unemployment compensation laws, iii) the Federal Social Security Law, iv) the Fair Labor Standards Act,

MAW Communications Inc.

and v) all laws, regulations, rules, guidelines, policies, orders, permits, and approvals of any governmental authority relating to environmental matters and/or occupational safety.

12. DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY

12.1 EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTIES REGARDING THE SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT AND MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.2 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST REVENUES OR LOST PROFITS ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY ACTIVITIES PURSUANT TO THIS AGREEMENT, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT OR OTHERWISE.

13. LICENSOR SALES OR DISPOSITIONS

Nothing in this Agreement shall prevent or be construed to prevent Licensor from selling or otherwise disposing of any portion of Licensor's Network or other property of Licensor used for Licensee's Fiber Optic Facilities, provided, however, that in the event of a sale or other disposition, Licensor shall condition such sale or other disposition subject to the rights of Licensee under this Agreement. Licensor shall promptly notify Licensee of the proposed disposition of Licensor's Network or other property used by Licensee and shall require Licensee's approval of such disposition. Licensee's approval shall not be unreasonably withheld and shall occur within fifteen (15) days of notice from Licensor.

14. LIENS

Each party shall keep Licensor's Network and other property of Licensor free from all mechanic's, artisan's, architect's, or similar services' liens which arise in any way from or as a result of its activities and cause any such liens which may arise to be discharged or released.

15. DEFAULT PROVISIONS AND REMEDIES

Each of the following shall be deemed an Event of Default under this Agreement:

15.1 Failure of Licensee to pay any sum required to be paid under the terms of this Agreement and such default continues for a period of thirty (30) days after written

MAW Communications Inc.

notice thereof to Licensee; Upon such Default, all amounts due and owing Licensor per the remaining term of this Agreement shall become immediately due and owing.

15.2 Failure by either party to perform or observe any other term, covenant, agreement or condition of this Agreement on the part of the defaulting party to be performed and such default continues for a period of thirty (30) days after written notice thereof from the defaulted party (provided that if such default cannot be cured within such thirty (30) day period, this period will be extended if the defaulting party commences to cure such default within such thirty (30) day period and proceeds diligently thereafter to effect such cure.

15.3 Either party's bankruptcy

15.4 If Licensee knowingly uses Licensee's Fiber Optic Facilities in violation of the Authorized Use, or any law, and such violation does not cease within ten (10) days after notice.

15.5 If Licensee occupies any portion of Licensor's Network without having first been issued a license therefore.

15.6 Upon the occurrence of an Event of Default by Licensee, Licensor, without further notice to Licensee in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

15.6.1 Perform, on behalf and at the expense of Licensee, any obligation of Licensee under this Agreement which Licensee has failed to perform and of which Licensor shall have given Licensee notice, the cost of which performance by Licensor shall be payable by Licensee to Licensor upon demand;

15.6.2 Elect to terminate this and/or all agreements between Licensee and Licensor by giving notice of such election to Licensee;

15.6.3 Exercise any other legal or equitable right to remedy which it may have. Any and all costs and expenses incurred by Licensor (including, without limitation, reasonable attorneys' fees) in enforcing any of its rights or remedies under this Agreement shall be repaid to Licensor by Licensee upon demand.

15.7 All rights and remedies of Licensor set forth in this Agreement shall be cumulative, and none shall exclude any other right or remedy, now or hereafter allowed by or available under any statute, ordinance, rule of court, or the common law, either at law or in equity, or both.

15.8 Any material noncompliance by Licensee with the terms of this Agreement.

15.9 Any material breach by either party of a representation or warranty under this Agreement.

MAW Communications Inc.

[Comment - the prior redlined draft contained a comment pertaining to what had been listed as 5.11 re: defined Routes. The City in turn had a comment proposing text regarding the City's right to terminate the Agreement is MAW doesn't construct the Route(s) within 3 months. As the text from the prior Section 5.11 was deleted, please advise as to the response to the proposed language as merely deleting the text isn't clear to the person proposing the language set forth in the comment.]

16. DISPUTE RESOLUTION

The parties will make good faith efforts to resolve any disputes, controversies or claims arising out of or relating to this Agreement or any breach or any alleged breach hereof. If a dispute arises out of or relates to this Agreement or its breach and the dispute cannot be settled through negotiation, the parties agree to submit the dispute to a sole mediator selected by the parties, or, at any time at the option of a party, to mediation by the American Arbitration Association ("AAA"). If not resolved within thirty (30) days after submission to mediation, either party may by notice to the other cause the dispute to be referred to a sole arbitrator selected by the parties or in the absence of such selection, to AAA arbitration which shall be governed by the United States Arbitration Act and the Commercial Rules of the AAA, and judgment on the award may be entered in any court having jurisdiction. The arbitration shall determine issues of arbitrability, but may not limit, expand or otherwise modify the terms of this Agreement. The parties, their representatives and other participants and the mediator and arbitrator shall hold the existence, content and results of mediation and arbitration in confidence. Each party will bear its own attorneys' fees associated with the mediation and arbitration and will pay all other costs and expenses of the mediation and arbitration as the rules of the AAA provide.

17. FORCE MAJEURE

If during the performance of this Agreement, or any obligation thereunder, Licensor's Services or Fiber Optic Facilities are interfered with by reason of any circumstances beyond the control of Licensor, including without limitation, fire; lightning; explosion or other casualty; power failure; acts of God; war; revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body of any representative of any such government; or labor unrest including without limitation, strikes, slowdowns, picketing or boycotts; then Licensor shall be excused from such performance on a day-to-day basis while such interference occurs.

18. TAXES AND OTHER CHARGES

If it is determined by any state or local governmental authority that the acquisition, license, grant, transfer or disposition of any part or portion of the property or rights herein described to or by Licensee, requires payment or any tax or fee (including sales or use tax) under statute, regulation or rule (but excluding any tax on or calculated with respect to the net income or capital of Licensor), Licensee shall pay the same, plus

MAW Communications Inc.

penalty or interest thereon, directly to the taxing authority but only to the extent otherwise required by law.

19. SUCCESSION, ASSIGNABILITY

19.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors or assigns.

19.2 Licensee shall not assign, transfer, or dispose this Agreement or any of its rights or obligations hereunder without prior written consent of Licensor, which shall not be unreasonably withheld. An assignment, transfer or disposition of this Agreement by Licensee shall not relieve Licensee of any of its obligations under this Agreement.

19.3 Subject to Section 13 hereof, Licensor shall have the right to assign this Agreement and to assign its rights and delegate its obligations and liabilities under this Agreement, either in whole or in part, to any party. Assignment by Licensor shall be approved in writing by Licensee. Licensee's approval shall not be unreasonably withheld and shall occur with fifteen (15) days of notice of assignment from Licensor.

19.4 Neither this Agreement, nor any term or provision hereof, nor any inclusion by reference shall be construed as being for the benefit of any person or entity not a signatory hereto.

20. NOTICES

Any demand, notice or other communication to be given to a party in connection with this Agreement shall be given in writing and shall be given by personal delivery by registered or certified mail, return receipt requested, by telecopy or commercial overnight delivery service addressed to the recipient as set forth as follows or to such other address, individual or telecopy number as may be designated by notice given by the party to the other:

Licensor:

MAW Communications, Inc.
PO Box 978
Reading, PA 19603
Attention: Frank Wiczowski
Telephone: 610-781-6279

LICENSEE:

City of Lancaster
120 North Duke St.
Lancaster, PA 17608

MAW Communications Inc.

Any demand, notice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered or certified mail return receipt requested on the date of receipt thereof and, if given by telecopy, the day of transmittal thereof if given during the normal business hours of the recipient and on the next business day if not given during normal business hours.

21. NON-WAIVER

No course of dealing, course of performance or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right or condition.

22. CHOICE OF LAW

The construction, interpretation and performance of this Agreement shall be governed by the law of the Commonwealth of Pennsylvania without regard to its conflicts of law's provisions.

23. HEADINGS

All headings contained in this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement or any clause.

24. REQUIRED RIGHTS

Licensor covenants that it will have obtained by the time the Licensee's Fiber Optic Facilities are made available to Licensee and will use its best efforts to cause to remain in effect during the term of this Agreement, all easements, leases, licenses, fee interests, rights of-way, permits, authorizations and other rights necessary and requisite to enable Licensor to grant the IRU to Licensee ("Required Rights"). Licensee agrees to pay all costs per Exhibit B Intrinsic Costs associated with the Required Rights. Subject to the foregoing obligations of Licensor, Licensee is accepting the License on an "AS IS, WHERE IS" basis and receiving its interests in Licensor's Fiber Optic Facilities only to the extent such interests are held by Licensor.

Licensee covenants that it will have obtained by the time the Licensee's Pole Attachments and or existing aerial facilities are made available to Licensor and will use its best efforts to cause to remain in effect during the term of this Agreement, all easements, leases, licenses, fee interests, rights of-way, permits, authorizations and other rights necessary and requisite to enable Licensor to grant the IRU to Licensee ("Required Rights"). Licensee agrees to pay all costs associated with the Required Rights. Subject to the foregoing obligations of Licensee, Licensor is accepting the License on an "AS IS, WHERE IS" basis and receiving its interests in Licensee's Pole Attachments and or existing facilities only to the extent such interests are held by Licensee.

MAW Communications Inc.

25. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants that: (i) it has full right and authority to enter into, execute, deliver and perform its obligations under this Agreement; (ii) this Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iii) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court, or body.

26. ENTIRE AGREEMENT

The terms and conditions contained in this Agreement and its associated Exhibits A through C supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this Agreement. There are no understandings or representations, express or implied, not expressly set forth in this Agreement. This Agreement shall not be modified or amended except by express written approval by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives

City of Lancaster

MAW Communications Inc.

By: 

By: 

Name: J. Richard Gray

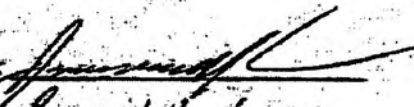
Name: Frank T Wiczowski

Title: Mayor

Title: President

Date: 12/23/14

Date: 12/17/14

Witnessed by: 

Name: Berry N. Henderson

Title: Secretary



MCA - Exhibit A



MAW Communications Inc.
P.O. Box 978
Reading, PA 19601 610.396.1050

Confidential & Proprietary
Information of
MAW Communications
Contact: Frank T. Witzkowski
610.781.6279
Email: Frank@MAWcom.com

DATE	APP	PROJ NO	REV
6/9/2014	MAW - Lancaster	MAW - Lancaster	0
SHEET		1 of 1	

Downtown Lancaster

Drawn by: BJB

24 Splice Cases

MAW Communications and the City of Lancaster

Municipal Carrier Agreement

Exhibit B

All costs to Licensee associated with and or created by this Agreement are determined by the costs of the Routes. Routes are established either through an Acceptable Use of this Agreement by Licensee or via an Instance as defined in Exhibit C. Consequently, if there are no Routes detailed in Exhibit A then the costs to Licensee due to this Agreement are zero.

Intrinsic costs shall be billed at cost plus thirteen percent.

Throughout the term of this Agreement, exclusive of any fees paid to Licensor by Licensee and exclusive of any Instances, Licensor shall pay to Licensee, a fee equal to thirteen (13) percent of revenues reported by Licensor, as a result of operations within the confines of the city of Lancaster. Fees shall be thirteen (13) percent of the Gross revenues and shall be paid to Licensee, on a quarterly or annual basis at the discretion of Licensor. Licensee is responsible for any regulatory fees and or taxes owed by Licensor for fees paid to Licensee by Licensor.

As Routes are added to this Agreement, through the Firm Order Confirmation process detailed in Exhibit C, the installation and maintenance costs for each Route will be detailed in this Exhibit B. The cost for a specific Route is not dependent upon nor is it determined by any other Route or its associated costs. Specifically, each Route and its associated maintenance and installation costs are completely independent of any other Route and its associated costs.

Recurring Payments due Licensor by Licensee shall be due and payable either monthly or quarterly in advance. Licensee agrees to pay Licensor's Invoices either monthly or quarterly as determined by Licensor, within fifteen (15) days of receipt of Licensor's Invoice. Licensee agrees to pay a carry charge of the maximum allowed by law for any payments which are due and owing over thirty (30) days.

Licensee agrees to pay all regulatory fees, taxes and or surcharges that may be due and owing for the services provided for under this Agreement.

All costs detailed in this Exhibit B will be adjusted yearly, based on the Consumer Price Index (CPI) calculated over the previous twelve (12) months. The next twelve (12) months fees will be adjusted up or down accordingly.

All hourly fee costs detailed herein remain fixed over a twenty four (24) month period and may change bi-annually due to changes in costs for fuel, insurance, regulatory cost, etc.

The costs for Routes are detailed below:

Telecommunications Network Construction costs are fixed at cost plus thirteen (13) percent.

Telecommunications Fiber Splicing Services per hour: \$350.00

Telecommunications Design & Implementation Services per hour discounted 35% equals : \$123.50

Telecommunications Network Maintenance costs are fixed at cost plus thirteen (13) percent.

MAW Communications and the City of Lancaster
Municipal Carrier Agreement
Exhibit C

Construction

Throughout the term of this Agreement, Licensor will construct and maintain the Routes as detailed in Exhibit A and shall allocate and reserve fifty percent (50%) of the fiber optic strands for Licensee's Authorized Use. If, throughout the term of this Agreement, Licensor augments Licensor's Fiber Optic Facilities, within the confines of the City of Lancaster, Licensor shall allocate and reserve fifty percent (50%) of the fiber optic strands to a limit of twenty four (24) strands for Licensee's Authorized Use.

Throughout the term of this Agreement, Licensee agrees all Routes constructed and maintained by Licensor, including all additional Routes added via the FOC process detailed herein, shall include cost for up to ninety six (96) strands of fiber of which fifty percent (50%) shall be allocated for Licensee's Authorized Use. If, in the sole discretion of Licensor, the network is augmented with more or less than ninety six (96) strands, Licensor shall allocate fifty percent (50%) of the fiber optic strands for Licensee's Authorized Use.

Operation

Throughout the term of this Agreement, Licensor shall provide all specifications, engineering, project management, installation and maintenance, including all electronic equipment attached to Licensor's network, for all of the Routes detailed in Exhibit A. Costs for Licensor's services are detailed in Exhibit B.

Licensee shall provide Licensor or Licensor will submit for Licensee's approval the appropriate specifications for any electronic equipment attached to Licensor's network for Licensee's Authorized Use.

Except as detailed in this Agreement, any costs associated with the operation and maintenance of Licensee's Routes and or Licensor's network not detailed in this Agreement shall be approved by Licensee prior to Licensor incurring the expense.

Throughout the term of this Agreement, unless Licensee notifies Licensor otherwise, Route Outages shall be considered emergencies. Consequently, Licensor's restoration efforts shall be ongoing twenty four (24) hours per day, seven (7) days per week until restoration has been accomplished. Licensee shall report Route Outages by calling

Licensor's Emergency Number. Until notified in writing by Licensor, the number shall be: 1.877.Need.MAW. Licensor shall respond to Route Outages within three (3) hours of receipt of the call. If Licensor does not respond and begin restoration efforts, per the terms of this Agreement, within three (3) hours of receipt of Licensee's call, Licensor shall credit Licensee thirteen hundred dollars (\$1,300).

Throughout the term of this Agreement, Routes may be added or deleted and do not require an Amendment to this Agreement. A Firm Order Confirmation ("FOC"), provided to Licensee by Licensor shall be the method used to add or delete Routes to Licensee's Fiber Optic Facilities. The FOC shall be signed by Licensee and Licensor and shall serve as authorization by Licensee and Licensor to add or delete the Routes detailed in the FOC. The FOC may specify unique terms and conditions of the respective Routes. For example: The FOC may define a minimum term for the respective Routes. A revised Exhibit A will be issued upon the execution of any FOC's.

Expansion

Throughout the term of this Agreement, Licensee and Licensor may agree to work together to offer services beyond the Authorized Use of Licensor's network by Licensee which shall not require an Amendment to this Agreement and is defined as an "Instance." This Exhibit details the terms of conditions for any and all uses of Licensor's network beyond the Authorized Use of Licensor's Network by Licensee. A FOC provided to Licensee by Licensor shall serve as authorization by Licensee and Licensor and shall be the method used to add or delete Instances of service offerings and their corresponding Routes.

Throughout the term of this Agreement, Licensee agrees to exclusively utilize Licensor's Instances for any and all of Licensee's revenue sharing and or revenue generating projects that incorporate and or utilize services provided by and or offered by Licensor.

For each and every Instance of Licensee and Licensor agreeing to work together on a specific service:

- a) Any and all revenue sharing shall be based on gross revenues from the service as reported by Licensor. Since Licensor is a Pennsylvania Public Utility, Licensor is required to report any and all such revenues according to federal and state regulations.
- b) The percentage of gross revenues shared by Licensor to Licensee shall be determined by the Instance and governed by Exhibit B.
- c) Licensor shall provide all specifications, engineering, project management, installation and maintenance of all aspects of the service related to Licensor's network, including any and all electronic equipment attached to Licensor's network.

- d) Involving and or requiring Internet connectivity, Licensor shall provide all specifications, engineering, project management, installation and maintenance of all aspects of the Internet Service including Internet connectivity in of itself that is connected to Licensor's network, including any and all electronic equipment attached to Licensor's network.
- e) The term of the service offering shall be mutually agreed upon and at the least will be six (6) months and at the most to the end of the term of the Agreement.
- f) Any additional Routes required for the service will be added to Exhibit A and will be governed by the terms and conditions of this Agreement.
- g) Any and all costs associated with the Service related to Licensor's network will be governed by the terms and conditions of this Agreement, accept as mutually agreed upon by Licensee and Licensor.
- h) Each Instance shall be independent of any other Instance.



**Zimmerman,
Pfannebecker,
Nuffort & Albert, LLP**

22 SOUTH DUKE STREET
LANCASTER, PA 17602
PHONE 717-299-0711
FAX 717-299-1092

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Ephrata, PA 17522
Phone 717-733-8411
Lititz:
14-16 South Broad Street
Lititz, PA 17543
Phone 717-626-2088

January 23, 2019

Via Email

Jeffrey Franklin, Esquire
Prince Law Offices P.C.
JFranklin@PrinceLaw.com

Re: City of Lancaster/Fiberoptic Litigation

Dear Jeff:

This is going to be a long letter, but there are a lot of matters to review.

The first order of business is a review of the \$1,263,536.12 set of invoices submitted by MAW on December 4, 2018.

There are eighteen invoices and three credit memos, but overall they fall into three categories. The largest category, in terms of both numbers of invoices and the amounts claimed, represent engineering charges.

The first invoice involving engineering is #15058 in the amount of \$4,940.00 which references "Professional Engineering Services January 1, 2018 through January 31, 2018," and the only explanation is "Required Rights." We do not know what professional services are being charged for, and because this happened during the period in which litigation PPL was most active, we believe this may be part of MAW's cost of defense in the PPL litigation, which is not our responsibility. More documentation is required.

The next engineering invoice is #15093 in the amount of \$7,050.00. This represents work associated with damage to a MAW cable by Warfel Construction on March 16, 2018. This is a Warfel Construction expense, not a City expense.

The next invoice is #15095 in the amount of \$20,254.00 for design services. Although there is no supporting documentation, this may very well be a legitimate expense. For reasons discussed below, even if this is a legitimate expense, it is not payable at this time. If you can provide more documentation as to the exact services rendered, we can determine with more confidence whether this invoice is appropriate.

(7500-17R-483/00159166-3)

Jeffrey Franklin, Esquire
January 23, 2019
Page 2

The next invoice is #15134 in the amount of \$583,537.50. There is no supporting documentation. However, from the narrative, it seems clear that this represents another component of the cost of MAW's cost of defense of the PPL litigation. This invoice is rejected.

The next invoice is #15135 in the amount of \$274,602.25. This represents MAW costs associated with defending the suit by PPL. This invoice is rejected.

The next invoice is #15053 in the amount of \$9,150.00. This is an invoice for residential connection fees for January, 2018. This is an appropriate point to discuss connection fees.

The original agreement was that the City would pay MAW, at the time of connection, \$1,000.00 per live residential connection as a subsidy to City residents to incentivize their becoming LanCity Connect customers. The City would recoup its payment out of the 13% franchise fee collected on its behalf by MAW each month. As the build-out continued, it became clear that customer density was much lower than forecast. We then went to a system whereby MAW did most of the pre-wiring for a service drop at every residential location on each block, even though very few of them were live customers. The City agreed to pay \$350.00 for each partly wired drop, with the balance being due when a residential customer actually connected.

As a result of the litigation, a number of the live residential drops, for which the City paid \$1,000.00 apiece, have been removed by PPL. More important, the balance of the MAW system, including both live customers and partly wired customer drops, are all at risk of being removed. We do not know how much of the infrastructure that the City paid for has already been removed. More important, we do not know if the rest will be removed or not. Before the City is going to entertain payment of this invoice, as well as similar invoices, we are going to have to have an audit as to whether any of the drops removed by PPL have already been paid for. The City is not prepared to pay twice. Further, the City should be credited for connection fees already paid, when the connections are all subject to removal. The City has already paid substantial sums for connections under the basis that the connections would meet with the approval of PPL. MAW is going to need to satisfy PPL that its connections are correct before the City can make payment of this and similar invoices, and we must discuss the amount that must be reimbursed to the City for attachments that will have to be removed in the future.

The next invoice is #15103 in the amount of \$90,569.50. This invoice consists entirely of invoices from your law firm to MAW in defending the PPL litigation. This invoice is rejected. Not that it matters, but the invoice as well as several others includes a 13% "external expense fee" which is also rejected.

The next invoice is #15140 in the amount of \$79,970.10. This is an invoice from your law firm to MAW for defending the PPL litigation. This invoice is rejected.

Jeffrey Franklin, Esquire
January 23, 2019
Page 3

The next invoice is #15094 in the amount of \$63,295.02. This appears to be charges for the City's internet service. There was never any discussion of MAW charges to the City for City internet services, as these were understood to be provided to the City on the City's 50% of the MAW fiber. I do not see any provisions for a charge to the City and this invoice is, therefore, rejected.

The next invoice is #15104 in the amount of \$34,498.90. These are invoices from Katapult Engineering which were part of MAW's defense to the PPL litigation. This invoice is rejected.

The next invoice is #15146 in the amount of \$16,769.00 for pole attachment work. This is likely a legitimate cost under the contract between the parties, but no payment will be forthcoming at this time for reasons detailed below.

The next invoice is #15149 in the amount of \$24,185.39. This may be a legitimate invoice. The City had certain responsibilities to reimburse MAW for the costs of make-ready work. That being said, without a fuller description, we cannot understand whether this is a cost of the project or a cost of defense. Please provide further documentation supporting this invoice.

In addition to the invoices reflecting what we generally classify as backbone costs, there are invoices related to LanCity Connect. The first of these is invoice #15065 in the amount of \$12,600.00. This invoice, as well as invoice #15066 in the amount of \$16,800.00, involves the charges I mentioned above for residential connection costs. As indicated already, because the Lehigh County Court has made MAW's entire network, including the residential connections, subject to peremptory removal, the City cannot make payments on these invoices until it is satisfied that these are PPL-approved connections. That position also applies to invoice #15074 in the amount of \$93,800.00.

The next invoice is #15114 in the amount of \$8,670.66. This invoice is a grab bag of MAW's utility charges for PPL providing electricity. This is not a City expense under the agreement. The bulk of the invoice, \$5,995.00, is for the "Calix Advantage Program." We require documentation that this is a City obligation under the agreement. The same observation applies to the "Ubiquiti Order" for \$193.54. Please provide any background you can that these are proper charges.

The next invoice is #15141 in the amount of \$1,627.83 for MAW's utility charges. This invoice is questioned for the same reason as the City questions invoice #15114. We believe that MAW's utility charges for operating its network are MAW's responsibility, not the City's.

The last invoice is #15150 in the amount of \$448.60. This invoice is rejected for the same reason as the prior two invoices because all three of them attempt to impose liability on the City for MAW's own utility charges.

Jeffrey Franklin, Esquire
January 23, 2019
Page 4

The third category of invoices relates to MAW's services rendered at the Conestoga Water Treatment Plant (CWTP). I am referring to invoices #15092 in the amount of \$24,949.00, and invoice #15120 in the amount of \$1,862.78. For the CWTP project, MAW submitted a Project Scoping Proposal dated February 1, 2018 which included costs for a combined 112 hours of *Engineering - Install and Engineering - PM*. In May 2018, the City paid MAW invoice #15056 which included charges for 109 hours of *Design Services* for the CWTP project. As there are no *Design Services* included on the MAW Proposal, we presume *Design Services* and *Engineering* are synonymous. On invoice #15092, the charges for 24 hours of *Splice Team* and 32 hours of *Construction Fiber Infrastructure* are consistent with the February 1, 2018 Proposal. However, the charge on this invoice for 102 hours of *Design Services* would appear to be a duplication of the *Engineering* charges which have already been paid for by the City. If this is not the case, additional documentation will be needed for the City to consider payment of invoice #15092. Assuming for purposes of settlement that both of these invoices are legitimate, they will not be paid at this time until the question of credits to the City are addressed.

Before we get to that issue, I wish to address the credit memos issued. The first of these is invoice #15119 in the amount of (\$3,456.12). This is identified as a credit against MAW invoice #15079 which the City paid in May 2018. There is no indication of what the credit represents as invoice #15079 paid by the City doesn't include a specific charge in that amount. Additional documentation is requested for this credit.

There are three additional credit memos, invoice #15153 in the amount of (\$8,040.57), invoice #15154 in the amount of (\$7,664.94), and invoice #15155 in the amount of (\$6,947.15). These invoices all indicate that MAW is refusing to pay the City franchise fees it is due under the agreement.

MAW's approach regarding the franchise fees is unwarranted. MAW has collected 13% from each residential customer. That money belongs to the City of Lancaster. MAW was authorized to collect the City's money and pay it to the City. MAW has no right to set off any claims it may have, regardless of how ill- or well-founded they are. The City hereby demands that MAW reverse the credit memos and pay the 13% owing to the City so that MAW will not be in breach of its agreement. The City reserves the right to determine whether MAW has breached the agreement in other respects.

That concludes the invoice review.

The City has incurred a number of costs due to MAW's failure to comply with PPL-mandated procedures in fulfilling its contract obligations with the City. MAW's failure to follow PPL procedures cannot be seriously debated. MAW and the City are both parties to the Lehigh County litigation and unless and until an appeal is taken reversing the Order of April 13, 2018, the court's determination is *res judicata* of MAW's performance.

Jeffrey Franklin, Esquire
January 23, 2019
Page 5

The City of Lancaster has spent at least \$48,817.40 as of November, 2018, defending its interests due to MAW's conduct. The City would not have spent a penny had MAW done its job properly. In making this calculation, we are only using the City's legal bills starting with the December, 2017, billing cycle.

When the litigation began and MAW and the City felt that this matter might best be handled through an approach with the FCC, the City engaged the Cohen Law Group to aid MAW and the City in pursuing that approach and the City incurred \$18,720.00 in fees from the Cohen Law Group.

The City also engaged the firm of Best Best & Krieger following the institution of litigation to assist with the potential FCC filing. The City incurred costs from Best Best & Krieger between January and June of 2018, in the amount of \$62,312.61.

Lastly, as a result of the Judge's Order of April 13, 2018, the City was required to hire Celerity to aid the City in formulating a migration plan. The task of Celerity was made considerably harder by non-cooperation of MAW's technical personnel in withholding information. To date, Celerity has billed the City \$79,472.50.

The above charges, for the City solicitor, the two legal consultants, and the technical consultant, total \$209,323. When MAW has addressed these claims, the City is prepared to make payment of the services for which it concedes liability.

I understand that this is not the final word in this matter and that the contract obligates both parties to negotiate charges in good faith, followed by mediation, and possibly after that, determined by mandatory arbitration under AAA rules.

I look forward to your response after you have had a chance to digest this information.

Very truly yours,

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT

By

Neil L. Albert

NLA:jlbb

Cc: Patrick Hopkins
Barry N. Handwerger, Esquire



MAW Communications Inc.
Po Box 978
Reading, PA 19603 www.MAW.com.com

City of Lancaster
Project Scoping Proposal
February 1, 2018

Phase II Summary:

The Conestoga Water Treatment Plant required connectivity upgrades to the network infrastructure. During Phase I of the project, we identified several significant network security vulnerabilities in the Water Treatment Plant network design. The Campus WAN solution designed for Phase II will connect all six locations, replacing the existing network infrastructure with a secure, redundant and reliable enterprise level network that will isolate the process network (SCADA/PLCs) from the rest of the network thus mitigating the risks associated with current setup.

Phase II Engineering Cost Summary:

Total material costs:	\$98,985
Total Labor costs:	<u>\$26,112</u>
Total Project costs:	\$125,097

Additional Exhibits:

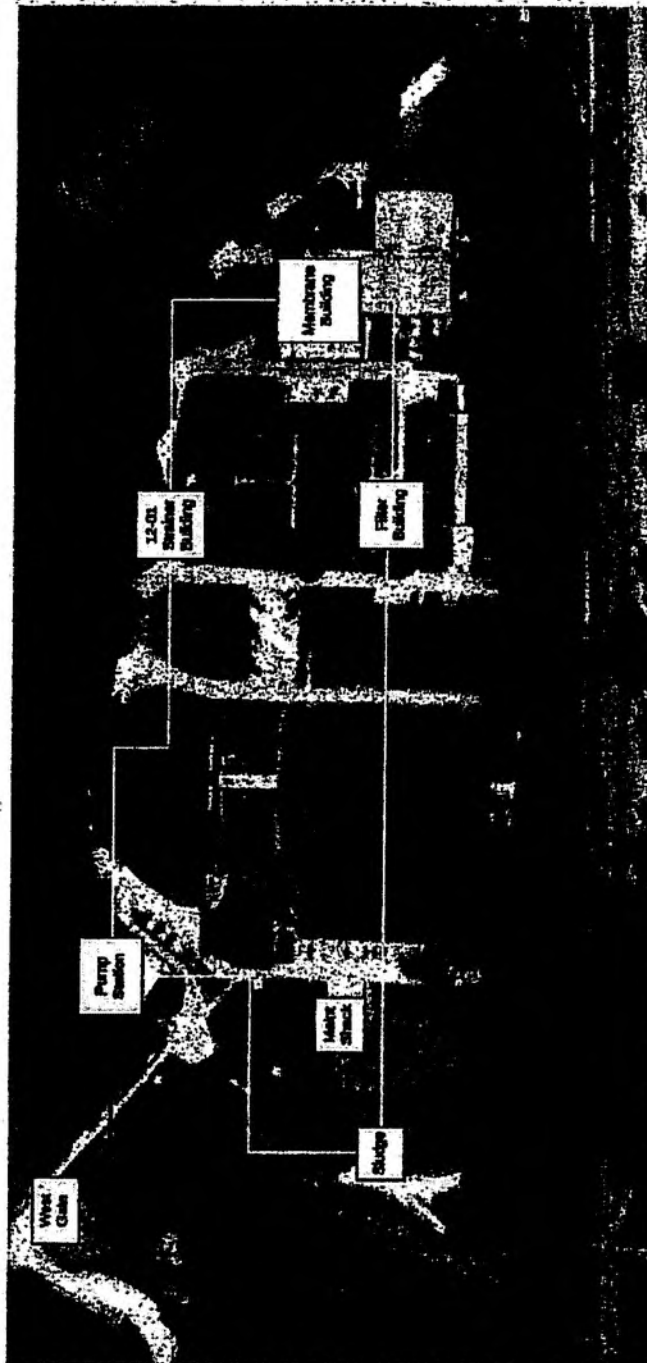
- Exhibit A: Equipment and Installation Component Summary
- Exhibit B: Network Cabling Brief

Exhibit A: Equipment and Installation Component Summary

Item	Model	Qty	PPU	Total
SFP+ LR LC	J9151A	37	\$197	\$7,289
LC-UPC to SC-APC Singlemode 3M patch cable		37	\$10	\$360
SC-APC to SC-APC 2 foot long		12	\$12	\$140
1u rackmount cable management		18	\$20	\$360
West Gate outdoor switch	TI-PG541	1	\$255	\$255
Trend net 1 gig SFP	SFP-GE-LX-1310-DLC-AO	1	\$46	\$46
freight charge for trend net and sfp	na	1	\$11	\$11
Aruba 16 port SFP+	JL075A	3	\$5,979	\$17,937
Aruba 48 port POE	JL074A	1	\$3,685	\$3,685
Aruba 24 port POE	JL073A	9	\$2,374	\$21,363
Aruba Non POE Power Supply	JL085A	6	\$229	\$1,376
Aruba POE Power Supply	JL087A	20	\$486	\$9,720
Aruba Stacking Module	JL084A	8	\$569	\$4,552
Aruba .5m Stacking Cables	J9578A	4	\$130	\$520
SFP+ 4 Port Module	JL083A	8	\$651	\$5,208
Geist PDU with auto transfer	ATRN102-152R20ST5	5	\$339	\$1,696
APC UPS Net management Card	AP9631	4	\$437	\$1,749
APC UPS 1500Va	SMT1500RM2U	4	\$691	\$2,763
3u Rackmount CCH housing		1	\$250	\$250
2u rackmount CCH housing		3	\$250	\$750
12 port panel Inserts SCAPC		24	\$104	\$2,496
SC-APC fusion splice Tips		24	\$55	\$1,321
24 strand fiber		3500	\$1	\$3,500
12 strand cable		500	\$1	\$250
Administrative Processing				\$11,388
Parts Total				\$98,985
Splicing		24	\$350	\$8,400
Fiber Build		32	\$123	\$3,936
Engineering - Install		80	\$123	\$9,840
Engineering - PM		32	\$123	\$3,936
Labor Total				\$26,112
Project Total				\$125,097

Exhibit B: Network Cabling Brief

Cabling Installations



24 Strand Fiber
— 12 Strand Fiber —
— CAT 6 Copper —

Conestoga Water Treatment Plant APC 1000 Conestoga Road PO Box 978 Reading, PA 19602 610-771-1000		Conestoga Water Treatment Plant 1000 Conestoga Road PO Box 978 Reading, PA 19602 610-771-1000	
Conestoga & Pottsville Wastewater Conestoga & Pottsville Conestoga & Pottsville Conestoga & Pottsville Conestoga & Pottsville	Lancaster Pottsville	Lancaster Pottsville	1000 Conestoga Road PO Box 978 Reading, PA 19602 610-771-1000



MAW Communications Inc.
Po Box 978
Reading, PA 19603 www.MAW.com.com

Invoice

DATE	INVOICE #
6/1/2018	15092

BILL TO
City of Lancaster 120 N Duke St. Lancaster, PA 17608 Attention: Charlotte Katzenmoyer

		P.O. NO.	TERMS	PROJECT
			Net 15	09-Water Treatment Plant
QUANTITY	DESCRIPTION	RATE		AMOUNT
	Water Treatment Plant - Phase II			
	Professional Services from 03/01/2018 -04/30/2018			
102	Design Services: Water Treatment Plant	123.50		12,597.00
24	Splice Team	350.00		8,400.00
32	Construction Fiber Infrastructure	123.50		3,952.00
	Project completion expected May 2018			
			Total	\$24,949.00
			Payments/Credits	\$0.00
			Balance Due	\$24,949.00

DATE	INVOICE #
2/27/2018	1586

City of Lancaster
128 N Duke St.
Lancaster, PA 17603
Attention: Charles Katsenberger

		P.O. NO.	TERMS	PROJECT
			Nes 15	09-Water Treatment Plant
QUANTITY	DESCRIPTION	RATE	AMOUNT	
	Professional Engineering Services from 08/01/2008-01/31/2008			
10	Design Services Schematic	125.50		1,255.00
99	Design Services Water Treatment Plant	125.50		12,276.50
<p>NO INVOICING INFORMATION</p> <p>INVOICE # 15005 \$12461.50 ARSIS COMMUNICATIONS INC. 02/06/2008 # Pages 1 FP1 DOCUMENT</p>				
		Total	\$13,461.50	
		Payments/Credits	\$0.00	
		Balance Due	\$13,461.50	



MAW Communications Inc.
Po Box 978
Reading, PA 19603 www.MAWcomm.com

Invoice

DATE	INVOICE #
7/1/2018	15120

BILL TO
City of Lancaster 120 N Duke St. Lancaster, PA 17608 Attention: Charlotte Katzenmoyer

P.O. NO.	TERMS	PROJECT
	Net 15	09- Water Treatment Plant

QUANTITY	DESCRIPTION	RATE	AMOUNT
	Water Treatment Plant		
	External Expense -United Electric Supply # S104104875-EL-Tester; Modular plugs; ratchet telemaster; data cable, (20 CAT 5EPatch pnl)	815.82	815.82
	External Expense -United Electric Supply # S104104875 -Deposit	22.72	22.72
	External Expense United Electric Supply #S104106489- EL-2 CAT 6 Patch pnl	473.12	473.12
	External Expense United Electric Supply # S104113713-EL-Return of (2) CAT 5E Patch pnl	-276.46	-276.46
	External Expense Amazon - # 113-5930927-7061048-EL-CanaKit Raspberry Pi 3 B+ Starter Kit	92.59	92.59
	External Expense- Amazon # 113-1915044-8982651-EL-Trendnet 120 W Single Output Industrial DIN-Rail Power supply	93.57	93.57
	External Expense Amazon # 113-6027340-8569014-EL-Trendnet 6-Port Hardened Industrial Gigabit PoE+ Layer 2 Managed DIN Rail Switch	255.92	255.92
	Total Reimbursable Expenses		1,477.28
12	External Expense Graybar: 9303364437-SCASCADUPSM-1M Lynn Electric	13.33	159.96
1	Shipping freight charges	11.24	11.24
	Invoiced Sub-Total		1,648.48
	External Expense Fee = 13% of Expense	13.00%	214.30

	Total	\$1,862.78
	Payments/Credits	\$0.00
	Balance Due	\$1,862.78



UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601
717-392-8500 Fax 717-392-8584

Ship Ticket

04/10/18		S104104875.002
ORDER TO:		Brian Connor 1 of 2
UNITED ELECTRIC SUPPLY-LANC		
1564 FRUITVILLE PIKE		
LANCASTER PA 17601		
717-392-8500 Fax 717-392-8584		
09:28:13 10 APR 2018		

SOLD TO:
LANCASTER CASH
1564 FRUITVILLE PIKE
LANCASTER, PA 17601

COUNTER PICK UP
UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601

** C.O.D. ** C.O.D. ** C.O.D. **

132618	CWTP	MAN COMMUNICATIONS	ERON LLOYD 302-322-3333
Bryan Connor 717-392-8500	COUNTER PICK UP	Shp. LANC Prc LANC	04/10/18 04/10/18 Sales House Account 717-392-8500
2000ft	2000ft	***** Shipping Instructions ***** * ERON LLOYD: 484-529-9223 ***** TEL234CAT6BERGEN 23AWG, 4PAIR UNSHIELDED, PVC CAT6 DATA CABLE BLUE 1000' REEL-IN-A-BOX CR6.A3.07, 972721506 MBW6U-00934	169.110/m 338.22 <i>Returned</i>
75ea	75ea	24PT, LEVITON IDL85-366 CAT 6 MODULAR PLUG, RJ45, 25PC, IDEAL INDUSTRIES	85.710/c 64.28
1ea	1ea	IDL62-200 LINKMASTER TESTER, IDEAL INDUSTRIES	72.030/ea 72.03
1ea	1ea	IDL30-696 RATCHET TELEMMASTER RJ11 RJ45, IDEAL INDUSTRIES	64.830/ea 64.83
***** Credit Card Information *****			
* Merchant ID# : 1174436		Time/OT/Date: 09:28:13 10 APR 2018 *	
* Card Number : 8712		Card Type:	
* Card Holder : LANCASTER CASH		Auth Code: 800162	
* Charge Amount: \$887.49		Charge Date: 04/10/2018	
* I agree to pay above total amount according to card issuer agreement.			
** The following are scheduled for future shipment:			
25ea	B70	IDL85-366 CAT 6 MODULAR PLUG, RJ45, 25PC, IDEAL INDUSTRIES	

*** Continued on Next Page ***



UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601
717-392-8500 Fax 717-392-8584

Ship Ticket

WTP	
04/10/18	S104104875.002
ORDER TO: UNITED ELECTRIC SUPPLY-LANC 1564 FRUITVILLE PIKE LANCASTER PA 17601 717-392-8500 Fax 717-392-8584	
2 of 2	
09:28:13 10 APR 2018	

SOLD TO:
LANCASTER CASH
1564 FRUITVILLE PIKE
LANCASTER, PA 17601

COUNTER PICK-UP
UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601

** C.O.D. ** C.O.D. ** C.O.D. **

132618	WTP	MAM COMMUNICATIONS		ERON LLOYD 302-322-3333	
Bryan Conner 717-392-8500	COUNTER PICK-UP	SHD LANC Prg LANC	04/10/18	04/10/18	Sales House Account 717-392-8500
<p>04-10-2018 08:27:38 AM STATION 1005.022</p> <p><i>[Signature]</i></p>					
PACKAGES	BOXES	COILS	REELS	PICKED BY	
Subtotal					815.82
FREIGHT					0.00
Sales Tax					48.95
Amount Due					864.77

Thank you for your order. Unless this order is covered by a separate written agreement signed conditions set forth on the reverse side hereof which terms and conditions are incorporated such terms and conditions and (II) that inconsistent provisions in Purchaser's forms shall herein by reference, and by ordering goods from United, Purchaser agrees (I) to be bound by such terms and conditions and (II) that inconsistent provisions in Purchaser's forms shall have no effect.



UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601
717-392-8500 Fax 717-392-8584

Ship Ticket

WTP

04/10/18	8104104875.003
ORDER TO: UNITED ELECTRIC SUPPLY-LANC 1564 FRUITVILLE PIKE LANCASTER PA 17601 717-392-8500 Fax 717-392-8584	
1 of 1	
09:20:06 11 APR 2018	

SOLD TO:
LANCASTER CASH
1564 FRUITVILLE PIKE
LANCASTER, PA 17601

WILL CALL
UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601

** C.O.D. ** C.O.D. ** C.O.D. **

132618	CWTP	MAN COMMUNICATIONS	ERON LLOYD 302-322-3333
Bryan Conner 717-392-8500	WILL CALL	Shp LANC Prc LANC	04/11/18 .04/10/18
***** Shipping Instructions *****		Sales House/Account 717-392-8500	
25ea	25ea	***** * ERON LLOYD: 484-529-9223 ***** TDL85-366 CAT 6 MODULAR PLOG, RJ45, 25PC, IDEAL INDUSTRIES <<*** 25 Tagged to T1P0696700 ***>> Prior Deposit on 04/10/18 ***** Credit Card Information ***** * Merchant ID# : 1174436 * Card Number : 8712 * Card Holder : LANCASTER CASH * Charge Amount: \$887.49 * I agree to pay above total amount according to card issuer agreement.* ***** TimeMDT/Date: 09:20:06 11 APR 2018 Card Type: Auth Code: 809162 Charge Date: 04/10/2018	85.710/c 21.43
<p>DEPT 2018 04 02 12:11 AM SYD HIGGINS</p> <p><i>Cash</i></p>			
PACKAGES	BUNDLES	COILS	REELS
1			
PICKED BY JT2473		Subtotal -1.29 FREIGHT 0.00 Sales Tax 1.29	
Amount Due		0.00	

Thank you for your order. Unless this order is covered by a separate written agreement signed conditions set forth on the reverse side hereof which terms and conditions are incorporated such terms and conditions and (II) that inconsistent provisions in Purchaser's forms shall herein by reference, and by ordering goods from United, Purchaser agrees (I) to be bound by such terms and conditions and (II) that inconsistent provisions in Purchaser's forms shall have no effect.



UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601
717-392-8500 Fax 717-392-8584

Ship Ticket

WTP

04/11/18	S104106489.001
ORDER TO: UNITED ELECTRIC SUPPLY-LANC 1564 FRUITVILLE PIKE LANCASTER PA 17601 717-392-8500 Fax 717-392-8584	
1 of 1	
10:03:39 18 APR 2018	

SOLD TO:
LANCASTER CASH
1564 FRUITVILLE PIKE
LANCASTER, PA 17601


WILL CALL
UNITED ELECTRIC SUPPLY-LANC
1564 FRUITVILLE PIKE
LANCASTER PA 17601

** C.O.D. ** C.O.D. ** C.O.D. **

132618	MAW COMMUNICATION	CWTP	ERON 717-392-8500
Steve Marsh 717-392-8500	WILL CALL	Shp. LANC Pro LANC	04/16/18 05/01/18 Sales House Account 717-392-8500
2ea	2ea	LEV69586-U24 24PORT CAT6 PATCH PBL,LEVITON <<*** 2 Tagged to T100697064 ***>> Amount paid today - Payment # S104106489.0	236.560/ea 473.12 -501.51 CC total
***** Credit Card Information *****			
* Merchant ID# : 1174436		TimeRDT/Date: 10:03:39 18 APR 2018	
* Card Number : 8712		Card Type:	
* Card Holder : LANCASTER CASH		Auth Code: 908120	
* Charge Amount: \$501.51		Charge Date: 04/18/2018	
* I agree to pay above total amount according to card issuer agreement.*			
DL182018100831AM STAFFORD HENRY			
PACKAGES	BUNDLES	COILS	REELS
1			
PICKED BY JT2584		Subtotal -28.39 FREIGHT 0.00 Sales Tax 28.39	
Amount Due		0.00	

Thank you for your order. Unless this order is covered by a separate written agreement signed conditions set forth on the reverse side hereof which terms and conditions are incorporated such terms and conditions and (II) that inconsistent provisions in Purchaser's forms shall herein by reference, and by ordering goods from United, Purchaser agrees (I) to be bound by such terms and conditions and (II) that inconsistent provisions in Purchaser's forms shall have no effect.

Return Goods Acknowledgement

04/18/18		S104113713	
ORDER TO:			
UNITED ELECTRIC SUPPLY-LANC			
1564 FORTVILLE DR			
LANCASTER PA 17601		1 of 1	
717-392-8800 Fax 717-392-8844			
			
09:58:35 18 APR 2018			

SOLD TO:
LANCASTER CASH
1564 FRUITVILLE PIKE
LANCASTER, PA 17601

SHIP TO:
LANCASTER CASH
1564 FRUITVILLE PIKE
LANCASTER, PA 17601

[illegible]

amazon.com

Final Details for Order #113-5930927-7061048

Print this page for your records.

Order Placed: May 14, 2018
Amazon.com order number: 113-5930927-7061048
Order Total: \$92.59

CWTP

Shipped on May 14, 2018

Items Ordered

1 of: *CanaKit Raspberry Pi 3 B+ (B Plus) Starter Kit (32 GB EVO+ Edition, Premium Black Case)* **Price \$79.99**

Sold by: CanaKit ([seller profile](#)) | Product question? [Ask Seller](#)

Condition: New

Shipping Address:
MAW Communications
419 WASHINGTON ST
READING, PA 19601-3907
United States

Item(s) Subtotal: \$79.99
Shipping & Handling: \$7.36

Total before tax: \$87.35
Sales Tax: \$5.24

Shipping Speed:
Standard Shipping

Total for This Shipment: \$92.59

Payment information

Payment Method:
Visa | Last digits: 8712

Item(s) Subtotal: \$79.99
Shipping & Handling: \$7.36

Billing address
MAW Communications
PO Box 978
Reading, PA 19603
United States

Total before tax: \$87.35
Estimated tax to be collected: \$5.24

Grand Total: \$92.59

Credit Card transactions

Visa ending in 8712: May 14, 2018: \$92.59

To view the status of your order, return to [Order Summary](#).

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✓

amazon.com

Final Details for Order #113-1915044-8982651

Print this page for your records.

Order Placed: May 21, 2018
Amazon.com order number: 113-1915044-8982651
Order Total: \$93.57

CWTP

Shipped on May 22, 2018

Items Ordered

1 of: TRENDnet 120 W Single Output Industrial DIN-Rail Power Supply, Extreme -20 to 70 °C (-4 to 158 °F) Operating Temp, TI-S12048 **Price** \$75.99
Sold by: Amazon.com Services, Inc.

Condition: New

Shipping Address:

MAW Communications
419 WASHINGTON ST
READING, PA 19601-3907
United States

Item(s) Subtotal: \$75.99
Shipping & Handling: \$12.28

Total before tax: \$88.27
Sales Tax: \$5.30

Shipping Speed:

Two-Day Shipping

Total for This Shipment: \$93.57

Payment information

Payment Method:

Visa | Last digits: 8712

Item(s) Subtotal: \$75.99
Shipping & Handling: \$12.28

Billing address

MAW Communications
PO Box 978
Reading, PA 19603
United States

Total before tax: \$88.27
Estimated tax to be collected: \$5.30

Grand Total: \$93.57

Credit Card transactions

Visa ending in 8712: May 22, 2018: \$93.57

To view the status of your order, return to Order Summary.

amazon.com

Final Details for Order #113-6027340-8569014

Print this page for your records.

Order Placed: May 21, 2018
Amazon.com order number: 113-6027340-8569014
Order Total: \$255.92

CWTP

Shipped on May 22, 2018

Items Ordered

	Price
1 of: TRENDnet 6-Port Hardened Industrial Gigabit PoE+ Layer 2 Managed DIN-Rail Switch, IP30 Rated, 120 W Power Budget, CLI, HTTP, SNMP, QoS, Lifetime Protection, TI-PG541I	\$222.31

Sold by: Essex Technology Group ([seller profile](#))

Condition: New

Shipping Address:
MAW Communications
419 WASHINGTON ST
READING, PA 19601-3907
United States

Item(s) Subtotal: \$222.31
Shipping & Handling: \$19.12

Total before tax: \$241.43
Sales Tax: \$14.49

Shipping Speed:
Expedited Shipping

Total for This Shipment: \$255.92

Payment Information

Payment Method:
Visa | Last digits: 8712

Item(s) Subtotal: \$222.31
Shipping & Handling: \$19.12

Billing address
MAW Communications
PO Box 978
Reading, PA 19603
United States

Total before tax: \$241.43
Estimated tax to be collected: \$14.49

Grand Total: \$255.92

Credit Card transactions

Visa ending in 8712: May 22, 2018: \$255.92

To view the status of your order, return to [Order Summary](#).

Remit to :

Graybar.

PO BOX 414398
BOSTON MA 02241-4398

Bill-To:
MAW COMMUNICATIONS INC
PO Box 878
READING PA 19603
USA

INVOICE

484-538-2400

Invoice No: 9303364437
Invoice Date: 04/05/2018
Account Number: 562723
Account Name: MAW COMMUNICATIONS INC
Ship-To:
MAW COMMUNICATIONS INC
418 WASHINGTON STREET
READING PA 19601-3907
USA

Page 1 of 1

Order No: OP00880408							SON: 363259689
Del. Doc. #:	PRO #	Routing	Date Shipped	Shipped From	F.O.B.	Et. To	
363259689			04/04/2018	FACTORY			
Quantity	Catalog # / Description			Unit Price / Unit		Amount	
12	SCASCADUPSM-1M LYNN ELECTRONICS CORP			13.33 / 1		159.96	

Terms of Payment As a condition of the sales agreement, a monthly service charge of the lesser of 1-2/3% or the amount permitted by law may be added to all accounts not paid by net due date. Visa, Mastercard, American Express, and Discover credit cards are accepted at point of purchase only.	Sub Total:	159.96
	Freight & Handling:	11.24
	Tax:	0.00
	Total Due:	0.00
	PD by CG: AMEX ending in 8004	171.20

SUBJECT TO THE STANDARD TERMS AND CONDITIONS LISTED ON WWW.GRAYBAR.COM

4/10/18 ✓

LAU & ASSOCIATES, P.C.

SHAWN J. LAU, ESQUIRE
JOHN C. TABLER, ESQUIRE

4228 ST LAWRENCE AVENUE
READING, PA 19606
610-370-2000
FAX: 610-370-0700

February 8, 2019

NEW JERSEY OFFICE
489 BLOOMFIELD DRIVE
UNIT 3
W. BERLIN, NJ 08091

Neil L. Albert, Esq.
Zimmerman, Pfannebecker, Nuffort & Albert, LLP
Via email to nla@zpnalaw.com

E-MAIL:
LauShawn@aol.com
Shawn_Lau@man.com

RE: Your Letter of January 23, 2019 in relation to MAW Communications

Dear Mr. Albert,

Thank you for your lengthy letter of January 23, 2019. Please allow this letter to serve as MAW's response to the same.

Addressing the issues you raise with invoices point-by-point, we first address the objection raised to the payment of Invoice # 15058. The substance of the City's objection to payment seems to be that the city is assuming, as the professional engineering services were incurred during an active period of litigation, they must somehow be related to that defense. We note that this position is pure speculation on behalf of the City. The costs incurred in the amount of \$4,940.00 are in fact pre-engineering costs related to what will be necessary to obtain the required rights for the telecommunications systems and the pole attachments. Whether or not instigated by the litigation, this is not a cost of defense but a cost of assessments necessary to complete the network and obtaining the required rights to do so.

Pursuant to Section 6.4 of the MCA, and Exhibit B to the same, the City is responsible for all intrinsic costs related to the project – which would naturally include the costs associated with obtaining the rights required to actually connect to poles and perform the project as agreed to. Further, under Section 24 of the MCA the City explicitly agrees to pay for such costs pursuant to Exhibit B. Despite the position previously expressed to us that this is a "reimbursement" provision, no such language exists in the MCA or any exhibit thereto for these costs. Instead, the obligation of the City in relation to intrinsic costs is to pay invoices for such costs received from MAW within fifteen (15) days of their receipt. Unless the City has anything more than mere speculation to rely on in denying an invoice related to intrinsic costs which has been properly submitted and for which payment has been improperly withheld, this letter serves as a demand that the City satisfy its obligation to pay the invoice in the amount of \$4,940.00.

We additionally note at this point that Section 24 of the MCA contained certain covenants by the City to provide the IRU for poles and attachments which were 1) owned by the City and 2) necessary for this project to proceed successfully. The City, in effect, obligated itself to obtain the necessary rights for MAW to utilize those poles. The long history here has shown that the City and its partners failed to fulfill these obligations, with documentation necessary for

this transfer never being turned over to MAW nor maintaining records in a manner which would allow MAW to fulfill its obligations.

Likewise, in addressing Invoice # 15093 in an amount of \$7,050.00, the repair of the splice box appears to fall under MCA provisions for maintenance of the cable and network that is providing the City with infrastructure. These would, again, appear to be intrinsic costs due when billed (regardless of whether MAW has already paid for it or not) under Exhibit B. The city is always free to pursue Warfel Construction, but as the damage appears to have been on an approved route the cost of repair and maintenance of it would fall under the City's agreement with MAW.

As to Invoice # 15095, this is an invoice for design work performed at the request of the City in January of 2018. The City asked for MAW to provide alternatives to the pole matters for infrastructure, and specifically asked MAW to design a potential underground cable run. This was performed at the request of the City and presented to the City. Based on emails received from the City, the City considered this proposal then rejected it as it felt it would not be able to justify the cost of this solution that would have cut off the need for further litigation almost immediately. For reasons further discussed below, we believe the payment of the invoice for the amount of \$20,254.00 is now due and payable, and indeed is actually overdue given the provisions of the MCA which require payment within fifteen (15) days of receipt.

In relation to Invoice # 15134, we note that this amount was incurred in defending the acquisition of required rights during the present litigation, including complete surveys of poles and records to determine which poles were supposed to have been transferred to MAW under the MCA. A substantial portion of these costs were necessitated because of the City's inability to provide MAW with accurate and complete records regarding their pole rights. It is MAW's position that, had the City upheld its obligations under Section 24 of the MCA to provide these poles and the required information to MAW, a significant portion of these costs would never have been incurred in the first place. Given the City's obligation to pay costs associated with the acquisition and transfer of the Required Rights, we believe that, the \$583,573.50 is therefore properly assessed to the City pursuant to Exhibit B to the MCA and Section 24 of the MCA itself. The same statement applies to Invoice # 13135 for \$274,602.25.

Further, Invoices # 15103, #15140, and 15104 in the respective amounts of \$90,569.50, \$79,970.10, and \$34,498.00 are being rejected as legal expenses related to the PP&L litigation. The same logic we discussed above applies here: the City and MAW have cross-indemnified one another in relation to their costs of defense pursuant to the MCA, and all of these services were rendered as a part of MAW's efforts to defend and protect required rights for the fulfillment of the MCA. It remains MAW's position that, as Exhibit B of the MCA clearly requires the City to pay intrinsic costs associated to the acquisition and defense of these rights

Now would also be a good time to address the competing claims of legal fees in this matter and their relative appropriateness. In reviewing the MCA agreement, there are cross-indemnifications in this matter so long as damages are not the result of "negligence of willful misconduct." I am aware of the final two paragraphs of your letter which indicate that the Order of April 13, 2018 acts a *res judicata* on the merit of MAW's actions. However, the face of the

Order itself belies this. The Order explicitly stated it was entered without any prejudice as to the underlying merits of any party's claims, counterclaims, or defenses. Based on our reading, this Order was meant to set forth the dictates the parties must follow during the pendency of the litigation, but in no way was a determination of liability, breach, or any other matter which underlies the claims pending before the Court. As such, the City's position that MAW has any liability related to this litigation is premature, especially in light of the fact no final order has been entered determining that MAW is liable in any form.

Further, absent a finding of negligence or willful misconduct, MAW and the City have agreed to indemnify each other in relation to the MCA for costs incurred. Until such a finding of negligence or willful misconduct is entered, the City is acting prematurely in seeking any payment from MAW in this matter. The April 13th Order is not a final order, does not touch on the merits of the underlying causes of action, and in no way acts as a *res judicata* in the matter. If it did so, I doubt Mr. D'Amico would be seeking the enshrining of it as a final order as part of any settlement if it was already final.

In short, MAW will not at this point be agreeing to pay any legal fees incurred by the City. Conversely, the City is obligated to pay legal fees incurred by MAW as required under the provisions of the MCA, and especially those related to MAW's need to rectify the wholly inadequate documentation of the City in relation to the rights that were to be transferred to MAW.

Returning to the Invoices in this matter, you next reference Invoice # 15053 in the amount of \$9,150.00. We note that the same issues referenced above – the inadequate and, frankly, negligent records-keeping by the city – prevented authorizations for transfers in relation to the infrastructure. As such, it is our position that the City bears some or all of the blame and burden of the removal of customer connections, especially in light of the fact that, when MAW was prepared to perform J and Raise work to preserve these connections prior to the PP&L matter, the City directed MAW to leave the temporary fixes and drops in place as the City no longer had sufficient funds to fulfill their end of the agreement. While in theory we support the idea of an audit to determine what service drops have been removed and to determine which service drops the City might be entitled to a partial credit for as a result, nothing in the MCA indicates that the City has a right to unilaterally withhold payment. In fact, the MCA sets out a rather comprehensive dispute resolution process, of which the City has not availed itself until the present in any form. We note that the City, despite having been invoiced for this, never protested the invoices or payments until present – when the City was finally pressed for payment of MAW's invoices. However, we would be willing to review this specific issue with the City and see if an agreement in relation to Invoice # 15053 can be reached, as well as determine whether any further credit is due to the City and how such responsibility for the removed drops should be allocated between the City and MAW in the spirit of good faith.

This logic also applies to your concerns with Invoice # 15065 in the amount of \$12,600.00, Invoice # 15066 in the amount of \$16,800.00, and Invoice # 15074 in the amount of \$93,800.00. While the City may believe that there has been some finding of liability to MAW, the April 13th Order does no such thing. If PP&L removes those connections and MAW prevails on these matters before the Court, the same connections will be back in place. At this point,

these are necessary, legitimate charges under the terms of the MCA, and it is our position they are properly due and payable when billed.

We note that this also applies to the issue of credit memos raised in page 4 of your letter. Further, as to the issue of franchise fees of 13%, we note that there is no statement that MAW is merely collecting those fees as a bailee for the City. Rather, Exhibit B to the MCA merely states that "[MAW] shall pay to [City], a fee equal to thirteen (13) percent of revenues reported by the [MAW]" from operations within Lancaster, and further that the fees are to be paid quarterly or annually at MAW's discretion. If the City has an issue with MAW withholding its payment under Exhibit B to the MCA to offset the City's refusal to pay for properly billed services, we suggest the City consider paying its bills and invoices under the same portion of the MCA.

This also leads into Invoice # 15094 in the amount of \$63,295.02 for the City's internet services. No portion of the MCA allows the City free access to the Internet. The "City's [part] of the MAW fiber" is what is referred to as "dark fiber." This is cable that provides the City with its internal network between different city facilities and offices, but does not include access to the larger world wide web. MAW has been clear with this, as the MCA states that the City will be receiving Dark Fiber Strands in Section 2.1, the grant of license for such use to the City as well as Section 6.7. If you're referencing Exhibit C, note that language only requires that MAW reserve 50% of its network up to 24 strands for the City's use, but makes no statement the City would receive a license or right to that network free from any charge by MAW. What the City is being invoiced for is its internet access, not its usage of the fiber routes, the same as any other customer who is accessing the world wide web through MAW's servers would. At this point, the City is delinquent on its bill for those services, and MAW is formally demanding the City make payment of the amount owed for its internet access.

In reference to Invoice # 15146 and 15149, both of which the City concedes are likely legitimate costs for make-ready and pole attachment work in relation to the MCA, the City's position appears to be that the City is required to reimburse MAW, not pay when billed. As we set forth above, no such language exists at any point in the MCA or any agreement thereto. In fact, the only time the word "reimburse" appears in the MCA or its exhibits is in Section 6.3 and 6.9, relating to the City's liability to reimburse MAW for the time and labor spent repairing or remedial work done by the City without authorization or in emergency situations. In every other instance, the requirement is that the City will bear the intrinsic costs of the project when billed for them by MAW, which these apply to. MAW has provided documentation showing these are appropriate costs and charges related to building the network under the MCA. Again, it is MAW's position that, as these are legitimate costs billed to the City for services intrinsic to the project, and are rightfully billed to the City for payment – not reimbursement – these invoices are now due and payable in their full amounts.

The City further raises issues with Invoice # 15114, Invoice # 15141, and Invoice # 15150, stating that it believes these are utility charges for the operation of MAW's network and therefore not the responsibility of the City. MAW states that these invoices, which total \$10,747.09, are intrinsic to the operation and maintenance of the network pursuant to the MCA and the exhibits thereto, and therefore are being passed on to the City absent the 13% increase that MAW is entitled to seek for such costs under Exhibit B of the MCA. However, if the City

would like MAW to add the 13% charge authorized by the City onto the bills, we would be happy to do so.

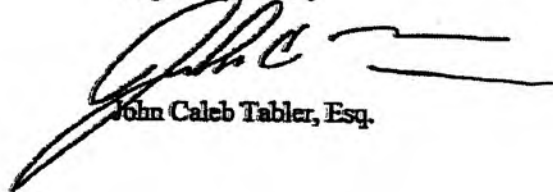
Finally, we come to the Conestoga Water Plant ("CWP") invoices. We state first that it appears the City concedes that the 24 hours billed for *Splice Team* and the 32 hours of *Construction Fiber Infrastructure* are not being contested. As such, MAW now demands those be paid in their full amounts. The City's position that the issue of the credits on a separate project must be addressed, especially when the liability for those credits is contestable, is preposterous. We also note that there is a genuine question as to whether the MCA dispute resolution procedures apply in regards to the CWP project. We will be reviewing that issue to determine if we are bound by the MCA dispute resolution procedure in determining our course of action related to the CWP invoices, if necessary.

Next, MAW states that the CWP Invoice containing the reference to *Design Services* are not engineering services, but rather separate network design costs incurred after MAW was directed to take actions that necessitated by changes to the initial scope of the project. We believe that these are proper invoices for those services, and accordingly will provide whatever documentation is requested or required to support this. However, we note that these Invoices have been outstanding, as all the invoices mentioned in this letter have, for well past the fifteen (15) days in which the City should have properly raised any objections. Accordingly, we find these now very delinquent protests to payment to be untimely and well after a cause of action for non-payment would accrue.

Aware that the dispute resolution procedures of the MCA apply herein, we would look to receive a response from you in this matter within the next seven (7) days to determine whether the City and MAW can engage in good faith efforts to resolve this matter and move forward. However, the position that the City will not be making any payment on invoices for services rendered that were properly submitted and have now been outstanding for quite some time is simply not acceptable. We either will have to reach a mutually agreeable resolution, or proceed to the next steps under the agreement to resolve these disputes.

Please do not hesitate to contact me with any questions.

Very Truly Yours,



John Caleb Tabler, Esq.

cc: Client
Jeffrey Franklin, Esq.

Neil L. Albert, Esquire
 Attorney I.D. No. 23368
 Zimmerman, Pfannebecker, Nuffort & Albert, LLP
 22 South Duke Street
 Lancaster, PA 17602
 (717) 299-0711

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

PPL ELECTRIC UTILITIES CORPORATION, FORMERLY KNOWN AS PENNSYLVANIA POWER & LIGHT CO., Plaintiff,	:	IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
	:	
	:	CIVIL DIVISION – LAW
	:	
vs.	:	File No. 2017-C-3755
	:	
MAW COMMUNICATIONS, INC. and FRANK T. WICZKOWSKI, PRESIDENT, Defendants,	:	HON. EDWARD D. REIBMAN
	:	
and	:	
	:	
CITY OF LANCASTER, Intervenor.	:	

CERTIFICATE OF SERVICE

I, Neil L. Albert, Esquire, hereby certify that I did cause a true and correct copy of MOTION OF INTERVENOR FOR LEAVE TO FILE CROSS-CLAIM to be served upon the person and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure and the Lancaster County, Pennsylvania, Rules of Civil Procedure.

Service by first class mail, addressed as follows:

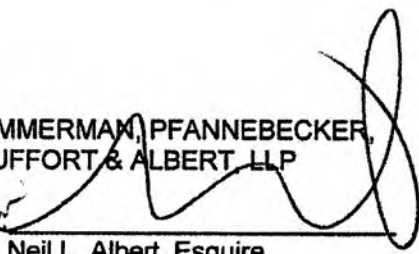
PP&L Electric Utilities Corporation
 Joseph D'Amico, Jr., Esquire
 4001 Schoolhouse Lane, P.O. Box 219
 Center Valley, PA 18034-0219

John C. Tabler, Esquire
 Lau & Associates, P.C.
 4228 St. Lawrence Avenue
 Reading, PA 19606

MAW Communications Inc.
and Frank T. Wiczowski
 Eric E. Winters, Esquire
 Jeffrey Franklin, Esquire
 Prince Law Office, P.C.
 646 Lenape Road
 Bechtelsville, PA 19505

Dated: 4/5/19

ZIMMERMAN, PFANNEBECKER,
 NUFFORT & ALBERT, LLP

By 
 Neil L. Albert, Esquire
 Attorney I.D. No. 23368

Neil L. Albert, Esquire
Attorney I.D. No. 23368
Zimmerman, Pfannebecker, Nuffort & Albert, LLP
22 South Duke Street
Lancaster, PA 17602
(717) 299-0711

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PPL ELECTRIC UTILITIES
CORPORATION, FORMERLY KNOWN AS
PENNSYLVANIA POWER & LIGHT CO.,
Plaintiff,

vs.

MAW COMMUNICATIONS, INC. and
FRANK T. WICZKOWSKI, PRESIDENT,
Defendants,

and

CITY OF LANCASTER,
Intervenor.

: IN THE COURT OF COMMON PLEAS
: OF LEHIGH COUNTY, PENNSYLVANIA

: CIVIL DIVISION – LAW

: File No. 2017-C-3755

: HON. EDWARD D. REIBMAN

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION OF INTERVENOR FOR LEAVE TO FILE CROSS-CLAIM**

It is the policy of Pennsylvania courts to dispose of all claims between litigants in one action in order to avoid multiplicity of litigation and the possibility of inconsistent results.

The matter involved in the cross-claim is a live issue between the litigants. The issue is whether the ruling of the court with respect to the conduct of MAW should be deemed a final order. When this litigation moves to its conclusion, the City of Lancaster believes that the court will enter an order to that effect. This cross-claim does not

require the court to make any additional findings. The purpose of this cross-claim is to ensure on the record that this issue is actually litigated for purposes of issue preclusion.

Allowance of the cross-claim will not result in any delay or in the consumption of any additional judicial resources. Allowance of the cross-claim will expedite the arbitration process between MAW and the City of Lancaster in that it will remove a potential issue.

WHEREFORE, the City of Lancaster requests that its Motion be granted.

Respectfully submitted,

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT, LLP

Dated: 4/5/19

By: 

Neil L. Albert, Esquire
Attorney for Intervenor
Attorney I.D. No. 23368
22 South Duke Street
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I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

PPL ELECTRIC UTILITIES CORPORATION, FORMERLY KNOWN AS PENNSYLVANIA POWER & LIGHT CO., Plaintiff,	:	IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
	:	
	:	CIVIL DIVISION – LAW
	:	
vs.	:	File No. 2017-C-3755
	:	
MAW COMMUNICATIONS, INC. and FRANK T. WICZKOWSKI, PRESIDENT, Defendants,	:	HON. EDWARD D. REIBMAN
	:	
and	:	
	:	
CITY OF LANCASTER, Intervenor.	:	

CERTIFICATE OF SERVICE

I, Neil L. Albert, Esquire, hereby certify that I did cause a true and correct copy of MEMORANDUM OF LAW to be served upon the person and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure and the Lancaster County, Pennsylvania, Rules of Civil Procedure.

Service by first class mail, addressed as follows:

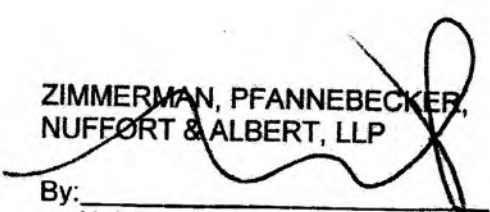
PP&L Electric Utilities Corporation
Joseph D'Amico, Jr., Esquire
4001 Schoolhouse Lane, P.O. Box 219
Center Valley, PA 18034-0219

John C. Tabler, Esquire
Lau & Associates, P.C.
4228 St. Lawrence Avenue
Reading, PA 19606

MAW Communications Inc.
and Frank T. Wiczowski
Eric E. Winters, Esquire
Jeffrey Franklin, Esquire
Prince Law Office, P.C.
646 Lenape Road
Bechtelsville, PA 19505

Dated: 4/5/19

ZIMMERMAN, PFANNEBECKER,
NUFFORT & ALBERT, LLP

By: 
Neil L. Albert, Esquire
Attorney I.D. No. 23368

PPL ELECTRIC UTILITIES
CORPORATION, FORMERLY KNOWN AS
PENNSYLVANIA POWER & LIGHT CO.,
Plaintiff,

vs.

MAW COMMUNICATIONS, INC. and
FRANK T. WICKOWSKI, PRESIDENT,
Defendants,

and

CITY OF LANCASTER,
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: IN THE COURT OF COMMON PLEAS
: OF LEHIGH COUNTY, PENNSYLVANIA
:

: CIVIL DIVISION – LAW
:

: File No. 2017-C-3755
:

: HON. EDWARD D. REIBMAN
:
:
:
:
:
:

ORDER

AND NOW this ____ day of April, 2019, the Motion of Intervenor for Leave to File
Cross-Claim is granted.

BY THE COURT

The Honorable Edward D. Reibman,
President Judge

CC: Neil L. Albert, Esquire
Joseph D'Amico, Esquire
Eric E. Winters, Esquire
Jeffrey Franklin, Esquire
John C. Tabler, Esquire