# CO-LOCATION OF PRIVATE TELECOMMUNICATIONS FACILITIES
# APPLICATION PACKAGE

## MORGAN COUNTY, WEST VIRGINIA

- POLICY
- LEASING PROCESS
- APPLICATION
- DRAFT AGREEMENT

Morgan County Commission, 77 Fairfax St, Berkeley Springs, WV 25411
304-867-3130, fax: 304-258-7305, www.morgancountywv.gov

# POLICY FOR THE CO-LOCATION OF PRIVATE TELECOMMUNICATIONS FACILITIES ON COUNTY PROPERTY

## SUMMARY

As a result of the Telecommunications Act of 1996 (the "Act"), the Morgan County Commission has found it necessary and appropriate to develop a Policy for the Co-Location of Private Telecommunications Facilities on County property to allow orderly compliance with the Act as well as to promote the public good.

This policy is predicated on the following considerations:

1. Minimize proliferation of towers and obstructions.

2. Minimize negative impacts on County Property
   a. Recognize impact on future County capacity needs.
   b. Recognize impact on future County space needs.

3. Minimize impact on County neighbors.

4. Be fairly compensated for use of County property.
   a. Use of County Tower space
   b. Spectrum Management Framework
   c. Application fee (non-refundable)

5. Recognition of prior contractual obligations.

6. Sound engineering practices.
   a. County review of plans, drawings, designs, etc.
   b. Re-location for county purposes
   c. Adherence to existing permit requirements and procedures.

7. Balance the aforementioned points with maximizing opportunities for expanding telecommunications service to the public.

**POLICY FOR THE CO-LOCATION OF PRIVATE TELECOMMUNICATIONS FACILITIES ON COUNTY PROPERTY**

The Telecommunications Act of 1996 (the "Act") provides that no State or local statute, regulation or other legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The practical result of this provision is that entities such as the county are now in a position of having to consider requests from private entities to co-locate on their facilities. Although the Act, for all intents and purposes, opens the County for use by providers of telecommunications services, it does not do so without limitation.

The Act provides that the County retains its authority to manage its business and to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and non-discriminatory basis, for use of County property on a non-discriminatory basis.

As a result of the Act, the County has found it necessary and appropriate to develop a Policy for the Co-Location of Private Telecommunications Facilities on County property to allow orderly compliance with the Act as well as to promote the public good.

While the County's intentions, concerns and positions with the respect to co-locations are more fully set forth below and made a part of this Policy, the Policy may be summarized as follows:

1. Requests for co-location shall be considered on a first come, first serve basis.
2. Entities desiring to co-locate on County property shall be required to submit an application (attachment A), along with the appropriate, non-refundable application fee. This application shall, among other things, contain a precise description of the location at which the co-location is desired, a precise description of the nature and scope of the desired co-location (including all designs, drawing, etc. that may be available at that time).
3. Morgan County Commission staff shall review the submitted application for the purpose of determining whether the desired co-location is practical. In making this determination, staff will consider, among other things, the load capacity of the structure upon which the co-location is desired and future County needs. It shall be understood by all entities desiring to co-locate that the County reserves the right to request any and all documents it deems necessary in making its determination as to the practicality of the desired co-location.
4. Assuming that the County determines that the desired co-location is practical, the requesting party shall be so notified. However, prior to the commencement of any co-location related activities, the requesting party shall be required to enter into a co-location agreement (attachment B) with the County. The agreement will be in general conformity with the draft Lease.
5. Upon execution of the necessary co-location Agreement, co-location activities may commence, subject to the terms and conditions contained therein.
6. If, after completing its review of the co-location application the County determines that the desired co-location is not practical, the County shall so notify the requesting party. Said notice by the County shall state the reasons why the desired co-location was determined to be impractical.

7. Notwithstanding that the County may determine that a desired co-location is practical, it shall be understood by all parties that no action of the County releases a requesting party from compliance with the provisions of any existing Federal, State or local regulations relating to the construction of such co-location.

**Minimize proliferation of towers and obstructions**

It is the County's desire to keep the number of towers to a minimum. The sharing of facilities either between private entities and the County or among several private entities is highly encouraged. This includes consolidation of facilities at singular sites, construction of common infrastructure and sharing of towers.

**Minimize negative impacts on County operations**

In all cases it is necessary to recognize that County capital has been used to build a communication system necessary for the operation of the County. Sufficient capacity will be prudently reserved to meet the reasonable future needs of the County. Where capacity exists in excess of that prudently reserved to meet the reasonable future needs of the county that capacity will be considered available for lease to private entities so that the County can realize a partial return on its capital investment.

**Minimize negative impacts on County neighbors**

When at all possible, the County will take appropriate steps to ensure that negative impacts to its neighbors are minimized. These steps should include coordination of construction activities and the requirement that any private entities obtain applicable local permits prior to co-location on County facilities.

**The County should be fairly compensated for use of its property**

The Act allows the County to be fairly compensated for the use of its property. Consistent with past practices and current market conditions, the County shall always be fairly compensated for the use of its property.

**Spectrum Management Framework**

In instances where a Broadband Wireless Internet carrier is issued a site application, and submits said application, a spread spectrum band is allocated exclusively for their use at a given tower site. This framework ensures that broadband carriers are equitably allowed to co-locate on County towers with minimal concerns of interference.

Any spectrums reserved within this framework will be held for a maximum of three (3) months prior to executing a lease. After that time, if a lease agreement has not been executed, then the application fee is forfeited and the spectrums become available.

The Spectrum Management Framework may be modified from time to time by the County.

**Application Fees & Leasing Rates**

**Application Fee** –

A one-time application fee of shall be required at the time of formal application by a private entity for co-location. This fee shall be non-fundable and will be considered to cover the administrative and engineering costs incurred by the County in the review of the application. The application fee is a separate charge and shall not be applied against future fees that may become due and payable from the private entity to the County. The following is an application fee schedule that may be modified from time to time by the County.

**Application Fee Schedule –**

- Broadband Wireless Internet carrier with feed installed on existing County tower and equipment in an outdoor cabinet. Two spectrums per application. ($250)

- Wireless Microwave Backhaul carrier with feed installed on existing County tower and equipment in an outdoor cabinet.($250)

- Simple Stick Antenna with feed installed on existing County Tower and equipment in a new structure. ($750)

- PCS Antenna Array with feeds installed on existing County Tower and equipment in a new structure. ($1250)

**Commercial Tower Co-Location Leasing Formula for County Towers -**

The leasing Rates for Co-location agreements will be based on the following formulas (all rates below to be paid monthly) and specifically noted in the lease agreement.

- Wireless Broadband Services, Two spectrums per application - $500,
  maximum of eight antennas less than 12 inches in diameter each.
  30 amp 120 volt service provided when available.

- Microwave Backhaul – priced per antenna –
  $125 per ft. in dia. Examples 1ft = $125.00 – 2ft x $125.00 = $250 etc.

- Stick Antennas 0 - 10 ft. $200, 10ft. – 20ft. $400

- Additional $50 for placing equipment at 101'-150', $100 at 151'-200', $150 at 201'-250', $200 at 251'-300', $300 at 301'-350', $400 at 351'

- PCS antenna array with feeds installed on existing County tower and equipment in a new structure. ($2,500.00)

- Ground Space within the secured compound. - $5.00 per sq. ft.

**Sound engineering practices**

It shall be understood by all entities wishing to co-locate on County facilities that the County reserves the right to review and inspect all plans, designs, drawings, etc. in connection with desired co-locations to ensure that nothing will interfere with the County's construction, maintenance and operation.

It shall also be understood by all entities wishing to co-locate on County facilities that the County reserves the right to require re-location, at no cost, to the County, if it is determined that such re-location is necessary for the County to fulfill its obligations with respect to the construction, maintenance and operation of the Tower.

It shall finally be understood by all entities wishing to co-locate on County facilities that the County reserves the right to enforce all of its existing regulations, requirements and procedures with respect to the County permitting processes. These requirements include, but are not limited to, bonding and insurance.

# FACILITY LEASING PROCESS

## 1. INITIAL CONTACT

Wireless carriers or their representatives initiate contact with the Morgan County Commission regarding a site that will be of value to their system. This level of contact is casual and need not be in writing. The proposed site location will be discussed and a general determination will be made by the Morgan County Commission as to whether a wireless carrier should proceed with plans. At this time, the Morgan County Commission documents the contact and, if applicable, opens a new project file.

If the wireless carrier does not already have a copy of the "Policy for the Co-Location of Private Telecommunications Facilities on County Property", it will be made available to them.

The wireless carrier is informed/reminded of the Morgan County Commission's reservation of the top 20' of each tower.

## 2. OPTIONAL SITE WALK

After initial contact is made with the Morgan County Commission a site walk is recommended between Morgan County Communications Director and representatives of the wireless carrier, to further explore project feasibility.

## 3. LEASE NEGOTIATIONS

After confirming their interest the wireless carrier is referred to the Morgan County Commission's Legal Department. Ideally, lease discussions should take place concurrently with Step 4.

## 4. SITE APPLICATION FORM ISSUED

The Morgan County Commission issues a copy of the Site Application Form.

## 5. ANTENNA HEIGHT ASSIGNMENT

At this time, concurrently with the issuance of the Site Application Form, a mutually agreeable tower height and azimuth (if applicable) is agreed upon. As per Morgan County Commission policy, the top 20' of each tower is reserved for in-house future use. Additionally, there must be a 10' separation between the proposed wireless carrier's antenna(s) and any other antenna on the tower. These requirements may be waived at the discretion of the Morgan County Commission.

## 6. TOWER STRUCTURE REVIEW

Immediately after receiving antenna height assignment the wireless carrier should submit all tower (antenna and line) details for structural review by a certified engineering firm for structural review.
If the structural report fails, there are two options. First, the wireless carrier may have a tower modification performed by a certified structure engineering firm, to bring tower to acceptable limits, or they may opt to re-submit their request to re-locate to a

lower height. If the latter instance is chosen, a second analysis report will be required. Any modifications or re-location cost would be at the carrier's expense.

**This step must take place after antenna height assignment**, as to avoid multiple tower analysis requests by the wireless carrier. If structural review fails, applicant may choose a different height or choose a tower modification at applicants expense. All tower modifications are subject to a performance bond.

## 7. SITE APPLICATION FORM SUBMITTED

The wireless carrier submits the completed Site Application Form, along with the appropriate application fee. The paperwork is date stamped. Full engineering plans (as detailed in Step #8) are not necessary at this time.

**Only applicable for broadband wireless internet carriers:** Once the site application is received the desired, pre-discussed spectrums will be reserved for that specific wireless carrier at that site.

## 8. ENGINEERING PLAN SUBMITTED & REVIEWED

The Wireless Carrier's 90% engineering plans are submitted to the Morgan County Commission and Morgan County Planning Commission. This process allows for a 30 business day review period.

Proof of insurance must be furnished to the county for all contractors and sub-contractors who will be performing the proposed site work. Insurance requirements are as follows: Commercial general liability insurance, with limits of not less than One Million Dollars combined single limit per occurrence for bodily injury and property damage liability, workers compensation, and automobile liability insurance insuring against claims for bodily injury and property damage with combined single limits of one million dollars. Bonding is required if it becomes necessary for tower modification in regards to the structural review process.

## 9. COMMENTS RETURNED TO WIRELESS CARRIER

Written comments are returned to the wireless carrier and a re-draft of the 90% plans is requested. If there were no comments on the submitted plans, then proceed to Step #11. Above and beyond expected comments on the engineering plans, if there is a broad determination that the proposed site is not suitable for licensing, then a written notice of objection, explaining all bases for such objections, will be issued by the Morgan County Commission. The wireless carrier will have the opportunity to address the written notice of objection and re- apply for consideration.

## 10. RE-DRAFT OF ENGINEERING PLAN SUBMITTED

The revised plans are examined to determine whether the previously issued Morgan County Commission's comments have been addressed. If so then proceed to Step #11. If not, then return to Step #9.

## 11. APPROVAL OF ENGINEERING PLANS

With a complete, approved engineering plan, the Morgan County Commission notifies the wireless carrier that all issues have been adequately addressed.

## 12. LEASE NEGOTIATIONS ARE COMPLETED

The Morgan County Legal Department notifies the Morgan County Commission that lease details have been finalized.

## 13. MORGAN COUNTY COMMISSION MEETING

The wireless carrier's proposal is put before the Morgan County Commission. If approved, then proceed to Step #14. If the proposal is denied, then either return to Step #9 or issue a Written Notice of Denial (as detailed in Step # 9.)

## 14. NOTICE TO PROCEED (NTP) ISSUED

The Morgan County Commission issues the formal approval to commence construction. There should not be any pending lease (Step # 12) or insurance (Step #7) issues. If there are, then the NTP will be delayed until their completion.

## 15. SITEWORK

Installation crews begin site work, which is coordinated with the Morgan County Commission staff.

The Morgan County Commission maintains that each third party user is entitled to perform their site work within their own guidelines and needs. Nevertheless, if there are any broad scoped site installation issues that impact the Morgan County Commission or other third parties' on-site (safety, aesthetics) then these must be reasonably addressed.

Upon completion of site work, the Morgan County Commission will document the project and close any project files created in Step **#1.**

## 16. FINAL AS-BUILTS

The engineering plans submitted in Step #8 should be amended as needed during construction. Once work has been completed, any changes should be addressed in final record drawings, which are forwarded to the Morgan County Commission for permanent filing.

**Attachment A**

## TELECOMMUNICATIONS SITE APPLICATION FORM

**Site Name:** _____

**Licensor:** Morgan County Commission
77 Fairfax Street, Rm 101
Berkeley Springs, WV 25411

**Attention:** Morgan County Commission, Communications Director
**Phone:** 304-258-8540
**Fax:** 304-258-7305

**Licensee**: _____

_____

**Attention:** _____

**Phone:** _____

**Fax:** _____

_____ requests approval on this

_____ day of 20_____ to license a portion of Licensor's Towers

and Lands together with obtaining a right of access to install associated utilities within

the portion of the Licensor's towers and Licensor's Lands actually defined above. Attached

with this application form please find the pre-determined site application fee, payable to

_____ in the amount of __$_____

**Submitted by :** _____

**Title**:_____

**Attest:** _____

**TELECOMMUNICATIONS SITE APPLICATION FORM**

**TOWER HEIGHT** _____

**REQUESTED ANTENNA HEIGHT (TO TIP OR CENTERLINE)** _____

**REQUESTED TOWER SIDE(S)** _____

**ANTENNA MANUFACTURER** _____ **MODEL** _____ **SIZE** _____

**TRANSMISSION LINE TYPE & SIZE** _____

**ANTENNA AZIMUTH TO OTHER SITE** _____

**TRANSMIT FREQUENCY (MHZ)** _____

**RECEIVE FREQUENCY (MHZ)** _____

**TRANSMIT POWER (WATTS)** _____

**TRANSMIT EIRP (WATTS)** _____

**TRANSMIT INPUT POWER TO ANTENNA LINE (WATTS)** _____

**AC POWER REQUIREMENTS** _____

**EQUIPMENT HOUSING TYPE & SIZE (H, W, D)** _____

**EQUIPMENT QUANTITY** _____

**TELEPHONE REQUIREMENTS** _____

**EQUIPMENT MANUFACTURER & MODEL** _____

**UNIQUE REQUIREMENTS (EXPLAIN)** _____

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**NOTE: In addition to this form, a complete set of certified engineering plans for the proposed site also need to be submitted for review. Plans must include general specifications, a site plan incorporating both the proposed equipment, tower/site elevations, antenna details, shelter plans (including foundations and/ or caissons), utilities and a grounding plan. While this site application form <u>may</u> be submitted in advance of the engineering plans, a technical review and final approval require the aforementioned plans.**

**Attachment B**

**Morgan County, WV**
**Tower Site Agreement**

Lessor leases to Lessee, the site described below (check appropriate boxes)

____ Land consisting of approximately _____square feet upon which Lessee will install their equipment sheltering structure
____ Tower Antenna Space- see Attachment A for specifications and wind loading
____ Space required for cable runs to connect Facility equipment and antennas

In the location(s) (Site) shown on Exhibit A, together with non-exclusive easement for reasonable access thereto and to the appropriate, the discretion of Lessee, source of electric and telephone facilities. The site will be used by Lessee for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, communications service system facility, including without limitation, antenna equipment, cable wiring, back-up power sources (including generators and fuel storage tanks), related fixtures and if applicable to the Site, an antenna structure. Lessee will use the Site in a manner which will not unreasonably disturb the occupancy of Lessor's other tenants. Lessee will have unrestricted access to the Site 24 hours per day, 7 days per week.

1. **Term.** The term of this Agreement (the "initial Term") is five (5) years, commencing on date both Lessee and Lessor have executed this Agreement. This Agreement will automatically renew for three (3) five (5) year terms unless either party indicates its intention to terminate in writing at least 90 days prior to lease expiration. Lessee will provide notice of intent to renew prior to expirations of this agreement. Lack of notification is assumed to be intent of the Lessee not to pursue renewal.

2. **Rent.** Rent (as hereinafter defined) will commence upon the Construction start date and/or installation of Lessee's Antenna Facilities, (the "Rent Commencement Date"). Thereafter, the annual rent of $_____will be paid in equal monthly installments in advance. Rent for each Renewal Term will be the annual rent in effect for the final year of the initial Term or prior renewals Term, as the case may be, increased by Three percent (3 %). Rent payments will be sent to the address beneath Lessor's signature or via electronic transfer to the Lessor's bank account as directed by the Lessor. All of Lessee's monetary obligations set forth in this Agreement are conditioned upon Lessee's receipt of an accurate and executed W-9 Form from Lessor.

3. **Title and Quiet Possession.** Lessor represents and agrees (a) that it is the Lessor of the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign;(d) that Lessee is entitled to access to the Site at all times and to the quiet possession of the Site throughout the initial Term and each Renewal Term so long as Lessee is not in default beyond the expiration of any cure period;(e) that Lessor shall not have unsupervised access to the Site or to the equipment; and (f) that Lessor will upon sale or transfer of the underlying property, provide an assignment letter to Lessee that instructs Lessee to make future rent payments to the transferee. Lessor further agrees to defend, indemnify and assume all liability for failure to provide Lessee with proper transfer information or required documentation pertaining to subsequent Lessor.

4. **Assignment/Subletting.** Lessee shall not have the right to sublease and/or assign its rights under this Agreement without notice to and consent of Lessor.

5. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested or sent by recognized overnight carrier to the addresses specified below. Notices, requests, demands and other communications may also be given by facsimile transmission, provided that notice is concurrently given by one of the above methods. Communication by electronic or computerized mail shall not be accepted as effective notice under this Agreement. Notices to Lessee must be sent to the address shown underneath Lessee's signature. Notices to Lessor must be sent to the address shown underneath Lessor's signature.

6. **Improvements.** Lessee may, at its expense, make such improvements on the Site, as it deems necessary from time to time, for the operation of the facility. Upon termination or expiration of this Agreement, Lessee shall remove its equipment and improvements and will restore the Site to substantially the condition existing on the Commencement Date, except for ordinary wear and tear and casualty loss.

7. **Compliance with Laws.** Lessor represents that Lessor's property (including the Site), and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Lessee will substantially comply with all applicable laws relating to its possession and use of the Site.

8. **Standard of Work.** All work shall conform the methods and procedures described in the Motorola document Standards and Guidelines for Communications Sites Motorola Part Number 68-81089E5O). Electrical work shall meet requirements of the most current edition of NFPA 70, the National Electrical code. The emergency back-up generator shall meet requirements of the most current editions of NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines and NFPA 110, Standard for Emergency and Standby Power Systems.

9. **Proof of engineering competency.** The Lessor shall be sole arbiter of situations arising from disputes as to the competency of engineering of proposed additions such as antennas, batteries, cabling, electrical equipment, generators, penetrations, racks, support structures, and transfer switches. This list in not intended to be all-inclusive.

10. **Interference.** Lessee will resolve technical interference problems with other equipment located at the site on the commencement date or any equipment that becomes attached to the site at any future date when Lessee desires to add additional equipment to the site. Subsequent users: Lessor will not permit or suffer the installation of any future equipment, which (a) results in technical interference problems with Lessee's then existing equipment, (b) encroaches onto the site, or (c) shall not permit the use of any portion of Lessor's property by any subsequent users following installation of Lessee's facilities in a way which materially interferes with the rights of Lessee hereunder.

11. **Emergency termination of interference.** As this site supports multiple public safety communalizations systems, the Lessor reserves the right to remove power (both normal and emergency) from any Lessee installed equipment in order to prevent interference to a public safety communications system. Lessee shall clearly mark disconnecting means for both normal and emergency power in order to minimize damage to Lessee equipment.

12. **Utilities.** Lessor represents that utilities adequate for Lessee's use of the Site are available. Lessee will pay for all utilities used by it at the Site. Lessor will cooperate with Lessee in Lessee's efforts to obtain utilities from any location provided by Lessor or the servicing utility, including signing any easement or other instrument reasonably required by the utility company.

13. **Termination.** Lessee may terminate this Agreement at any time by 60 day notice to Lessor without further liability if Lessor does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority, quasi-governmental authority or any easements required from any third party to operate the installed equipment, or if any such approval is canceled, expires or is withdrawn or terminated, or if Lessor fails to have proper Lessor ship of the Site or authority to enter into this Agreement, or if Lessee, for any other reason including technical, regulatory and business reasons, in its sole discretion, determines to terminate this Agreement. Upon termination, all prepaid rent will be retained by Lessor unless such termination is due to Lessor's failure of proper Lessor ship or authority, or such termination is a result of Lessor's default.

14. **Default.** If either party is in default under this Agreement for a period of (a) 15 days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) 30 days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30-day period and proceeds with due diligence to fully cure the default.

15. **Indemnity.** Lessor and Lessee each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the Lessor ship, use and/or occupancy of the Site by the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The indemnity obligations under this Paragraph will survive termination of this Agreement.

16. **Hazardous Substances.** Lessor represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee will not introduce or use any such substance on the Site in violation of any applicable law.

17. **Subordination and Non-Disturbance.** This Agreement is subordinate to any mortgage or deed of trust now of record against the Site. However, promptly after the Agreement is fully executed, Lessor will use diligent efforts to obtain a non-disturbance agreement reasonably acceptable to Lessee from the holder of any such mortgage or deed of trust.

18. **Taxes.** Lessee will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its use of the communications facility on the Site. Lessee will pay to Lessor any increase in real property taxes attributable solely to any improvements to the Site made by Lessee within 60 days after receipt of satisfactory documentation indicating calculation of Lessee's share of such real estate taxes and payment of the real estate taxes by Lessor. Lessor will pay when due all other real estate taxes and assessments attributable to the property of Lessor of which the Site is a part and will provide Lessee with proof of such payments.

19. **Insurance.** Lessee will procure and maintain commercial general liability insurance, with limits of not less than One Million Dollars combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to Lessor within 30 days of written request. Such policy will provide that cancellation will not occur without at least 15 days prior written notice to Lessor. Each party hereby waives its right of recovery against the other for any property loss or damage covered by any insurance policies maintained by the waiving party.

Each party will cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery against the other party in connection with any property loss or damage covered by such policy.

Lessor is not liable for any loss of technology, rights or services, incidental, punitive or consequential damages whatsoever, loss of data, or interruption or loss of use of service, including but not limited to, damages relating to lost revenues or profits, economic loss or injuries to persons or property arising from loss of service due to electrical issues, weather related issues or other acts of God.

20. **Maintenance.** Lessee will be responsible for repairing and maintaining the tower site and facility and any other improvements installed by Lessee at the Site in a proper operating and reasonably safe condition. Lessor will maintain and repair all other portions of the property of which the Site is a part in a proper operating and reasonably safe condition.

21. **Access to Premises.** Lessor shall supply Lessee with keys or security devices or codes for accessing the premises. Lessee shall not duplicate or disclose such keys or security devices or codes and shall prevent its employees, agents, or representatives from duplicating any keys or security devices or codes. In the event that Lessee loses such keys, security devices or codes or causes such keys, security devices or codes to be compromised, then Lessee shall be liable for the cost of rekeying or replacing the keys and security devices.

Lessee shall permit only its agents, employees and experienced communication vendors/contractors to enter the premises subject to written notification of the county. All persons performing work on the tower should have qualifications in accordance with the Code of Federal Regulations. Should Lessee wish to permit any other person or persons to enter the premises, Lessee shall provide their names, positions and qualifications in writing to Lessor at least forty-either (48) hours prior to the intended entrance into the premises, and Lessor may in its sole discretion deny such entrance.

Notification to be made to:

Morgan County Commission
77 Fairfax St., Room 101
Berkeley Springs, WV 25411

With an email copy to: e911director@morgancountywv.gov and
jmcclintock@morgancountywv.gov

22. **Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement, including any successor by merger or sale of assets; (b) this Agreement is governed by the laws of the state in which the Site is located; (c) If requested by Lessee, Lessor agrees promptly to execute and deliver to Lessee a recordable Memorandum of this Agreement in the form of Exhibit B; (d) this Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (e) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (f) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs

and expenses from the non-prevailing party.

23. **Non-Binding Until Fully Executed.** This Agreement is for discussion purposes only and does not constitute a formal offer by either party. This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

24. **Authority.** Each party hereby represents and warrants to the other that the undersigned person is duly authorized to execute this Lease Agreement by and on behalf of such party.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A (Site Description), and B (Memorandum of Site Agreement)

**LESSOR**: Morgan County Commission_____

_____
Bradley J. Close, President

_____
Robert L. Ford

_____
Joel R. Tuttle

**LESSEE:** _____

_____
Signature

**EXHIBIT A**: Site Description
Site situated in the city of _____, County of Morgan, State of WV

INSERT SURVEY DATA HERE

Sketch of Site: To be added once drawings are approved and signed off by Lessor:

Note: Lessor and Lessee may, at Lessee's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site. Use this Exhibit A for Tower Site Agreement, Memorandum of Tower Site Agreement, Option Agreement and Memorandum of Option Agreement.

**EXHIBIT B:** Memorandum of Site Agreement

This memorandum evidences that a lease was made and entered into by a written Tower Site Agreement dated _____ between the County of Morgan and _____.

Such Agreement provides in part that Lessor leases to Lessee a certain site locate at _____ within the property of Lessor which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of one year commencing on_____.
(Date)

WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

**LESSOR:**
Morgan County Commission
77 Fairfax Street, Rm 101
Berkeley Springs, WV 25411

By the direction of the President of the Morgan County Commission and approved in a regularly scheduled meeting.

_____Date_____
Bradley J. Close, President
Morgan County Commission