

**ORDINANCE NO. 2011-13
TOWNSHIP OF EAST WINDSOR
COUNTY OF MERCER**

**AN ORDINANCE REGULATING THE STATUTORY AUTHORITY
OF VERIZON NEW JERSEY, INC., ITS SUCCESSORS AND ASSIGNS
TO USE THE VARIOUS PUBLIC STREETS, ROADS, AVENUES,
HIGHWAYS AND OTHER PUBLIC WAYS IN THE TOWNSHIP OF
EAST WINDSOR, MERCER COUNTY, NEW JERSEY, FOR ITS
LOCAL AND THROUGH LINES AND OTHER COMMUNICATIONS
FACILITIES AND PRESCRIBING THE CONDITIONS THEREOF.**

BE IT ORDAINED AND ENACTED by the Mayor and Council of the Township of East Windsor, in the County of Mercer, State of New Jersey, that:

SECTION I. Pursuant to the provisions of N.J.S.A. 48:17-10 and N.J.S.A. 48:17-11, and subject to the provisions of Section 4 hereof, permission and consent is hereby granted to Verizon New Jersey, Inc., its successors and assigns, to erect, construct, reconstruct, remove, locate, relocate, replace, inspect, maintain, repair and operate its communications facilities and other transmission or process equipment, including underground facilities such as conduits, manholes, cables, subways, and facilities and appurtenant thereto, and aerial and buried facilities, such as cables, wires, antennas, poles, posts, supports, guys, pedestals, cable termination and distribution cabinets and all other facilities appurtenant thereto, in, through, upon, along, over, under and across all of the various public ways, sidewalks, streets, roads, avenues, highways, bridges, waterways and other public places, and parts thereof, throughout their entire length, and to effect the necessary street openings and lateral connections to curb poles, property lines, and other facilities in the Township of East Windsor for said Company's local and through lines and

other communications facilities in connection with the transaction of its business. All of the public ways, including by way of illustration and not of limitation, the various sidewalks, streets, roads, avenues, highways, bridges and waterways, and other public places, and parts thereof, throughout their entire length located in this municipality are hereby designated and prescribed for the uses and purposes of said Company as aforementioned.

Section 2. All poles, posts, pedestals, cabinets or other facilities hereafter to be erected, constructed, reconstructed, located, relocated, maintained, repair or operated shall be located and placed back of the curb lines where shown on the official map(s) of the Township of East Windsor, the poles and posts, however, shall be located within eighteen (18) inches of the face of such curb line or as may otherwise be mutually agreed by both parties, or at the points or places now occupied by the poles, posts, pedestals, cabinets or other facilities of Verizon New Jersey, Inc., its successors and assigns, and where there are no curb lines, at other convenient points or places in, upon, along, adjacent or across the public ways, streets, roads, avenues, highways or other public places as may be mutually agreed upon between the parties.

Section 3. Verizon New Jersey, Inc. may bury its cables and associated equipment, fixtures, process equipment and appurtenances within the right-of-way of the various public ways, sidewalks, streets, roads, avenues, highways and other public places,

and parts thereof, and at such locations as shall be mutually agreed upon by the parties for said Company's local and through lines and communications facilities.

Underground conduits shall be placed below the surface of said public ways, sidewalks, streets, roads, avenues, highways and other public places and parts thereof, and with the exception of lateral branches to curb poles and property lines and other facilities, said conduits generally shall not be constructed more than ten (10) feet from the curb line, unless obstructions make it necessary to deviate from such course or unless the parties mutually agree to another location. Underground conduits shall be placed at least eighteen (18) inches below the surface.

Manholes shall be located at such points along the line of subways or underground conduits as may be necessary or convenient for placing, maintaining and operating the facilities, cables, conductors and other appurtenances or process equipment which said Company may from time to time place in said subways or underground conduits and which shall be so constructed as to conform to the cross-sectional and longitudinal grade of the surface so as not to interfere with the safety or convenience of persons or vehicles.

Section 4. Before proceeding with any new construction or relocation work in an area covered by this ordinance, Verizon New Jersey, Inc. shall give prior notice in

writing thereof to the Township of East Windsor, by its designated representative, of its intention to perform such work, including therewith a map or plan showing the location and size of such facilities. Such maps or plans are for information of the municipality only and shall not be considered as construction specifications upon which subsequent excavation or other work may proceed either by the municipality or a third party.

Prior to the opening or excavating of any public ways, sidewalks, streets, roads, avenues, highways or other public places or parts thereof, for the purpose of installing, maintaining or operating its underground systems as aforementioned, the company shall obtain such street opening or excavation permits as may be lawfully required by any applicable ordinances regulating such openings or excavations. Additionally, the company shall be subject to such police and other regulations and restrictions as may be adopted by the governing body of the township.

Section 5. The surface of the public ways, sidewalks, streets, roads, avenues, highways and other public places, and any pavement or other surface and/or planting disturbed by Verizon New Jersey, Inc. in constructing its facilities, shall be restored to as good condition as it was prior to the commencement of work thereof. No highways or other public ways shall be encumbered for a period longer than shall be necessary to execute the work. Such restriction shall be subject to such police and other regulations and restrictions as may be adopted by the governing body of the Township

and subject to the approval of the Township after a reinspection by its authorized representative.

Section 6. Whenever a curb line shall be established on streets where one does not now exist or where an established curb line shall be relocated in order to widen an existing street in conjunction with road construction being performed by the Township, the Company shall change the location of its above-ground facilities covered by this Ordinance in accordance with applicable law, so that the same shall be back of, and adjacent to, the new curb line so long as the Township has acted in accordance with applicable law and with reasonable care in establishing the new curb line and providing notice thereof.

Section 7. Any company or corporation having legal authority to erect and maintain poles, posts or pedestals upon any of the public ways, sidewalks, streets, roads, avenues, highways or other public places in the Township of East Windsor may jointly use the Company's poles, posts, pedestals or other structures for all lawful purposes provided the Company consents to such use and on terms and conditions acceptable to the Company and not inconsistent with the provisions of the present Ordinance. When extending underground facilities, Verizon New Jersey, Inc. shall make every reasonable effort to provide timely notice prior to making such extension, to all other utilities that may wish to cooperate in such extension, care being taken to conform to applicable codes

and regulations.

Section 8. Verizon New Jersey, Inc. shall provide, without charge, for the sole benefit of the Township of East Windsor and for as long as this Ordinance shall continue in effect, space on its poles so long as said poles are occupied by the Company, and space, to the extent available, in its main subways existing on the date of passage of this Ordinance, but not exceeding one (1) clear duct of standard size, solely to accommodate the wires or electrical conductors required for one-way signal control in connection with this municipality's police patrol, fire alarm signals control, and traffic signal control systems only, but for no other uses or purposes, either alone or in conjunction therewith, nor for circuits for the supply of electrical energy for traffic or other signals, nor for wires, conductors, cable or the equivalent which provide a means of transmitting any signal to a private commercial or residential location, and which is normally provided by anon-governmental supplier; provided, further, that no such use or attachment by the municipality shall interfere with the plant or facilities of or the use thereof by the Company. All costs or expenses incurred by the Company in connection therewith shall be paid by the Township of East Windsor.

Before proceeding with the attachment of its wires to the poles or the placing of its electrical conductors in the main subways or manholes of the Company, either by itself or by a person, firm or corporation engaged to perform such work, the

Township of East Windsor shall give the Company thirty (30) days prior notice in writing.

All such work shall be performed under the supervision of said Company. If any or all of the said streets or highways are later taken over by the Board of Chosen Freeholders of the County of Mercer or State of New Jersey, Department of Transportation, such Board of Chosen Freeholders, or the Department of Transportation shall have such rights and privileges and be subject to the same terms, conditions and limitations of use as herein granted by this Ordinance to the Township of East Windsor, provided, however, that satisfactory prior arrangements as may be necessary are made with the Township of East Windsor and the Company for the full protection of the respective interests of each.

In the event of any vacation of any public streets by the Township, the Township shall give at least sixty (60) days written notice of such vacation to Verizon New Jersey, Inc. prior to the introduction of any ordinance enacting same.

Section 9. The Township of East Windsor agrees to indemnify, save harmless and in the event of suit, to defend Verizon New Jersey, Inc. from and against all actual losses, costs and damages found in any suit to have arisen out of any negligent act or omission by the Township of East Windsor in its use of the Company's utility poles, plant or facilities, including location in the subways of the company of any wires or electrical conductors of the Township of East Windsor in accordance with Section 8 above.

Section 10. Following final passage of this Ordinance and acceptance thereof by Verizon New Jersey, Inc., the permission and consent granted herein shall continue and be in full force and effect for a period of fifteen (15) years from the date of its approval by the New Jersey Board of Public Utilities as required by law, subject to the right of the Company to seek such changes herein as it may deem necessary and reasonable from time to time and prior to the expiration of said period. Notwithstanding the foregoing, the Township of East Windsor reserves the right to repeal this Ordinance prior to the expiration of the said fifteen (15) year term, in the sole and absolute discretion of the Township of East Windsor.

Verizon New Jersey, Inc. for itself, its successors and assigns, agrees to maintain its property within the Township of East Windsor in good order throughout the full term of the present Ordinance; shall furnish safe, adequate and proper service within the Township of East Windsor at just and reasonable rates; and, at and after expiration of the term of the present Ordinance, to safeguard the public interest in continuous and uninterrupted service within the Township of East Windsor.

Section 11. Verizon New Jersey, Inc., its successors and assigns agree to indemnify and save harmless the Township of East Windsor from and against all costs or expenses (including, but not limited to the costs of defense litigation) resulting from any loss of life or property or injury or damage to the person or property of any person, firm

or corporation (including, but not limited to the parties hereto and their respective officers, agents and employees), and from any and all claims, demands, liabilities or actions for such loss, injury or damage, caused by or arising out or alleged to be caused by or arising out of the negligent conduct of the Company in performing any of the work permitted under this Ordinance, when not attributable solely to the fault, failure or negligence of the Township, except that if such loss, injury or damage shall be caused by the joint or concurring negligence or fault of the Company and Township, the same shall be borne by them to the extent of their respective fault or negligence. Nothing in this Section shall modify the provisions of the New Jersey Tort Claims Act, or expand the scope of the Township's potential liability as stated therein.

Section 12. Nothing herein contained shall be construed to grant unto said Verizon New Jersey, Inc., its successors and assigns, an exclusive right, or to prevent the granting of permission and consent to other companies for like purposes on any of the streets, roads, avenues, or highways of the Township of East Windsor.

Section 13. The term "Township" as used in this Ordinance shall be held to apply to and include any form of municipality or government into which the Township of East Windsor or any part thereof may at any time hereafter be changed, annexed or merged, and the term "Township" or any other term herein used in referring to the governing body of the Township of East Windsor shall be held to apply to and include the

governing body of such other form of municipality.

Section 14. The permission and consent hereby granted shall apply to and cover all communications facilities of the company existing at any time and related strictures, process equipment, and appurtenances heretofore or hereafter erected, constructed, reconstructed, removed, located, relocated, replaced, maintained, repaired or operated by Verizon New Jersey, Inc., its predecessors, successors or assigns within the Township of East Windsor.

Section 15. Upon adoption, this Ordinance will cancel and supersede an Ordinance enacted on August 13, 1996, by the Township of East Windsor.

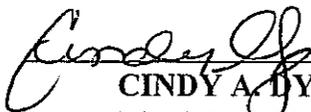
Section 16. The Company shall pay the expenses incurred for advertising required in connection with the passage of this Ordinance, after the date of its first reading, within thirty (30) days after the Company has received a bill for said advertising from the publisher. Following final passage of this Ordinance, the Township Clerk shall provide the Company with written notice thereof by certified mail. As provided by applicable law, this Ordinance, and any subsequent amendments, shall not become effective until acceptance thereof by the Company and approval thereof by the Board of Public Utility Commissioners.

Section 17. In the event that any provision herein shall for any reason be illegal or unenforceable under applicable law, such illegality or unenforceability shall not

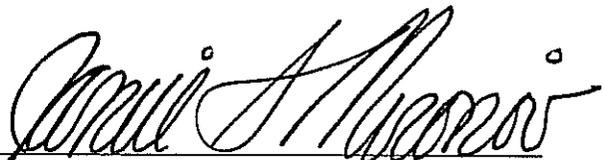
affect any other provisions of this Ordinance, and this Ordinance shall be construed as if such illegal or unenforceable provision(s) had never been contained herein.

Section 18. This Ordinance shall take effect twenty (20) days after final passage, adoption and publication, according to law.

ATTEST:



CINDY A. DYE
Municipal Clerk



JANICE S. MIRONOV
Mayor

Adopted: May 17, 2011