

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE**

**ORDINANCE NO. 013-2015**

**RE: 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 UPPER, CAPE MAY  
COUNTY, NEW JERSEY, FOR ITS LOCAL AND THROUGH LINES AND  
OTHER COMMUNICATIONS FACILITIES PRESCRIBING THE  
CONDITIONS THEREOF**

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BE IT ORDAINED by the Township Committee of the Township of Upper, Cape May County, New Jersey that:

**SECTION 1.** Chapter 13 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended to add the following Section 13-3:

**13-3 MUNICIPAL CONSENT FOR COMMUNICATIONS FACILITIES.**

13-3.1 Consent

Pursuant to the provisions of N.J.S.A. 48:17-10, N.J.S.A. 48:17-11, and N.J.S.A. 48:17-12, permission and consent is hereby granted to Verizon New Jersey Inc., (the "Company"), its successors and assigns, to install, operate, inspect, maintain, repair, replace and remove its communications facilities and other transmission or process equipment, including underground facilities, such as conduits, manholes, cable, wires, and all other facilities appurtenant thereto, and above-ground 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 streets and ways, which include the roads, avenues, right-of-way, sidewalks, 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 Upper (the "Township") for said Company's local and through lines and other communications facilities in connection with the transaction of its business. In the event that any public street or way where the Company has facilities is vacated by the Township, the Township agrees to reserve unto said Company the rights granted the Company by the present Ordinance.

13-3.2 Location

All poles, posts, pedestals, cabinets, or other facilities shall be located and placed back of the curb lines where shown on the official map(s) of the Township 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 the Company, 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 streets and ways as may be mutually agreed upon between the parties.

13-3.3 Underground Facilities

The Company may bury its local and through communications facilities such as cables, conduit, manholes and associated equipment, fixtures, process equipment and appurtenances within the right-of-way of the various public streets and ways 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 and associated facilities, as aforementioned, shall be placed at least eighteen (18) inches below the surface of said public streets and ways and with the exception of lateral branches to curb poles and

property lines and other facilities, the same shall generally 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. Manholes shall be located at such points along the line of underground conduits as may be necessary or convenient for placing, maintaining, and operating the facilities, as aforementioned, which the Company may from time to time use in connection with its underground conduit system and 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.

#### 13-3.4 Prior Notice and Permit

Before proceeding with any new construction or relocation work in an area covered by this Ordinance, the Company shall give prior notice in writing thereof to the Township, through its designated representative, of its intention to perform such work. The Company shall obtain such street opening or excavation permits as may be lawfully required by any applicable ordinances regulating such openings or excavations. Notwithstanding any other provisions of this Ordinance, the Company shall install such communication facilities underground when required by Township major subdivision approvals, or site plan approvals, as provided in Section 19-7.8 of the Code or as otherwise required by applicable state law, municipal ordinance or regulation of the New Jersey Board of Public Utilities; provided that Verizon shall not be responsible for the cost of such installation except as expressly provided by the rules and regulations of the said New Jersey Board of Public Utilities. Any such area affected by the Company in constructing its facilities shall be restored to as good condition as it was before the commencement of work thereon. No public streets or ways shall be encumbered for a period longer than shall be reasonable to execute the work.

#### 13-3.5 Indemnification

The Company agrees to indemnify and save harmless the Township from and against all claims and liabilities resulting from any injury or damage to the person or property of any person, firm or corporation caused by or arising out of road conditions resulting from any negligent or faulty excavations, installation or maintenance connected with the work or equipment of said Company, and not attributable to the fault or negligence of the Township except that if such injury or damage shall be caused by the joint or concurring negligence or fault of the Company and the Township the same shall be borne by them to the extent of their respective fault or negligence.

#### 13-3.6 Establishment of Curb Line

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.

#### 13-3.7 Joint Use

Any company or corporation having legal authority to place its facilities in the public streets and ways of the Township may jointly use the Company's poles, posts, pedestals or other structures for all lawful purposes, provided the Company consents to such use, on terms and conditions acceptable to the Company and not inconsistent with the provisions of the present Ordinance.

#### 13-3.8 Municipal Use

The Company shall provide space, to the extent available, on its poles so long as said poles are occupied by the Company and space, to the extent available, in its main conduits existing on the date of passage of this Ordinance, but not exceeding one (1) duct of standard size, for the sole benefit of the Township during the pendency of this Ordinance. Such space shall be provided for the exclusive use of the Township which use shall be limited to accommodating the wires or electrical conductors required for one-way signal control in connection with municipal police patrol, fire alarm signal 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 a nongovernmental supplier; provided, further, that no such use or attachment by the Township 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. It shall be the obligation of the Township to attach its wires to the poles or place its electric conductors in the conduits or manholes of the Company, provided that before proceeding with said work, either by itself or by a person, firm or corporation engaged to perform such work, the Township shall give the Company thirty (30) days prior notice in writing. All such work shall be performed under the supervision of said Company. The Township will indemnify and save harmless the Company from and against all claims, liabilities or demands arising in any manner in connection with the Township's wires or facilities or their installation, maintenance, operation or removal, or the Township's use or enjoyment of the Company's plant or facilities provided under this Section 3.8.

#### 13-3.9 County or State Jurisdiction

If any or all of the said streets or ways are later taken over by the County of Cape May or the State of New Jersey, such County or State shall have such rights and privileges and be subject to the same terms, conditions and limitations of use as apply herein to the Township provided, however, that satisfactory prior arrangements as may be necessary are made with the Township and the Company for the full protection of the respective interest of each.

#### 13-3.10 Township

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 or any part thereof may at any time hereafter be changed, annexed, or merged.

#### 13-3.11 Facilities Covered; Supersede Prior Ordinance

The permission and consent hereby granted shall apply to and cover all communications facilities of the Company existing at any time, and related structures, process equipment, and appurtenances hereto or hereafter erected, constructed, reconstructed, removed, located, relocated, replaced, maintained, repaired, or operated by the Company, its predecessors, successors, or assigns within the Township. This Ordinance shall cancel and supersede all prior consent ordinances between the Township and the Company regarding the subject matter hereof.

#### 13-3.12 Duration of Consent

This Ordinance shall continue in effect for a period of fifty (50) years from the time it becomes operative. The Company shall maintain its property within the Township and shall comply with applicable law for the provision of safe, adequate and proper service at just and reasonable rates, and safeguard the public interest in continuous and uninterrupted service within the Township.

#### 13-3.13 Enforceability

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.

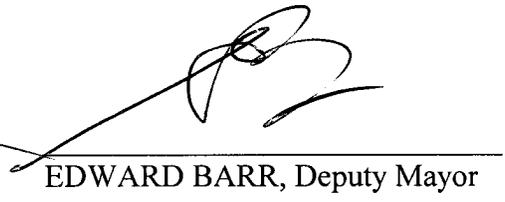
#### 13-3.14 Payment of Expenses

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 Utilities.

**SECTION 2. CODIFICATION:** This Ordinance shall be codified as indicated in Chapter 13 of the Upper Township Code.

ATTEST:

  
BARBARA L. YOUNG, Municipal Clerk

  
EDWARD BARR, Deputy Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE  
WAS INTRODUCED FOR FIRST READING ON **OCTOBER 13, 2015** AND WILL BE  
TAKEN UP FOR SECOND READING AND FINAL ADOPTION AT A MEETING OF  
THE TOWNSHIP COMMITTEE TO BE HELD ON **NOVEMBER 9, 2015** AT 7:30 P.M.

BY ORDER OF THE TOWNSHIP COMMITTEE.

BARBARA L. YOUNG, RMC  
TOWNSHIP CLERK

Legislative History:

Introduced: October 13, 2015

Publication: October 19, 2015

Newspaper(s): The Press of Atlantic City

Second Reading & Public Hearing: November 9, 2015

Final Adoption: November 9, 2015

Final Publication Date: November 12, 2015

I certify that the foregoing Ordinance was finally adopted by the Township Committee of the Township of Upper on November 9, 2015 and notice of adoption was thereafter published pursuant to law in The Press of Atlantic City on November 12, 2015.

  
BARBARA L. YOUNG, RMC