

BOROUGH OF RED BANK

COUNTY OF MONMOUTH

RESOLUTION NO. 14-270

**A RESOLUTION AUTHORIZING AT&T TO INSTALL COMMUNICATION
LINES WITHIN CONDUIT OR EXISTING POLES TO PROVIDE COMMUNICATION
SERVICES TO THE PUBLIC**

Councilman Murphy offered the following resolution and moved its adoption:

WHEREAS, AT&T Corp., specifically itself and its subsidiary Teleport Communications America, LLC (collectively, "AT&T"), is a communications carrier authorized to provide service by the New Jersey Board of Public Utilities and the Federal Communications Commission; and

WHEREAS, AT&T, as a public utility and common carrier, has requested approval to install communications facilities in Red Bank public right-of-way; and

WHEREAS, AT&T is seeking to lease or obtain conduit space and access to poles with other utilities, particularly Verizon New Jersey Inc., and Verizon has required that AT&T obtain approval of the Red Bank Borough Council as a condition of such access;

WHEREAS, the Borough Engineer has reviewed a schematic for the proposed installations and from an engineering standpoint finds no issues with the proposed installation.

NOW, THEREFORE, BE IT RESOLVED by the Red Bank Borough Council that:

1. Permission and authority are hereby granted to AT&T to install communications facilities, or lease or obtain for such communications facilities space on existing poles or in existing conduits, in the public right-of-way in Red Bank in order to provide communications services to the public, and to operate, maintain, and repair said facilities, subject to the following:

- A. The facilities shall be installed in underground conduit and/or on to existing utility poles in the public right-of-way.
- B. AT&T, its successors and assigns, shall adhere to all applicable Federal, State, and Local laws regarding safety requirements for the use of the public right-of-way.
- C. AT&T, its successors and assigns, shall comply with all Federal, State, and Local laws requiring permits prior to beginning construction.
- D. Such permission be and is hereby given upon the condition and provision that AT&T, its successors and assigns, not only indemnify and save harmless the Borough of Red Bank, its officers, agents, and servants, from any claims whatsoever arising from or in any way connected to the acts or omissions of AT&T in use of the public right-of-way but shall agree on behalf of the Borough to defend any action at law or equity which may be brought against the Borough upon such claims or from claims arising during the construction period, excluding in all instances claims arising out of gross negligence or willful misconduct on the part of the Borough.
- E. In addition to the aforesaid indemnity agreement, AT&T, its successors and assigns shall at its own cost and expense procure and keep at all times in full force and effect paid up policies for Comprehensive General Liability Insurance in favor of the Borough, in the amount of at least \$5,000,000, covering bodily injury and property damage arising out of any one accident. Proof of said coverage, naming the Borough as an insured and including the indemnification clause in Section D shall be filed with the Borough Clerk prior to the installation of any plant. The Borough shall have the right to increase the amount of Comprehensive General Liability Insurance and to alter the terms of insurance called for under this section provided it does so generally for all companies using the public right-of-way within the Borough. Said insurance shall not be subject to cancellation or change until thirty (30)

days after the Borough Clerk has received written notice thereof as evidenced by return receipt of certified or registered letter.

- F. Such permission be and is hereby given upon the further condition that in the use of the public right-of-way AT&T, its successors and assigns, shall comply with the provisions of Borough Ordinance No. 2013-17, provided that AT&T shall be excused from Section One, subsection B(6) of said ordinance, requiring an applicant to make the use of individual strands of its fiber optic cable available to the Borough, insofar as said subsection B(6) would apply to AT&T's aerial installations. The foregoing is without prejudice to the respective legal positions of the Borough and AT&T with respect to installations of fiber optic cables in underground conduits that AT&T may pursue in the future.
- G. Such permission be and is hereby given upon the condition that AT&T shall obtain all applicable permits which may be required by the Borough.
- H. AT&T shall be responsible for the repair of damage to paving, existing utility lines, or any surface or subsurface installations, etc., arising from the construction, installation or maintenance of said plant.
- I. Notwithstanding any provision contained herein, neither the Borough nor AT&T shall be liable to the other for consequential, incidental, exemplary, or punitive damages on account of any activity pursuant to this instrument.
- J. This instrument shall be adopted on behalf of the Borough by the Red Bank Borough Council and attested to by the Borough Clerk who shall affix the Borough Seal thereto. Said execution, approval, and filing shall constitute the existence of public notification.
- K. The permission and authority hereby granted shall be for a period of 50 years. However, after 15 years from the date of this agreement, the Borough shall have the right to terminate permission and authority, by Resolution with a minimum one year notice to AT&T to sell or liquidate its facilities in the public right-of-way. Conversely, AT&T shall be allowed to terminate permission and authority, by request of Resolution with a minimum of one year from passage of such Resolution to sell or liquidate its facilities in the public right-of-way.

Seconded by Councilman DuPont and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Councilman Murphy	(x)	()	()	()
Councilwoman Burnham	(x)	()	()	()
Councilwoman Horgan	(x)	()	()	()
Councilwoman Lewis	(x)	()	()	()
Councilman Ziprich	(x)	()	()	()
Councilman DuPont	(x)	()	()	()

Dated: October 8, 2014