

Township of West Milford

Passaic County, New Jersey

~ Resolution 2021 – 326 ~

RESOLUTION OF THE TOWNSHIP OF WEST MILFORD, IN THE COUNTY OF PASSAIC AND STATE OF NEW JERSEY, AUTHORIZING PLANET NETWORKS, INC. TO USE NEW AND EXISTING POLES ERECTED WITHIN THE PUBLIC RIGHTS-OF-WAY FOR THE INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT

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

WHEREAS, in accordance with N.J.S.A. 48:3-19, N.J.S.A. 27:16-6 and N.J.S.A. 48:17-8, Planet Networks has petitioned the Township of West Milford for consent to use the public rights-of-way to place its telecommunication facilities aerially on existing and new utility poles and/or in underground conduit; 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 "[t]he 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 "[t]he 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, or the board of public utility commissioners, shall consent thereto. When, in connection with any such grant, the consent of property owners is required by law, it shall be obtained before such grant of any such easement, right of way or use."; and

WHEREAS, N.J.S.A. 48:17-8 provides that, "[a]ny 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, the Mayor and Township Council finds that it is in the best interest of the Township and its citizens to grant such consent to Planet Networks.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Township Council of the Township of West Milford, in the County of Passaic and State of New Jersey, that it does hereby grant permission and authority to Planet Networks to install fiber optic cables and related facilities on existing utility poles within the public rights-of-way and to install new utility poles, upon the following terms and conditions:

1. Planet Networks shall adhere to all applicable federal, State, and local laws in connection with its use of the public right-of-way.
2. Planet Networks shall obtain any applicable permits in connection with the installation of its facilities;

3. 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 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.
4. 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.
5. 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.
6. Notwithstanding any provision contained herein, neither the municipality nor Planet Networks shall be liable to the other for consequential, incidental, exemplary, or punitive damages on account of any activity pursuant to this consent.
7. That the Mayor is hereby authorized to execute and the Clerk to attest to any other documents necessary to effectuate the terms of this resolution.
8. If a new utility pole is to be installed, Planet Networks, Inc., agrees to submit an escrow of \$750 for the application.
9. In addition, Planet Networks, Inc. shall provide an escrow of \$750 and reimburse the Township for any actual costs and any services rendered by the Township or its professionals in connection with the granting of this consent and use of the public right of way.
10. The term of this consent shall be fifteen (15) years.
11. Planet Networks, Inc. will supply the Township in advance of the installation of the fiber optics with appropriate mapping and notification of the installation of the fiber optic at least fifteen (15) days before undertaking such work.

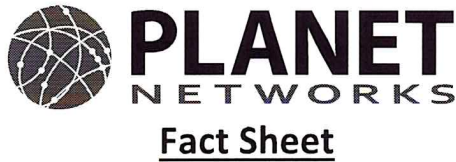
This Resolution shall take effect immediately.

Adopted: September 8, 2021

Adopted this 8th day of September, 2021
and certified as a true copy of an original.



William Senande, Township Clerk



What is Planet Networks planning in our area?

Planet Networks is deploying fiber optic cable in the municipal and county rights-of-way in New Jersey, which enables Planet Networks to provide both high-speed fiber optic Internet and phone services to both businesses and consumers.

Fiber optic cable contains strands of glass fibers inside a protective casing. Light traveling via fiber optic cable enables long distance, high-performance data transmission and telecommunications. High speed fiber-optic Internet access enables speeds of hundreds of Gigabits are possible today with faster speeds in the future. Planet Networks already offers Gigabit and 10 Gigabit fiber Internet services which are 10 to 1000 times faster than services typically available from the phone and cable companies which still utilize copper wires for their consumer and small business services.

When will Planet Networks offer service in our area?

Planet Networks is deploying as quickly as we can. We fund new network builds internally from operating profits. The faster new customers sign up, the faster we can build. We begin planning our roll out for each municipality after we receive municipal consent for access to the right of way. We typically focus on major roads first and higher density housing areas. We will branch off from these areas to serve less dense areas over time.

Is Planet Networks using existing utility poles or installing new utility poles?

The consent that Planet Networks is seeking from the municipality is permission to operate in the public right of way. This consent will allow Planet Networks to construct fiber optic cabling utilizing existing poles and conduits located in the municipal right of way typically owned by the phone and power companies already serving the municipality.

Planet Networks will occasionally need to install a new pole when either: a.) there is not enough space available on an existing pole for Planet to attach and the work and disruption to services required to replace such a pole would not be feasible or b.) we need to serve a new area which does not have a pole where it is needed. When deploying fiber in neighborhoods with underground utilities, we will need to bury new conduit in the ground along the streets. We will work with the municipality to permit these additional uses within the right of way on a case by case basis. The municipal consent does not permit us to add any new poles or conduits without seeking additional approvals on a case-by-case basis.

Understanding the visual sensitivities of residents and leaders, Planet Networks is committed to first, using existing infrastructure, and second, only installing new infrastructure when necessary, and ensuring that any new infrastructure is in character with the existing streetscape. Additionally, Planet Networks will not install new wood poles that are taller than existing utility poles unless

required to maintain safe street clearances for vehicles or to comply with relevant safety codes, nor will Planet install utility poles made of steel or other non-wood material in an area with existing wood utility poles.

What does Planet Networks seek from the municipality?

A provision of the New Jersey Public Utility Act, N.J.S.A. 48:3-18 (copy enclosed), permits any company (not necessarily public utilities) to use poles that have been lawfully erected in the public right-of-way. Where the second company is not itself a **franchised** utility, which is the case with Planet Networks, the consent of the municipality is required under N.J.S.A. 48:3-19 (copy enclosed). A form of proposed resolution for adoption to formalize such consent is attached.

Can the municipality reject the request?

Under Federal law, specifically Section 253 of the Federal Telecommunications Act, 47 U.S.C. 253 (copy enclosed), ***the municipality may not withhold approval***, but it may impose reasonable conditions, such as requiring insurance and repair to any damage caused, which have been included in the attached proposed resolution.

Can the municipality negotiate free services for municipal building, our library, or our schools for this?

Planet Networks is a Competitive Local Exchange Carrier (CLEC) regulated by the New Jersey Board of Public Utilities. Planet is not a cable company seeking a franchise in the municipality. With respect to fees or costs to utilize the public rights-of-way, a municipality may only request "reasonable fees for actual services made by any municipal, regional or county governmental agency." N.J.S.A. 54:30A-124 (copy enclosed).

What Sort of Fee is the municipality allowed to charge Planet Networks?

The municipality may not impose a tax on these facilities, but it is entitled to recover the reasonable costs for actual services that it incurs in reviewing and approving Planet Networks' request. The relevant state statute is N.J.S.A. 54:30A-124 (copy enclosed).

What does Planet Networks **NOT** seek to do in the municipality?

Planet Networks is aware that many wireless service providers and other telecommunications infrastructure providers are also seeking consent from municipalities in New Jersey to install wireless transmitting equipment in the public rights of way also known as 5G towers a/k/a micro or nano cell towers. **PLANET NETWORKS IS NOT A CELLULAR PHONE COMPANY AND DOES NOT INSTALL ANTENNAS ON TELEPHONE POLES NOR DOES PLANET NETWORKS OPERATE ANY CELLULAR WIRELESS INFRASTRUCTURE.** In fact, Planet's agreements with the pole owners usually specifically prohibit this type of activity.
