

STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

EMPIRE TELEPHONE CORPORATION

TAX AGREEMENT

Address:

26 Main Street

34 Main Street

Town of Prattsburgh, Steuben County, New York

Tax Map No.

047.08-01-071.000

047.08-01-050.000

Affected Taxing Jurisdictions:

Steuben County

Town of Prattsburgh

Prattsburgh School District

Dated as of March 1, 2019

TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement"), dated as of March 1, 2019, by and between **STEBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices located at 7234 Route 54, Bath, New York 14810 (the "Agency"), and **EMPIRE TELEPHONE CORPORATION**, a New York corporation duly formed and validly existing under the laws of the State of New York with offices at 34 Main Street, Prattsburgh, New York 14873 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 178 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Agency of a leasehold interest in certain property located at 34 and 26 Main Street, Town of Prattsburgh, Steuben County, New York (the "Land") and the existing improvements located thereon consisting principally of two (2) dilapidated vacant buildings (the "Existing Improvements"), (ii) the reconstruction, renovation and rehabilitation on the Land of the Existing Improvements consisting of connecting the two (2) vacant buildings and renovating the same to create a state-of-the-art customer service and network operations center (the "Improvements"), (iii) the acquisition and installation by the Company in and around the Existing Improvements and Improvements of certain items of equipment and other tangible personal property to undertake the Project, including, but not limited to, office furniture and cubes, phone system equipment, routers, switches, televisions, four (4) bucket trucks and three (3) additional vehicles as part of the Company's customer service and network support operations (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take or retain leasehold interest in the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, by and between the Agency, as lessor, and the Company, as lessee, to be dated as of March 1, 2019 hereof (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for

the benefit of Steuben County ("County"), the Town of Prattsburgh ("Town") and the Prattsburgh School District ("School" and collectively with the County and Town, the "Affected Tax Jurisdictions"); and

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in Lieu of Ad Valorem Taxes.

1.1 A. Subject to the completion and filing by the taxable status date March 1, 2020 (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the 2021 County and Town tax year and the 2020-2021 School tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Town and School. The Company shall provide to the Agency the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Payee. For the term of this Agreement, the Company agrees to pay on January 1 of each year to the Agency at 7234 Route 54, P.O. Box 393, Bath, New York 14810, or at such other address as shall be designated from time to time by the Agency, on behalf of the Affected Tax Jurisdictions and as a payment in lieu of taxes, commencing on or before January 1, 2021 (the "Payment Date"), an amount equal to the Total Payment. The Total Payment shall be calculated as described on Schedule A.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and Town and special district purposes, the tax rates used to determine the allocation of the Total Payment shall be the tax rates relating to the calendar year which includes the Total Payment due date. For School purposes, the tax rates used to determine the allocation of the Total Payment shall be the rate relating to the school year which includes the Total Payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total Payment if the Future Addition shall cause an increase in the assessed value of the Facility, as determined by the Agency or applicable tax assessor. The Agency shall notify the Company of any proposed increase in the Total Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Total Payment until a different Total Payment shall be established. If a lesser annual Total Payment is determined in any proceeding or by subsequent agreement of the parties, the Total Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Total Payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2020-2021 School tax year through the 2029-2030 School tax year, and (ii) the 2021 County and Town tax year through the 2030 County and Town tax year. This Tax Agreement shall expire on December 31, 2030; provided, however, the Company shall pay the 2030-2031 School tax bill and the 2031 County and Town tax bill on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that, during the term hereof, it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the

Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments and Other Charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this Agreement terminates and the Facility is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) permit the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law, and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month commencing on or after such Delinquency Date, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII - Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Steuben County Industrial Development Agency
 P.O. Box 393
 7234 Route 54 North
 Bath, New York 14810
 Attn.: Executive Director

With Copy To Harris Beach PLLC
(Transaction 99 Garnsey Road
Counsel): Pittsford, New York 14534
 Attn: Russell E. Gaenzle, Esq.

To the Company: Empire Telephone Corporation
 34 Main Street
 Prattsburgh, New York 14873
 Attn: Brian R. Wagner, President and CEO

With Copy to: Harter, Secrest & Emery, LLP
 1600 Bausch and Lomb Place
 Rochester, New York 14604
 Attn: Thomas Anderson, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

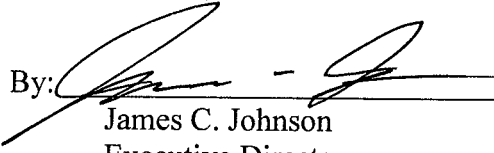
8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Steuben County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

[Signature Page to Tax Agreement]

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

STEBEN COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
James C. Johnson
Executive Director

EMPIRE TELEPHONE CORPORATION

By: _____
Brian R. Wagner
President and CEO

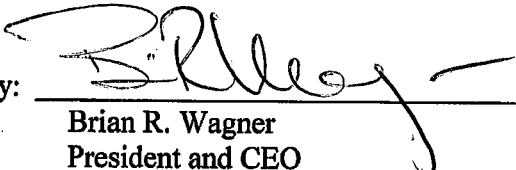
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STEUBEN COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
James C. Johnson
Executive Director

EMPIRE TELEPHONE CORPORATION

By:  _____
Brian R. Wagner
President and CEO

**TAX AGREEMENT DATED AS OF
MARCH 1, 2019, BY AND BETWEEN
STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AND
EMPIRE TELEPHONE CORPORATION**

"Total Payment" shall mean an amount per annum as set forth below.

<u>Tax Year</u>	<u>County and Town Tax Year</u>	<u>School Tax Year</u>	<u>Total Taxable Valuation</u>
Year 1	2021	2020-21	Base Valuation of \$35,000, plus (Added Value x .10)
Year 2	2022	2021-22	Base Valuation of \$35,000, plus (Added Value x .20)
Year 3	2023	2022-23	Base Valuation of \$35,000, plus (Added Value x .30)
Year 4	2024	2023-24	Base Valuation of \$35,000, plus (Added Value x .40)
Year 5	2025	2024-25	Base Valuation of \$35,000, plus (Added Value x .50)
Year 6	2026	2025-26	Base Valuation of \$35,000, plus (Added Value x .60)
Year 7	2027	2026-27	Base Valuation of \$35,000, plus (Added Value x .70)
Year 8	2028	2027-28	Base Valuation of \$35,000, plus (Added Value x .80)
Year 9	2029	2028-29	Base Valuation of \$35,000, plus (Added Value x .90)
Year 10	2030	2029-30	Full Taxes

For the term of this Tax Agreement, the Company shall pay full taxes on the assessed value of the Land and Existing Improvements before the completion of the Project, which assessed value shall be fixed at \$35,000 for the term of the Tax Agreement (the "Base Valuation.") The Total Taxable Valuation for each Total Tax Payment shall be calculated such that a graduated abatement factor ("Abatement Factor") shall be applied to the increased assessed valuation attributable to the Improvements made to the Facility by the Company, as agent of the Agency, for the Project (the "Added Value"). **The abatement schedule shall allow for a 90% exemption from taxation for the Added Value in Tax Year 1, with such exemption being eliminated in 10% increments every year thereafter, with a 0% exemption in Tax Year 10.**

Once the Total Taxable Valuation is established using the Abatement Factor, the Total Tax Payment shall be determined by multiplying the Total Taxable Valuation by the respective tax rate for each Affected Tax Jurisdiction (after application of any applicable equalization rate). After the tenth Tax Year, the Project Facility shall be subject to full taxation by the affected taxing jurisdictions.

$$\text{Total Taxable Valuation} = \text{Base Valuation} + (\text{Added Value} \times \text{Abatement Factor})$$

$$\text{Total Tax Payment} = \text{Total Taxable Valuation (after equalization)} \times \text{Tax Rate}$$