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April 29, 2009

Via Overnight Delivery
Honorable Jaclyn A. Brilling
Secretary
New York State Department
of Public Service
Three Empire State Plaza
Albany, NY 12223

Dear Secretary Brilling:

Enclosed for filing, please find an original and one (1) copy of the Joint Petition of Consolidated Edison Company of New York, Inc. ("Con Edison") and Omnipoint Communications Inc., d/b/a T-Mobile ("T-Mobile"). An electronic copy is also provided on the enclosed disc.

Con Edison and T-Mobile request approval, under Section 70 of the Public Service Law and the Public Service Commission's <u>Notice of Obligation to Seek Approval for Wireless Attachments to Transmission Facilities</u>, issued April 14, 2004 in Case 02-M-1288, of the existing T-Mobile wireless facilities on Con Edison property (Tower K-47).

Thank you for your assistance.

David P. Warner

incerely

Enclosures

cc: Joseph Dowling, Esq. Staff (via e-mail w/out encl.)
Edward Schrom, Staff (via e-mail w/out encl.)
Richard Powell, Staff (via e-mail w/out encl.)

Michele K. Thomas, Esq., T-Mobile (via e-mail w/out encl.)

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

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In the Matter of the Application

Case No.

of

JOINT PETITION

Consolidated Edison Company of New York Inc. and Omnipoint

Communications Inc. (d/b/a T-Mobile)

TO: THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK:

Introduction

Consolidated Edison Company of New York, Inc. ("Con Edison") and Omnipoint Communications Inc., a Delaware limited liability company doing business as T-Mobile ("T-Mobile") (together "Petitioners"), hereby seek Public Service Commission ("Commission") authorization for T-Mobile's existing wireless equipment ("Equipment") attached to Con Edison Electric Transmission Facilities ("Tower K-47") pursuant to Con Edison's Electric Transmission Wireless Attachment Standard Procedure ("Standard Procedure") and Section 70 of the Public Service Law ("PSL"). Communications in this proceeding should be addressed to the attention of:

¹ Con Edison's Standard Procedure was approved by the Commission in Case 07-M-0744, Joint Petition of Consolidated Edison Company of New York, Inc. and New Cingular Wireless for Approval under Section 70 of the Public Service Law Authorizing Installation of Cingular's Wireless Facilities on Consolidated Edison Property, Order Granting Petition, issued and effective November 8, 2007.

² T-Mobile is joining this Petition for the sole purpose of satisfying the Commission's regulations implementing PSL Section 70.

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Michele K. Thomas T-Mobile 4 Campus Drive Parsippany, NJ 07054 973-451-8399 866-836-6868 (fax)

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Procedural History

Pursuant to the Order Approving Procedure in Case 02-M-1288,³ the Commission approved Niagara Mohawk Power Corporation's generic procedures for wireless attachments to its transmission facilities. The Commission also explained the obligation of all investorowned utilities in the state to "obtain approval for existing and future attachments to their transmission facilities according to their own procedures that provide the same protections and assurances as Niagara Mohawk's procedures as set out in this Order."4

Pursuant to the Notice of Obligation to Seek Approval for Wireless Attachments to Transmission Facilities in Case 02-M-1288, 5 the Commission directed each utility with

³ Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval to Authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Power Corporation Transmission Facilities, Order Approving Procedure, issued and effective April 14, 2004, Ordering Clause 1, p. 5.

⁴ *Id*, p. 4.

⁵ Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval to Authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Power Corporation Transmission Facilities, Notice of Obligation to Seek Approval for Wireless Attachments to Transmission Facilities, issued April 14, 2004, p. 1.

wireless attachments to its transmission facilities, to "file an original and three copies of its own plan, for complying with the Public Service Law and the Commission's review of such wireless attachments, taking into account the effects of the attachments on system reliability, safety and the environment." Con Edison's Standard Procedure was approved by the Commission in November 2007.⁶

Currently, wireless telecommunication providers attach their facilities to Con Edison transmission towers pursuant to a Site License Agreement ("License") that incorporates either its Antenna License Standard Terms and Conditions ("Standard Terms and Conditions") or Master License Agreement ("Master License"). The uniform fees currently charged to wireless service providers for Con Edison transmission tower attachments are set forth in the Fee Schedule for the Site License Agreements ("Fee Schedule") (Exhibit A).

Tower K-47 Application

T-Mobile has a principal place of business at 12920 SE 38th Street, Bellevue, WA, 98006. T-Mobile represents that it has been duly licensed by the Federal Communications Commission ("FCC") to provide Commercial Mobile Radio Services ("CMRS") and that it is duly authorized to provide this service from Tower K-47.

T-Mobile's License for Tower K-47 was executed on December 21, 1998 (Exhibit B). Tower K-47 is located off Secor Road, in the Town of Greenburgh, Westchester County, New York. The tower is located on Con Edison's K Line right of way. The installation consists of three (3) antenna panels attached to Tower K-47 at approximately 121 feet above

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⁶ Supra at no. 1.

⁷ The Standard Terms and Conditions and the Master License provide non-discriminatory access to Con Edison transmission towers for all authorized wireless telecommunication providers as both documents contain nearly identical terms and conditions.

ground level and includes approximately 220 square feet at the base of the tower for equipment associated with the T-Mobile antennas (collectively, the "Licensed Premises"). The Licensed Premises and the equipment to be located thereon are more particularly described in Schedules 1 through 5 to the License. The License for Tower K-47 incorporates the terms and conditions of the Master License between Con Edison and T-Mobile (Exhibit C). Unless otherwise defined herein, the capitalized terms that follow shall have the meanings given them in the License and Master License.

The License allows the Licensed Premises to be used by T-Mobile on a non-exclusive basis and does not permit T-Mobile or Con Edison to prohibit other wireless carriers from attaching to the same transmission facility as long as such additional attachments do not adversely affect T-Mobile's Equipment or Con Edison's facilities.

The Initial Term of the License is five (5) years. There are three (3) five (5) year Renewal Terms as set forth in the Master License exercisable as long as T-Mobile is not in default. In addition, T-Mobile has a non-exclusive use of, and controlled and shared access to, the Licensed Premises controlled by Con Edison. T-Mobile or its agents must notify Con Edison sufficiently in advance of any entry onto the Licensed Premises so that Con Edison's representatives of Transmission Line Management ("TLM") and Construction Management ("CM") (or any successor or different Con Edison organizations) can monitor the activities authorized by the License. Any work to be performed at the Licensed Premises will be done at T-Mobile's expense and with supplies and materials furnished by T-Mobile. Con Edison personnel perform all work on the transmission towers. Contractors approved by Con Edison perform any other work.

The License provides that if Con Edison determines that any T-Mobile Equipment interferes with or adversely impacts the operation of Con Edison's internal telecommunications system, of any pre-existing co-located wireless telecommunication providers, or the safety and/or reliability of Con Edison's transmission system or Tower/Right of Way maintenance, T-Mobile, after written notice from Con Edison, will correct the condition within a reasonable time. If T-Mobile is unable to correct the condition within a reasonable time, Con Edison may, upon written notice to T-Mobile, terminate the License and T-Mobile will be required to arrange for removal of the Equipment at its sole expense.

The License is also subject to termination for Con Edison's business or operating needs. In such event, Con Edison must give T-Mobile reasonable advance notice and an opportunity to remove its Equipment from the Licensed Premises, provided that such removal is performed without interference to operation of the transmission facilities, does not threaten or impair the system reliability, safety or the environment, and is not likely to cause physical damage to Con Edison property. In any case of such termination, the Rent will be adjusted to the later of the date when T-Mobile a) removes its Equipment or b) discharges its License obligations in full.

Under the License, T-Mobile is required to provide insurance protection for Con Edison in the form of comprehensive public liability and property damage policies, paid in full, naming Con Edison as an additional insured. T-Mobile's insurance policies may be reviewed by Con Edison.

The License is personal to T-Mobile and may be transferred to T-Mobile's principal, affiliates, subsidiaries of its principal or its successors without consent or prior approval of

Con Edison. Assignment or transfer to any other parties requires the prior written consent of Con Edison, which consent will not be unreasonably withheld.

T-Mobile may change or add to the Equipment upon written advance consent of Con Edison and Con Edison may adjust the Rent under the License accordingly. T-Mobile has the right to terminate the License upon payment of the Buy-out Fee. T-Mobile is responsible for all real estate and other taxes imposed upon Con Edison by the taxing authorities because of the presence of the Equipment on the Licensed Premises.

License Fees

The current rent charged by Con Edison for the License is \$26,994.83 annually and is established by Con Edison's current Fee Schedule (Exhibit A). The Rent escalates annually each July by the greater of either four percent (4%) or the Consumer Price Index increase. The Fee Schedule is based on comparable pricing prevalent in the wireless carrier industry for attaching similar equipment to existing tower structures. T-Mobile is subject to Additional Rent charges if Con Edison expends funds to enforce T-Mobile's obligations under the License.

The Standard Procedure and Checklist

T-Mobile has submitted the necessary documentation in accordance with Con Edison's Standard Procedure. A copy of the Wireless Telecommunication Tower Attachment Checklist ("Checklist") required by the Standard Procedure, completed on behalf of T-Mobile for its License for Tower K-47, is attached to this Petition (Exhibit D).

Con Edison has reviewed the documentation prepared by T-Mobile, as required by the Commission's Order and determined that T-Mobile has complied with all the requirements of the Commission's Order and Con Edison's Standard Procedure.

Furthermore, the documentation and analyses conducted by T-Mobile demonstrate that the attachment of the Equipment to Tower K-47 will have no material adverse effect on the operation of transmission facilities, system reliability, safety or the environment.

Con Edison's point of contact for site construction and restoration is currently:

Robert Cole Construction Manager Consolidated Edison Company of New York, Inc. 1610 Matthews Avenue Bronx, NY 10462 (718) 904-4687

Additional information required by the Standard Procedure is attached to this Petition and includes the structural analysis reports for this attachment (Exhibit E) and the environmental assessment and SEQRA determination (Exhibit F).

The T-Mobile Installation is in the Public Interest

Petitioners respectfully request that the Commission authorize the existing

Equipment, pursuant to the License, at the Con Edison transmission facilities as set forth

herein. These facilities are needed by T-Mobile to continue to provide wireless services to its
subscribers via licenses provided by the FCC.

T-Mobile obtained the appropriate local municipal approvals for its Equipment at this location and Con Edison has determined that the Equipment does not have any materially adverse impact on its ability to provide reliable, safe and adequate service to its electric customers.

The terms of the Master License are provided by Con Edison to other wireless telecommunication providers on the same basis as provided to T-Mobile. In addition, revenues from the License will benefit Con Edison's core utility customers.

As such, the installation is in the public interest and Petitioners respectfully request that the Commission approve the installation authorized under the License.

16 NYCRR Part 31

T-Mobile's application for Tower K-47 complies with 16 NYCRR Part 31 as follows: Section 31.1(a)

T-Mobile has a non-exclusive, limited use, revocable license. As such, the license is not a transfer as contemplated by subdivisions (f) - (i) and (p) of NYCRR Section 18.1.

Section 31.1(b)

The License contains a description of the Con Edison premises subject to the License, which contains a description of the property licensed to the Licensee as required by this section.

Section 31.1(c)

The non-exclusive revocable License provides that none of Con Edison's franchises, consents or rights will be transferred merged or consolidated as part of the License.

Section 31.1(d)

The Standard Procedures establish as a condition to the license that all local approvals for the license be obtained and copies of the appropriate authorizations are annexed to this petition.

Section 31.1(e)

A copy of the License and the Master License is attached to this petition.

Sections 31.1(f) (g) (h) (j) (k) and (l)

Based upon the Commission's authorization for Con Edison to use its Standard Procedure, 8 and based upon the Commission's prior determination in case 02-M-1288 and in accordance with that Order, 9 it is respectfully requested that compliance with these Sections be waived.

⁸ Supra at no. 1.

⁹Case 02-M-1288, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. for Approval to Authorize National Grid Communications to Attach Wireless Facilities on Niagara Mohawk Power Corporation Transmission Facilities, <u>Order Approving Agreement</u>, Issued and Effective May 15, 2003, Ordering Clause 2, p. 8.

Conclusion

For the reasons set forth above, the Petitioners request that the Commission approve the existing installation for the T-Mobile Equipment attached to Con Edison Tower K-47 as specified herein and that, if any changes are required, the Commission grant the Secretary or appropriate designee the authority to approve any minor changes to the construction drawings. ¹⁰

New York, New York March 23, 2009

Respectfully submitted,

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: Its Attorney

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T-MOBILE

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¹⁰ This practice was instituted by the Commission in Case 06-M-0411, Joint Petition of Niagara Mohawk Power Corporation and National Grid Communications Inc. Under Public Service Law Section 70 to Authorize Attachment of Cingular Wireless Facilities to Niagara Mohawk Transmission Facilities on Niagara Mohawk Property in the Town of Brunswick, Order Approving Agreement, Issued and Effective June 19, 2006, at p. 5.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK)

James P. O'Brien, being duly sworn, deposes and says that he is a Vice President and Treasurer of Consolidated Edison Company of New York, Inc., the Petitioner above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information, and belief.

James P. O'Brien

Sworn to before me this 29 day of Afric 2009

CHARLES J. GALLACHER Notary Public, State of New York No. 01GA4894445

Qualified in Queens County Commission Expires Sept. 39, 2009

VERIFICATION

STATE OF NEW JERSEY)
)
COUNTY OF MORRIS	`

Ayo Sanderson, being duly sworn, deposes and says that she is a Director of Regional Engineering for T-Mobile, the Petitioner above named; that she has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of her knowledge, information, and belief.