

04-762-CD
MOUNTAIN UNION TELECOM OF PA, LLC vs. BOARD OF ASSESSMENTS
CLEARFIELD COUNTY

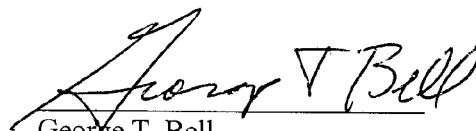
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION – LAW

MOUNTAIN UNION TELECOM OF	:	Map O11-000-00051-DW-01 Control # 105096404
PENNSYLVANIA, LLC,	:	Control No. 105096404
	:	Boggs Township
Petitioner	:	
	:	Map E06-000-00195-DW-01 Control # 129096457
v.	:	Control No. 129096457
	:	Union Township
BOARD OF ASSESSMENT APPEALS,	:	
CLEARFIELD COUNTY	:	Map K07-000-00002-DW-01 Control # 123096737
	:	Control No. 123096737
	:	Lawrence Township
Respondent	:	
	:	Docket No. 04-762-CD

PRAECIPE FOR WITHDRAWAL OF APPEAL

TO THE PROTHONOTARY:

Please withdraw with prejudice the Appeal of Mountain Union Telecom of Pennsylvania, LLC in the above-captioned matter.



George T. Bell
Atty. ID No. 40314
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101
(717) 237-4040

Of Counsel:

MORGAN, LEWIS & BOCKIUS LLP

Dated: November 23, 2005

NOV 28 2005
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NOV 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION – LAW

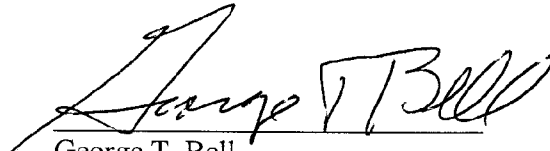
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	:	Lawrence Township
Respondent	:	
	:	Docket No. _____

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Praecept for Withdrawal
of Appeal upon the persons and in the manner indicated below.

Service by first class mail, postage prepaid, addressed as follows:

Kim C. Kesner, Esquire
Solicitor for Board of Assessment Appeals and for the County
23 N. 2nd Street
Clearfield, PA 16830


George T. Bell
Attorney for Petitioner

Date: November 23, 2005

Morgan, Lewis & Bockius LLP
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904
Tel: 717.237.4000
Fax: 717.237.4001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

George T. Bell
717.237.4040
gbell@morganlewis.com

RECEIVED
PROTHONOTARY'S OFFICE
10/18/04
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS
Copy to C/A

June 16, 2004

VIA FIRST CLASS MAIL

William A. Shaw
Clerk of Courts
Clearfield County Prothonotary
230 East Market Street
Clearfield, PA 16830

Re: Mountain Union Telecom of Pennsylvania, LLC v. Board of Assessment Appeals;
Docket No. 04-762-CD

Dear Mr. Shaw:

On May 25, 2004, Mountain Union Telecom filed a Petition for Appeal of Board Orders Regarding Real Estate Tax Assessments pertaining to three cell towers located in Clearfield County. The issue is whether the towers constitute nontaxable "personalty" or real property subject to taxation under the General County Assessment Law and the Fourth to Eighth County Assessment Law. The issue is not unique to this appeal and over 100 similar appeals are pending in Clearfield County and other counties throughout Pennsylvania. In particular, the same issue is being litigated in consolidated appeals entitled Shenandoah Mobile Company and Shenandoah Personal Communications Company v. Cumberland County Board of Assessment Appeals (No. 03-4921) pending before the Court of Common Pleas of Cumberland County. These appeals are scheduled for trial on June 24, 2004 and likely will be dispositive of the issue after a definitive, nonappealable decision has been rendered by an appellate court.

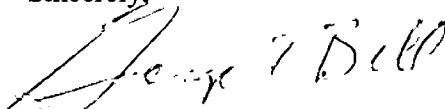
I have discussed the issues in the subject appeal with Attorney Kim C. Kesner who represents the Respondent in this appeal. We presently believe that the Shenandoah appeals ultimately will resolve the issues in the subject appeal and thereby render the case moot. For this reason, we request that the subject appeal not be set for trial until the Shenandoah appeals have been resolved. We will inform the Court when this occurs.

Board of Assessment Appeals
June 16, 2004
Page 2

We trust that this informal notice to the Court will suffice for the stated purposes. If not, please contact me or Mr. Kesner and we will file a more formal pleading.

Your understanding and cooperation are greatly appreciated.

Sincerely,



George T. Bell

GTB/kms

Enclosures

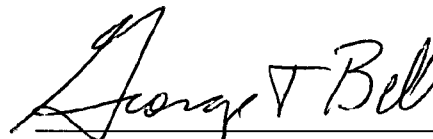
c: Kim C. Kesner, Esquire

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION – LAW

MOUNTAIN UNION TELECOM OF PENNSYLVANIA, LLC,	:	Map O11-000-00051-DW-01 Control # 105096404
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	:	Lawrence Township
Respondent	:	
	:	Docket No. <u>04-762-CD</u>

NOTICE OF APPEAL

AND NOW, Mountain Union Telecom of Pennsylvania, LLC, by and through its attorneys, George T. Bell and Morgan, Lewis & Bockius LLP, hereby appeals Notices of Board Action on Appeals issued by the Clearfield County Board of Assessment Appeals, true and correct copies of said determinations are attached to the Petition for Appeal hereto as Exhibit "A," and is incorporated herein by reference.

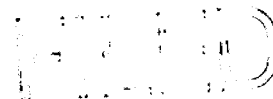


George T. Bell
Atty. ID No. 40314
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101
(717) 237-4040

Of Counsel:

MORGAN, LEWIS & BOCKIUS LLP

Dated: May 25, 2004



MAY 27 2004

William A. Shaw
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION – LAW

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	:	Control No. 123096737
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Respondent	:	
	:	Docket No. _____

NOTICE TO PLEAD

TO RESPONDENT:

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION FOR APPEAL BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU, YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
814.765.2641, Ext. 50-51

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION – LAW

MOUNTAIN UNION TELECOM OF PENNSYLVANIA, LLC,	:	Map O11-000-00051-DW-01 Control # 105096404
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**PETITION FOR APPEAL
OF BOARD ORDERS REGARDING
REAL ESTATE TAX ASSESSMENTS**

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE COURT OF COMMON PLEAS:

I. JURISDICTION

COMES NOW, Mountain Union Telecom of Pennsylvania, LLC, by its attorneys George T. Bell and Morgan, Lewis & Bockius LLP, to file this appeal under the provisions of the Act of May 22, 1933, P.L. 853, as amended, known as the General County Assessment Law (72 P.S. § 5020-518.1) and the Act of May 21, 1943, P.L. 571, as amended, known as The Fourth to Eighth Class County Assessment Law (72 P.S. § 5453.704), and in support of this action, avers that:

1. This Court has jurisdiction over this matter by reason of Section 933(a)(2) of the Judicial Code, 42 Pa. C.S.A. § 933(a)(2), which provides for appeal to this Court of adjudications by a local governmental agency.

II. THE PARTIES

2. Petitioner is Mountain Union Telecom of Pennsylvania, LLC (“Mountain Union”), a corporation organized under the laws of Virginia. Petitioner maintains its corporate headquarters at 301 N. Fairfax Street, Suite 101, Alexandria, VA 22314 and is engaged in the business of owning and leasing space on communications towers.

3. Respondent is the Board of Assessment Appeals for Clearfield County (the “Board”) which is a local government agency under the laws of the Commonwealth and which maintains its offices at 230 East Market Street, Suite 117, Clearfield, PA 16830.

III. NATURE OF ACTION

4. Petitioner seeks review of adjudications and orders, regarding three appeals of property tax notices and assessments, that were made by the Board on or about May 17, 2004, copies of which are attached herewith, marked Exhibit “A,” and incorporated herein by reference.

IV. DESCRIPTION OF THE PROPERTY

5. The Properties in question are three (3) communications towers (the “Towers”) which are owned by Mountain Union and which are located in Lawrence Township, Boggs Township and Union Township.

V. PROCEDURAL BACKGROUND

6. In response to real estate tax Change of Assessment Notices (the “Assessments”) effective for the 2004 Tax Year, issued on or about February 3, 2004, for the Towers, Petitioner timely appealed to the Board, pursuant to 72 P.S. § 5020-510 and § 5453.701, requesting relief from taxation upon the claim that the Towers were “personalty” and were not subject to real property taxation under either the General County Assessment Law or the Fourth to Eighth Class County Assessment Law.

7. After a hearing held on April 13, 2004, the Board issued, on or about May 17, 2004, the adjudications (Exhibit "A") which are the subject of the appeal herein.

8. Petitioner is the party who appealed to the Board for relief from the real estate tax notices and assessments and is aggrieved by the adjudications of the Board.

9. Petitioner contends that the adjudications of the Board are in error and contrary to law and must be reversed because Petitioner's Towers are personalty and are not subject to realty taxation under 72 P.S. § 5022-201(a) or § 5453.201(a).

VI. OTHER SIMILAR APPEALS

10. The issue in this matter is not unique to this appeal and Petitioner and other tower owners have over 100 appeals pending in Clearfield County and other counties throughout Pennsylvania.

11. In particular, the same issue is being litigated in consolidated appeals, entitled Shenandoah Mobile Company and Shenandoah Personal Communications Company v. Cumberland County Board of Assessment Appeals (No. 03-4921) (the "Shenandoah Appeals") pending before the Court of Common Pleas of Cumberland County, appeals which are scheduled for a June 2004 hearing date and which likely will be dispositive of the issue after a definitive, nonappealable decision has been rendered by an appellate court.

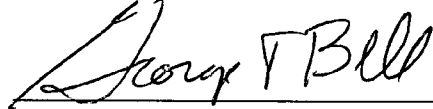
12. Petitioner further understands that, for the most part, these other appeals involving towers located in other counties have been stayed by the Courts pending the outcome of the Shenandoah Appeals.

VII. RELIEF REQUESTED

13. Mountain Union respectfully requests rescission and discharge of the Assessments issued by the Board for the 2004 Tax Year and thereafter as reflected on Exhibit A.

WHEREFORE, Petitioner respectfully prays your Honorable Court, after hearing, enter a judgment and Order reversing the orders of the Board, rescinding and discharging the Assessments against Petitioner, and granting such other relief as may be deemed appropriate by the Court. A hearing is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George T. Bell", written over a horizontal line.

George T. Bell
Atty. ID No. 40314
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101
(717) 237-4040

Of Counsel:

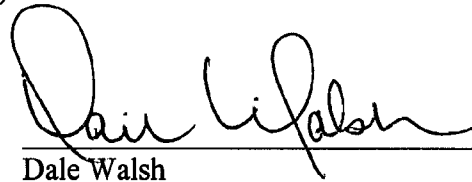
MORGAN, LEWIS & BOCKIUS LLP
Dated: May 25, 2004

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION – LAW

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VERIFIED STATEMENT

I, Dale Walsh, am the Vice President, Operations for the Petitioner named in the Notice of Appeal and the Real Estate Tax Assessment Appeal in this matter; I have read said Appeal and, to the best of my personal knowledge, information and belief, the averments of fact contained in said Appeal are true. This statement is made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Dale Walsh

Dated: This 24 day of May, 2004

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL ACTION – LAW

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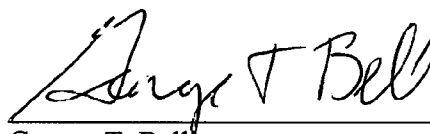
PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Petition for Appeal of Board Orders regarding Real Estate Tax Assessments upon the persons and in the manner indicated below.

Service by certified, first class mail, postage prepaid, addressed as follows:

Board of Assessment Appeals,
Clearfield County
Attn: Mary Ann Wesdock
230 East Market Street, Suite 117
Clearfield, PA 16830

Kim C. Kesner, Esquire
Solicitor for Board of Assessment Appeals
and for the County
23 N. 2nd Street
Clearfield, PA 16830



George T. Bell
Attorney for Petitioner

Date: May 25, 2004

Clearfield County Assessment Office
BOARD OF ASSESSMENT APPEALS



230 EAST MARKET STREET
SUITE 117
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640
Email- cctax@clearfieldco.org

Mountain Union Telecom of PA

1006 West 9th Ave

King of Prussia PA 19406

NOTICE OF BOARD ACTION ON APPEALS
FROM 2004 REAL ESTATE ASSESSMENT

Appellant Name	: Mountain Union Telecom of PA
Person Appearing	: George Bell
Location	: Boggs Township
Map #	: 105-011-000-00051-DK-01
Property Identification	: Bldg & Fence
Original 2004 market valuation	: \$194,600.
Original 2004 assessed valuation	: \$ 48,650.
Date of appeal hearing	: April 13, 2004

Dear Property Owner:

The Clearfield County Board of Assessment Appeals, having considered your appeal, has made an Order with reference to your 2004 real estate assessment as follows:

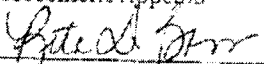
2004 Market valuation reduced to \$ 118,000.

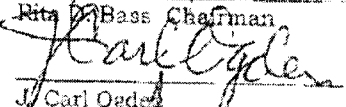
2004 Assessed valuation reduced to \$ 24,190. @ COMMON LEVEL RATIO

Dated: May 17, 2004

Sincerely,

Clearfield County Board of
Assessment Appeals


Rita DeBass, Chairman


J. Carl Ogden


Jack Green

Clearfield County Assessment Office
BOARD OF ASSESSMENT APPEALS



230 EAST MARKET STREET
SUITE 117
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640
Email- cctax@clearfieldco.org

Mountain Union Telecom of PA, LLC

301 North Fairfax Street Suite 101

Alexandria VA 22314

NOTICE OF BOARD ACTION ON APPEALS
FROM 2004 REAL ESTATE ASSESSMENT

Appellant Name	: Mountain Union Telecom of PA, LLC
Person Appearing	: George Bell
Location	: Union Township
Map #	: 129.0-E06-000-00195-DW-01
Property Identification	: Tower & Fence
Original 2004 market valuation	: \$204,900.
Original 2004 assessed valuation	: \$ 51,225.
Date of appeal hearing	: April 13, 2004

Dear Property Owner:


The Clearfield County Board of Assessment Appeals, having considered your appeal, has made an Order with reference to your 2004 real estate assessment as follows:


2004 Market valuation reduced to \$ 125,000.
2004 Assessed valuation reduced to \$ 25,625. @ Common Level Rate

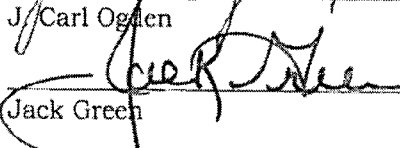
Dated : May 17, 2004

Sincerely,

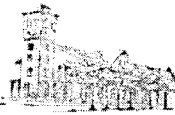
Clearfield County Board of
Assessment Appeals


Rita D. Bass, Chairman


J. Carl Ogden


Jack Green

Clearfield County Assessment Office
BOARD OF ASSESSMENT APPEALS



230 EAST MARKET STREET
SUITE 117
Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641
FAX (814) 765-2640
Email- cctax@clearfieldco.org

Devon Mobile Communications

275 Oak Street Suite 235

Buffalo NY 14203

NOTICE OF BOARD ACTION ON APPEALS
FROM 2004 REAL ESTATE ASSESSMENT

Appellant Name	: Devon Mobile Communications
Person Appearing	: George Bell
Location	: Lawrence Township
Map #	: 123.0-K07-000-00002-DW-01
Property Identification	: Tower & Fence
Original 2004 market valuation	: \$207,600.
Original 2004 assessed valuation	: \$ 51,900.
Date of appeal hearing	: April 13, 2004

Dear Property Owner:

The Clearfield County Board of Assessment Appeals, having considered your appeal, has made an Order with reference to your 2004 real estate assessment as follows:

2004 Market valuation reduced to \$ 126,700.


2004 Assessed valuation reduced to \$ 25,974.


@ Common Level Ratio

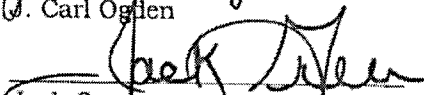
Dated : May 17, 2004

Sincerely,

Clearfield County Board of
Assessment Appeals


Rita D. Bass, Chairman


G. Carl Ogden


Jack Green

PL 11-15 WA 2006 Actg.
MAY 27 2004

William A. Shaw
Prothonotary