



# CITY OF BETHLEHEM

OFFICE OF THE CITY SOLICITOR

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## INTER-OFFICE MEMORANDUM

To: Michael Colón, Council President

From: Matthew J. Deschler, Assistant Solicitor

Re: Free Wi-Fi on Main Street streetlight poles

Date: July 17, 2023

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Enclosed for Council's review and action is a proposed Resolution authorizing the Mayor and Controller to execute two licenses permitting Service Electric Cable TV, Inc. to install equipment on two City streetlight poles, one at the intersection of West Broad Street and Main Street and the other at the intersection of West Market Street and Main Street for the purpose of providing free Wi-Fi to the general public on a year-round basis.

A handwritten signature in black ink that reads "Matt Deschler".

Matthew J. Deschler  
Assistant Solicitor

Cc: J. William Reynolds  
Michael Alkhal  
Greg Cryder  
John F. Spirk, Jr.

RESOLUTION NO. \_\_\_\_\_

A Resolution adopting the Wi-Fi Site License for the traffic light pole at Main Street and West Broad Street in the City of Bethlehem, and authorizing the Mayor and Controller to execute the same instrument.

WHEREAS, Service Electric Cable TV, Inc. is desirous of installing equipment on the City traffic light pole at the intersection of Main Street and West Broad Street in the City of Bethlehem for the purpose of providing free Wi-Fi to the general public; and

WHEREAS, such free Wi-Fi service would be provided at no cost to the City; and

WHEREAS, such free Wi-Fi service will not be used to provide preferential service to any customers of Service Electric Cable TV, Inc. in the surrounding area; and

WHEREAS, Service Electric Cable TV, Inc. has agreed to design and install any equipment necessary to provide such Wi-Fi service in a manner consistent with and respectful of the historic nature of the City's northside downtown; and

WHEREAS, such free Wi-Fi service will provide a significant no-cost benefit to members of the general public, including those frequenting the City's northside downtown.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bethlehem that the said Council hereby approves and adopts the Wi-Fi Site License for the traffic light pole at Main Street and West Broad Street as attached to this Resolution as Exhibit "A", and authorizes the Mayor and Controller to execute said License, which shall take effect according to the terms thereof.

Sponsored by \_\_\_\_\_

\_\_\_\_\_

ADOPTED by Council this       day of       , 2023.

\_\_\_\_\_  
President of Council

ATTEST:

\_\_\_\_\_  
City Clerk

**WI-FI SITE LICENSE (the “LICENSE”)**

**LICENSOR:** City of Bethlehem  
10 East Church St.  
Bethlehem, PA 18018

**LICENSEE:** Service Electric Cable TV, Inc.

**TERM:** August 3, 2023 through August 3, 2024 (inclusive), plus any renewal periods

**COMMENCEMENT DATE:** August 3, 2023

**LICENSED SITE:** City of Bethlehem Traffic Light Pole, W. Broad Street and Main Street, as set forth on **Exhibit A**.

1. **License of Site.** During the Term hereof, Licensor hereby licenses a certain light pole owned by Licensor as further illustrated on **Exhibit A** hereto, which is incorporated herein by reference (the “**Licensed Site**”), and grants to Licensee the right to install, operate and maintain at Licensee’s expense and risk, temporary communications transmitting and receiving equipment and antennas, including (without limitation) antennas, poles or masts, transmission line(s) and accessories (collectively, the “**Equipment**”) at the Licensed Site for the purpose of providing free Wi-Fi to the general public. Licensee agrees to take at its own expense all measures and precautions necessary to render the Equipment inaccessible to unauthorized persons. All Equipment and associated wiring shall remain, at all times, the property of Licensee.

2. **Term Renewals.** The Term of this License shall automatically renew for additional one year periods unless, at least thirty days (30) prior to the end of the Term, either Licensee or Licensor notifies in writing the other party of its intention not to renew the License.

3. **Termination of License.** The License shall terminate upon (a) thirty (30) days’ written notice by either party; (b) the end of the Term, including any renewal periods; (c) a breach of the License; or (d) notice to Licensee by Licensor due to Licensor being served with any complaint, notice, or warning, in whatever form, objecting to Licensee’s use of the Licensed Site pursuant to the terms of this License.

4. **Equipment Design.** Licensee shall not install the Equipment without first obtaining Licensor’s approval as to the Equipment’s design, which may be withheld by Licensor in Licensor’s sole and absolute discretion. The Equipment shall be designed, installed, operated and maintained so as to limit its conspicuousness and be consistent with and respectful of the characteristics of the historic district

in which the Licensed Site is located. No logos or other insignia of Licensee shall appear on the Equipment.

5. **Site Condition.** Except as set forth herein, Licensee takes the Licensed Site as it finds it and Licensors shall have no responsibility for its condition or any damage suffered by Licensee or any other person due to such condition.

6. **Commercial and Preferential Use Prohibited.** Under no circumstances shall Licensee operate the Equipment at the Licensed Site so as to provide or improve Wi-Fi service to any individuals or entities, including, without limitation, any current or potential customers of Licensee, for the payment of any monetary compensation or thing of value. Regardless of whether monetary compensation or anything of value is exchanged, under no circumstances shall Licensee operate the Equipment at the Licensed Site so as to provide or improve Wi-Fi service to any individuals or entities, including, without limitation, any current or potential customers of Licensee, in a manner or quality different from, superior than, or preferential to the Wi-Fi service available to members of the general public pursuant to the terms of this License. Licensee understands and agrees that it is a condition of this License that the Equipment shall provide free Wi-Fi service on an equal basis to all members of the general public without discrimination or preferential treatment to any individual or entity.

7. **Removal of Equipment.** Unless otherwise mutually agreed by the parties, Licensee shall remove all of the Equipment, and shall leave the Licensed Site in substantially the same condition that existed as of the date of this License, ordinary wear and tear and occurrences for which Licensee is not responsible hereunder, excepted, under the following circumstances:

- a. The end of the Term of this License, in which case the Equipment shall be removed prior to the end of the Term;
- b. Upon notice to Licensee by Licensors due to Licensors alleging a breach of this License, in which case the Equipment shall be removed within seven (7) days of said notice; and
- c. Upon notice to Licensee by Licensors due to Licensors being served with any complaint, notice, or warning, in whatever form, objecting to Licensee's use of the Licensed Site pursuant to the terms of this License, in which case the Equipment shall be removed within seven (7) days of said notice.

8. **Indemnification.** To the full extent permitted by law, Licensee shall indemnify, hold harmless and, at Licensors' sole option, defend Licensors, its principals, parents, affiliates, officers, directors, contractors, subcontractors, suppliers, licensees (other than Licensee), invitees, agents, attorneys, employees, successors and assigns (together "Licensors Indemnitees") from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensors Indemnitees may incur, asserted by reason of the negligent installation, operation, use, repair, or removal of its Equipment or breach of

the terms of this License by Licensee, including acts or omissions by Licensee's agents, contractors, or subcontractors except to the extent that such liabilities, damages or claims are a result of the negligence or willful misconduct of Licensor.

9. **Operation of Equipment.** Licensee will install, operate and maintain its Equipment in accordance with applicable laws and regulations so as not to cause interference (as that term is defined in the rules and regulations of the Federal Communications Commission), with any radio or television transmitting or receiving equipment whether or not such equipment is located on the Licensed Site. In the event that Licensee's Equipment causes interference with other radio or television transmissions, Licensee will, upon being notified thereof, promptly take all reasonable steps necessary to correct and eliminate the same. If Licensee is unable to eliminate the interference within a reasonable period of time, Licensee agrees to remove the Equipment from the Licensed Site and this License shall be terminated without liability of either party to the other.

10. **Assignment.** This License shall not be assignable by Licensee without the consent of Licensor, which may not be unreasonably withheld by Licensor.

11. **Electrical Service/Telephone Service.** Licensee agrees, at Licensee's sole cost and expense, to pay for the electric service and fees needed for the operation of Licensee's Equipment. Licensor agrees to grant the electric utility company providing service to the Licensed Site any necessary permissions, including temporary easements, for the electric line and meter installation, should the electric utility company require written permission or temporary easement.

12. **Notices.** Any notice or demand required or permitted to be given or made hereunder shall be deemed given when received. Notices may be sent by (a) messenger delivery, (b) overnight delivery, or (c) certified mail in a sealed envelope, postage prepaid:

Addressed in the case of Licensor to:

**City of Bethlehem**  
ATTN: Michael Alkhal  
10 E. Church St.  
Bethlehem, PA 18018

With a copy to Licensor's legal counsel:

**City of Bethlehem**  
ATTN: Solicitor's Office  
10 E. Church St.  
Bethlehem, PA 18018

And, addressed in the case of Licensee, to:

**Service Electric Cable TV, Inc.**  
ATTN: Jeffrey Kelly  
Director of Engineering  
2200 Avenue A  
Bethlehem, PA 18017

With a copy to Licensee's legal counsel:

**Holzinger, Harak & Scmillio**  
ATTN: Victor E. Scmillio  
1216 Linden Street  
PO Box 1409  
Bethlehem, PA 18016

13. **Waiver.** Failure or delay on the part of Licensor or Licensee to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

14. **Prior Negotiations.** This License constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and shall supersede all prior offers, negotiations and agreements.

15. **Amendment.** No revision of this License shall be valid unless made in writing and signed by duly authorized officers or representatives of Licensee and Licensor.

16. **Licensor's Representations.** Licensor represents and warrants that it owns or otherwise controls the Licensed Site during the Term of this License and that Licensor has full authority to execute and deliver this License.

17. **Governing Law.** This License shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its principles on conflict of laws.

18. **Dispute Resolution.** Any dispute concerning the interpretation, application, breach or enforcement of this License that cannot be resolved by mutual agreement between the parties must be resolved in the Court of Common Pleas of Northampton County, Pennsylvania, with the prevailing party entitled to reasonable and actually incurred litigation costs and attorney's fees from the non-prevailing party.

19. **Access Permission.** Licensor shall provide Licensee with reasonable access to the Licensed Site for the installation, operation, maintenance and removal of the Equipment. Except in the case of emergency, Licensee shall provide at least forty-eight (48) hours prior notice in writing of its request to access the Licensed Site, which Licensee shall not unreasonably refuse. In the event that

Licensee accesses the Licensed Site in the case of an emergency pursuant to this paragraph, it shall provide Licensor with written notice of its access, and the reasons therefore, within twenty-four (24) hours.

20. **Permits.** Licensee's ability to use the Licensed Site is contingent upon Licensee obtaining, at its own expense, all certificates, permits and other required governmental approvals.

21. **Successors and Assigns.** This License shall be binding upon, and shall inure to the benefit of, the parties, and their personal and legal representatives, successors and assigns.

22. **Insurance.** Throughout the term of this License, Licensee shall maintain (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of Two Million Five Hundred Thousand Dollars (\$2,500,000) combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. Licensee will name as additional insureds "the City of Bethlehem and its officers and employees" on such insurance policies. A certificate of insurance naming Licensor as "certificate holder" only is non-compliant. Licensee also shall produce proof of Workers' Compensation insurance or proof of no employees for which such insurance is otherwise statutorily required. Licensee shall furnish to the Licensor's Bureau of Law any certificates of insurance required by this License in a form satisfactory to Licensor evidencing all such required insurance coverages prior to the execution of this License, and shall be responsible for providing up-to-date certificates each year during the Term. Licensee shall provide updated certificates of insurance as the Licensor's legal counsel may direct in order to confirm that coverage is ongoing in the manner required by this License. The certificates of insurance shall require thirty (30) days' written notice to Licensor before the policy of insurance required hereunder can be altered or canceled.

[Remainder of page left intentionally blank]

**IN WITNESS WHEREOF**, the parties have executed this License as of the \_\_\_\_ day of August, 2023.

**LICENSOR:**

**City of Bethlehem**

By: \_\_\_\_\_  
J. William Reynolds  
Mayor

Attest: \_\_\_\_\_  
George H. Yasso  
Controller

**LICENSEE:**

**SERVICE ELECTRIC CABLE TV, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# **EXHIBIT “A”**

Access Point and Point-to-Point Radio  
mounted to traffic signal  
(to be color-matched)



## RESOLUTION NO. \_\_\_\_\_

A Resolution adopting the Wi-Fi Site License for the traffic light pole at Main Street and West Market Street in the City of Bethlehem, and authorizing the Mayor and Controller to execute the same instrument.

WHEREAS, Service Electric Cable TV, Inc. is desirous of installing equipment on the City traffic light pole at the intersection of Main Street and West Market Street in the City of Bethlehem for the purpose of providing free Wi-Fi to the general public; and

WHEREAS, such free Wi-Fi service would be provided at no cost to the City; and

WHEREAS, such free Wi-Fi service will not be used to provide preferential service to any customers of Service Electric Cable TV, Inc. in the surrounding area; and

WHEREAS, Service Electric Cable TV, Inc. has agreed to design and install any equipment necessary to provide such Wi-Fi service in a manner consistent with and respectful of the historic nature of the City's northside downtown; and

WHEREAS, such free Wi-Fi service will provide a significant no-cost benefit to members of the general public, including those frequenting the City's northside downtown.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bethlehem that the said Council hereby approves and adopts the Wi-Fi Site License for the traffic light pole at Main Street and West Market Street as attached to this Resolution as Exhibit “A”, and authorizes the Mayor and Controller to execute said License, which shall take effect according to the terms thereof.

Sponsored by \_\_\_\_\_

ADOPTED by Council this            day of            , 2023.

President of Council

ATTEST:

City Clerk

**WI-FI SITE LICENSE (the “LICENSE”)**

**LICENSOR:** City of Bethlehem  
10 East Church St.  
Bethlehem, PA 18018

**LICENSEE:** Service Electric Cable TV, Inc.

**TERM:** August 3, 2023 through August 3, 2024 (inclusive), plus any renewal periods

**COMMENCEMENT DATE:** August 3, 2023

**LICENSED SITE:** City of Bethlehem Traffic Light Pole, W. Market Street and Main Street, as set forth on **Exhibit A**.

1. **License of Site.** During the Term hereof, Licensor hereby licenses a certain light pole owned by Licensor as further illustrated on **Exhibit A** hereto, which is incorporated herein by reference (the “**Licensed Site**”), and grants to Licensee the right to install, operate and maintain at Licensee’s expense and risk, temporary communications transmitting and receiving equipment and antennas, including (without limitation) antennas, poles or masts, transmission line(s) and accessories (collectively, the “**Equipment**”) at the Licensed Site for the purpose of providing free Wi-Fi to the general public. Licensee agrees to take at its own expense all measures and precautions necessary to render the Equipment inaccessible to unauthorized persons. All Equipment and associated wiring shall remain, at all times, the property of Licensee.

2. **Term Renewals.** The Term of this License shall automatically renew for additional one year periods unless, at least thirty days (30) prior to the end of the Term, either Licensee or Licensor notifies in writing the other party of its intention not to renew the License.

3. **Termination of License.** The License shall terminate upon (a) thirty (30) days’ written notice by either party; (b) the end of the Term, including any renewal periods; (c) a breach of the License; or (d) notice to Licensee by Licensor due to Licensor being served with any complaint, notice, or warning, in whatever form, objecting to Licensee’s use of the Licensed Site pursuant to the terms of this License.

4. **Equipment Design.** Licensee shall not install the Equipment without first obtaining Licensor’s approval as to the Equipment’s design, which may be withheld by Licensor in Licensor’s sole and absolute discretion. The Equipment shall be designed, installed, operated and maintained so as to limit its conspicuousness and be consistent with and respectful of the characteristics of the historic district

in which the Licensed Site is located. No logos or other insignia of Licensee shall appear on the Equipment.

5. **Site Condition.** Except as set forth herein, Licensee takes the Licensed Site as it finds it and Licensors shall have no responsibility for its condition or any damage suffered by Licensee or any other person due to such condition.

6. **Commercial and Preferential Use Prohibited.** Under no circumstances shall Licensee operate the Equipment at the Licensed Site so as to provide or improve Wi-Fi service to any individuals or entities, including, without limitation, any current or potential customers of Licensee, for the payment of any monetary compensation or thing of value. Regardless of whether monetary compensation or anything of value is exchanged, under no circumstances shall Licensee operate the Equipment at the Licensed Site so as to provide or improve Wi-Fi service to any individuals or entities, including, without limitation, any current or potential customers of Licensee, in a manner or quality different from, superior than, or preferential to the Wi-Fi service available to members of the general public pursuant to the terms of this License. Licensee understands and agrees that it is a condition of this License that the Equipment shall provide free Wi-Fi service on an equal basis to all members of the general public without discrimination or preferential treatment to any individual or entity.

7. **Removal of Equipment.** Unless otherwise mutually agreed by the parties, Licensee shall remove all of the Equipment, and shall leave the Licensed Site in substantially the same condition that existed as of the date of this License, ordinary wear and tear and occurrences for which Licensee is not responsible hereunder, excepted, under the following circumstances:

- a. The end of the Term of this License, in which case the Equipment shall be removed prior to the end of the Term;
- b. Upon notice to Licensee by Licensors due to Licensors alleging a breach of this License, in which case the Equipment shall be removed within seven (7) days of said notice; and
- c. Upon notice to Licensee by Licensors due to Licensors being served with any complaint, notice, or warning, in whatever form, objecting to Licensee's use of the Licensed Site pursuant to the terms of this License, in which case the Equipment shall be removed within seven (7) days of said notice.

8. **Indemnification.** To the full extent permitted by law, Licensee shall indemnify, hold harmless and, at Licensors' sole option, defend Licensors, its principals, parents, affiliates, officers, directors, contractors, subcontractors, suppliers, licensees (other than Licensee), invitees, agents, attorneys, employees, successors and assigns (together "Licensors Indemnitees") from and against any and all liabilities, damages or claims for damage, including but not limited to all actual and reasonable costs, attorneys' fees, and other charges and expenditures that Licensors Indemnitees may incur, asserted by reason of the negligent installation, operation, use, repair, or removal of its Equipment or breach of

the terms of this License by Licensee, including acts or omissions by Licensee's agents, contractors, or subcontractors except to the extent that such liabilities, damages or claims are a result of the negligence or willful misconduct of Licensor.

9. **Operation of Equipment.** Licensee will install, operate and maintain its Equipment in accordance with applicable laws and regulations so as not to cause interference (as that term is defined in the rules and regulations of the Federal Communications Commission), with any radio or television transmitting or receiving equipment whether or not such equipment is located on the Licensed Site. In the event that Licensee's Equipment causes interference with other radio or television transmissions, Licensee will, upon being notified thereof, promptly take all reasonable steps necessary to correct and eliminate the same. If Licensee is unable to eliminate the interference within a reasonable period of time, Licensee agrees to remove the Equipment from the Licensed Site and this License shall be terminated without liability of either party to the other.

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ATTN: Jeffrey Kelly  
Director of Engineering  
2200 Avenue A  
Bethlehem, PA 18017

With a copy to Licensee's legal counsel:

**Holzinger, Harak & Scmillio**  
ATTN: Victor E. Scmillio  
1216 Linden Street  
PO Box 1409  
Bethlehem, PA 18016

13. **Waiver.** Failure or delay on the part of Licensor or Licensee to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

14. **Prior Negotiations.** This License constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and shall supersede all prior offers, negotiations and agreements.

15. **Amendment.** No revision of this License shall be valid unless made in writing and signed by duly authorized officers or representatives of Licensee and Licensor.

16. **Licensor's Representations.** Licensor represents and warrants that it owns or otherwise controls the Licensed Site during the Term of this License and that Licensor has full authority to execute and deliver this License.

17. **Governing Law.** This License shall be construed and governed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its principles on conflict of laws.

18. **Dispute Resolution.** Any dispute concerning the interpretation, application, breach or enforcement of this License that cannot be resolved by mutual agreement between the parties must be resolved in the Court of Common Pleas of Northampton County, Pennsylvania, with the prevailing party entitled to reasonable and actually incurred litigation costs and attorney's fees from the non-prevailing party.

19. **Access Permission.** Licensor shall provide Licensee with reasonable access to the Licensed Site for the installation, operation, maintenance and removal of the Equipment. Except in the case of emergency, Licensee shall provide at least forty-eight (48) hours prior notice in writing of its request to access the Licensed Site, which Licensee shall not unreasonably refuse. In the event that

Licensee accesses the Licensed Site in the case of an emergency pursuant to this paragraph, it shall provide Licensor with written notice of its access, and the reasons therefore, within twenty-four (24) hours.

20. **Permits.** Licensee's ability to use the Licensed Site is contingent upon Licensee obtaining, at its own expense, all certificates, permits and other required governmental approvals.

21. **Successors and Assigns.** This License shall be binding upon, and shall inure to the benefit of, the parties, and their personal and legal representatives, successors and assigns.

22. **Insurance.** Throughout the term of this License, Licensee shall maintain (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of Two Million Five Hundred Thousand Dollars (\$2,500,000) combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. Licensee will name as additional insureds "the City of Bethlehem and its officers and employees" on such insurance policies. A certificate of insurance naming Licensor as "certificate holder" only is non-compliant. Licensee also shall produce proof of Workers' Compensation insurance or proof of no employees for which such insurance is otherwise statutorily required. Licensee shall furnish to the Licensor's Bureau of Law any certificates of insurance required by this License in a form satisfactory to Licensor evidencing all such required insurance coverages prior to the execution of this License, and shall be responsible for providing up-to-date certificates each year during the Term. Licensee shall provide updated certificates of insurance as the Licensor's legal counsel may direct in order to confirm that coverage is ongoing in the manner required by this License. The certificates of insurance shall require thirty (30) days' written notice to Licensor before the policy of insurance required hereunder can be altered or canceled.

[Remainder of page left intentionally blank]

**IN WITNESS WHEREOF**, the parties have executed this License as of the \_\_\_\_ day of August, 2023.

**LICENSOR:**

**City of Bethlehem**

By: \_\_\_\_\_  
J. William Reynolds  
Mayor

Attest: \_\_\_\_\_  
George H. Yasso  
Controller

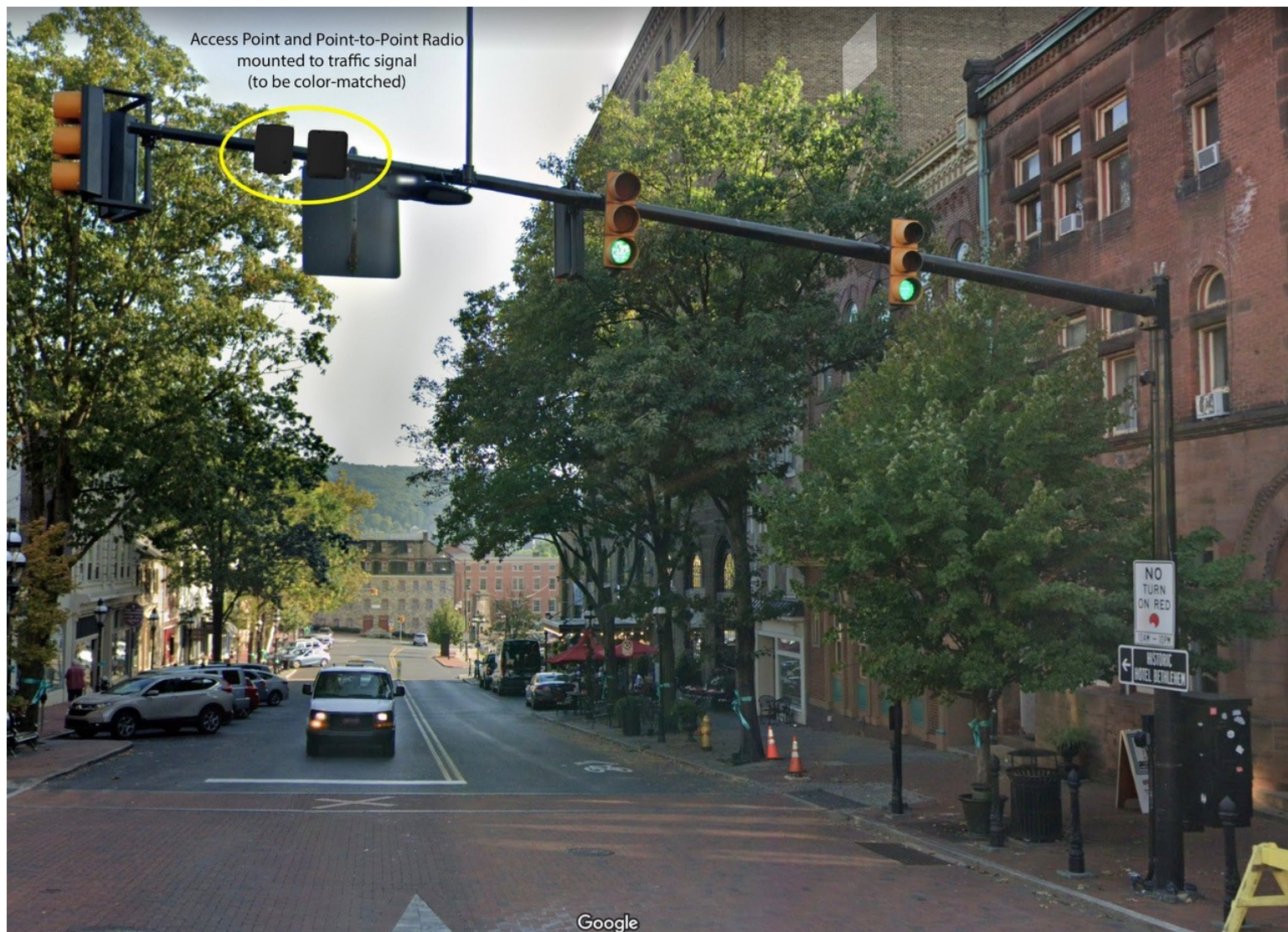
**LICENSEE:**

**SERVICE ELECTRIC CABLE TV, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# **EXHIBIT “A”**

Access Point and Point-to-Point Radio  
mounted to traffic signal  
(to be color-matched)



Google