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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV
ASSOCIATION, YISROEL FRIEDMAN, S.
MOSHE PINKASOVITS, SARAH BERGER,
MOSES BERGER, CHAIM BREUER, YOSEF
ROSEN, AND TZVI SCHONFELD,

Plaintiffs,

v.

THE BOROUGH OF UPPER SADDLE RIVER,

Defendant.

Civil No.: 2:17-CV-05512-JMV-CLW

Civil Action

**SUPPLEMENTAL DECLARATION
OF
BRUCE S. ROSEN, ESQ.**

I, Bruce S. Rosen, Esq., declare under penalty of perjury:

1. I am an attorney licensed with the State of New Jersey and admitted to practice before the Federal District Court for the District of New Jersey. I represent Defendant Borough of Upper Saddle River in the above-captioned matter and submit this declaration is in further support of Defendant's Cross-Motion to Dismiss Plaintiffs' First Amended Complaint.

2. Pursuant to a Google search of N.J.S.A. 48:3-19, conducted on December 12, 2017, we located numerous publically available documents that recognize N.J.S.A.

48:3-19 requires municipal consent for the use of utility poles within a municipality's jurisdiction from any entity which does not already have a lawful right for the use of those utility poles. A representative sampling of the documents located pursuant to aforementioned search are attached hereto as follows:

a. Attached as **Exhibit "J"** is a true and correct copy of a New Jersey League of Municipalities slide show, entitled Wireless Facilities in the Right of Way (ROW), which explicitly states, at slide 6, that if a non-franchised entity seeks to affix attachments on existing utility poles within in a municipality, the non-franchised entity must seek consent from the local government, pursuant to N.J.S.A. 18:3-19, for the use of those existing utility poles. Obtained from: <http://www.ocmayors.net/images/2017-09/OC%20Mayors%20Meeting.pdf>.

b. Attached as **Exhibit "K"** is a true and correct copy of a Verizon slide show, entitled Connecting Our Homes, Businesses and Communities, which explicitly states, at slide 15, that "[w]here the second company is not itself a franchised utility, which is the case with Verizon Wireless, the consent of the municipality is required under N.J.S.A. 48:3-19." Obtained from: <http://www.njslom.org/presentations/purcell-013017.pdf>.

c. Attached as **Exhibit "L"** is a true and correct copy of relevant portions of the June 1, 2016 Minutes of the Township of Pennsauken Township Committee Meeting that state: (1) Cross River Fiber, L.L.C. is not a franchisee in the Township of Pennsauken,; (2) Cross River

Fiber, L.L.C. is required to seek consent of the municipality, pursuant to N.J.S.A. 48:3-19, to utilize the utilities poles of existing Township of Pennsauken franchisees; (3) Cross River Fiber, L.L.C. has sought the consent of the municipality; and (4) the Township of Pennsauken has granted the requested consent. Obtained from: <http://www.twp.pennsauken.nj.us/sites/default/files/June%201%2C%202016%20minutes.pdf>.

d. Attached as **Exhibit “M”** is a true and correct copy of the “Resolution of the Township of [sic] Council of the Township of Mount Olive Approving Right-Of-Way use to PEG Bandwidth NJ, LLC and Authorizing the Execution of a Right of Way Use Agreement Between the Township of Mount Olive and PEG Bandwidth NJ, LLC,” which recognizes PEG Bandwidth NJ, LLC required municipal consent, pursuant to N.J.S.A. 48:3-19, to install fiber optic cables to utility poles owned by Verizon, who holds a franchise to operate within the municipality. Obtained from: <http://mountolivetownship.com/11%2012%2014%20reso%20approve%20row%20to%20peg%20bandwidth%20and%20autho%20execution%20of%20row%20use%20agreement%20btwn%20twp%20and%20peg%20bandwidth.pdf>.

e. Attached as **Exhibit “N”** is a true and correct copy of an application made by Verizon Wireless to the Township of Bernards recognizing Verizon Wireless requires municipal consent, pursuant to N.J.S.A. 48:3-19, to operate in the municipality’s right of way and on utility

poles owned by other entities that hold franchises to operate within the municipality. Obtained from:

<http://www.bernards.org/Township%20Committee/Document/2017/2017-01-24VerizonMunicipalConsentPackage.pdf>.

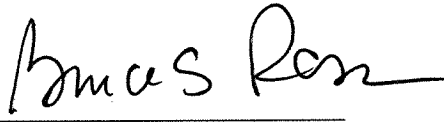
f. Attached as **Exhibit "O"** is a true and correct copy of an application made by Verizon Wireless to the Township of Montville recognizing Verizon Wireless requires municipal consent, pursuant to N.J.S.A. 48:3-19, to operate in the municipality's right of way on utility poles owned by other entities that hold franchises to operate within the municipality. Obtained from:

<http://www.montvillenj.org/DocumentCenter/View/1084>.

g. Attached as **Exhibit "P"** is a true and correct copy of an application made by Verizon Wireless to the Borough of Caldwell recognizing Verizon Wireless requires municipal consent, pursuant to N.J.S.A. 48:3-19, to operate in the municipality's right of way on utility poles owned by entities that hold franchises to operate within the municipality. Obtained from:

[http://www.caldwell-nj.com/filestorage/291/460/Council_Business_3-21-2017_\(Reduced\).pdf](http://www.caldwell-nj.com/filestorage/291/460/Council_Business_3-21-2017_(Reduced).pdf).

I declare under penalty of perjury that the foregoing is true and correct.

By: 
Bruce S. Rosen, Esq.

Executed on: December 12, 2017