

RESOLUTION 2020-118

**RESOLUTION OF THE BOROUGH OF MOUNT ARLINGTON
AUTHORIZING THE USE OF THE PUBLIC RIGHTS-OF-WAY
BY PLANET NETWORKS, INC.**

WHEREAS, Planet Networks Inc. ("Planet Networks") is a provider of telecommunications services that is authorized by the New Jersey Board of Public Utilities to provide local exchange and interexchange telecommunications services throughout New Jersey; and

WHEREAS, Planet Networks has petitioned the Borough of Mount Arlington for consent to use the public rights-of-way within the Borough, to place its telecommunication facilities aerially on existing and new utility poles and/or in underground conduit; and

WHEREAS, the Federal Communications Commission has held that "an effective prohibition [under the Telecommunications Act of 1996] occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service ... not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services." Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket No. 17-84, FCC-18-133A1, at para. 36, p. 15-16; and

WHEREAS, Planet Networks has or will enter into agreements with the utility companies for the use of their poles; and

WHEREAS, N.J.S.A. 48:3-19 provides that "the consent of the municipality shall be obtained for the use by a person of the poles of '-another person unless each person has a lawful right to maintain poles in such street, highway or other public place;" and

WHEREAS, N.J.S.A. 27:16-6 provides, in part that "the board of chosen freeholders shall not grant an easement, right of way, or use in, under or over, any portion of a county road in a municipality, unless the governing body of the municipality ... shall consent thereto;" and

WHEREAS, N.J.S.A. 46:17-8 provides that "[any telegraph or telephone company organized under the laws of this or any other State, or of the United States may erect, construct and maintain the necessary poles, wires, conduits, and other fixtures for its lines, in, upon, along, over or under any public street, road or highway, upon first obtaining the consent in writing of the owner of the soil to the erection of such poles, and through, across or under any of the waters within this State and upon, through or over any other land, subject to the right of the owners thereof to full compensation for the same"; and

WHEREAS, N.J.S.A. 54:30A-124(a) provides that a municipality may not impose any fees, taxes, levies or assessments in the nature of a local franchise, right of way, or gross receipts fee, tax, levy or assessment against telecommunications companies, but that a municipality may impose reasonable fees for actual services made by any municipal agency; and

WHEREAS, it is in the best interests of the municipality and its citizens to grant consent to Planet Networks as aforementioned.

NOW THEREFORE BE IT RESOLVED THAT:1) That the governing body of the Borough does hereby grant permission and authority to Planet Networks, Inc. to install fiber optic cables and related facilities on existing utility poles within the public right-of-way and to install new utility poles, upon the following terms and conditions:

- a) Planet Networks shall adhere to all applicable federal, State, and local laws in connection with its use of the public right-of-way.
- b) Planet Networks shall obtain any applicable permits in connection with the installation of its facilities.
- c) Planet Networks shall indemnify, defend and hold harmless the municipality, its officials, agents, and employees, from and against any claim of liability, damages or loss, including reasonable attorney's fees and costs, resulting in bodily injury or property damage arising out of Planet Network's use of the public right-of-way, except to the extent such loss, injury or property damage resulting from the acts or omissions of the municipality.
- d) Planet Networks shall procure and maintain, at its cost and expense, commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence and shall include the municipality as an additional insured on said insurance policy, with thirty (30) day notice before any cancellation, termination or non-renewal of any such insurance.
- e) Planet Networks shall be responsible for the repair of any damage to pavement or any structure arising from its construction, installation or maintenance of its facilities.
- f) Notwithstanding any provision contained herein, neither the municipality nor Planet Networks shall be liable to the other for consequential, incidental, exemplary, special, delay or punitive damages on account of any activity pursuant to this consent.
- g) That the Borough is hereby authorized and directed to execute, and the Clerk to attest to, any other documents necessary to effectuate the terms of this resolution.

STATEMENT: This resolution authorizes and consents to Planet Networks, Inc.'s installation of fiber optic cables and related facilities on new and existing utility poles and conduits within the public rights-of-way of the Borough of Mount Arlington.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Borough Council of the Borough of Mount Arlington, and adopted on September 1, 2020.



L. Dwyer
Acting Borough Clerk