

R08-122
RESOLUTION OF THE BOROUGH OF MERCHANTVILLE, COUNTY OF CAMDEN
AND STATE OF NEW JERSEY AUTHORIZING ABOVE NET COMMUNICATIONS
TO INSTALL FIBER OPTIC CABLE ON POLES AND IN CONDUITS IN THE
MUNICIPAL RIGHT OF WAY

Borough of Merchantville
County of Camden

Resolution No. R08-122
Date of Adoption November 10, 2008

Resolution granting permission to AboveNet Communications, Inc. to install telecommunications facilities along, under and over the public right-of-way.

Council Member _____ presents the following Resolution:

WHEREAS, AboveNet Communications, Inc. (AboveNet) is a telecommunications carrier authorized to provide service by the New Jersey Board of Public Utilities (BPU) and the Federal Communications Commission (FCC); and

WHEREAS, AboveNet, as a public utility and common carrier, has requested approval to install telecommunications facilities in Merchantville rights-of-way; and

WHEREAS, AboveNet 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 AboveNet obtain Merchantville Borough Council approval as a condition of such access;

NOW THEREFORE BE IT RESOLVED BY THE MERCHANTVILLE BOROUGH COUNCIL THAT:

1. Permission and authority are hereby granted to AboveNet to install telecommunications facilities on utility poles or within underground conduits located in the public right-of-way in the Borough of Merchantville in order to provide telecommunications 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 onto utility poles in the public right-of-way.
 - B. AboveNet, 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. AboveNet, 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 AboveNet, its successors and assigns, not only indemnify and save harmless the Borough of Merchantville, its officers, agents and servants, from any claims arising from or in any way connected to the acts or omissions of AboveNet 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. AboveNet, 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, as its interests may appear, in the amount of at least

\$5,000,000, in any combination of primary and excess or umbrella coverages, covering bodily injury and property damage arising out of any one accident. Proof of said coverage, naming the Borough as an additional insured shall be filed with the Borough Clerk prior to the installation of any plant. On prior notice to AboveNet, 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 such change is implemented uniformly for all similarly situated carriers. AboveNet shall endeavor to ensure that 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 AboveNet, its successors and assigns, shall become subject to any lawful Ordinance or Resolution now or hereafter adopted by the Borough.
- G. Such permission be and is hereby given upon the condition that AboveNet shall obtain all applicable permits which may be required by the Borough, and shall comply with, bear the expenses of, all applicable Borough requirements regarding traffic control and police supervision while any work in the pubic right of way is occurring.
- H. AboveNet 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. Neither the Borough nor AboveNet shall be liable to the other for consequential, incidental, exemplary or punitive damages on account of any activity pursuant to this resolution.
- J. The adoption of this resolution on behalf of the Borough by the Borough Council shall be attested to by the Borough Clerk who shall affix the Borough Seal thereto. Said actions shall constitute the existence of public notification.
- K. The permission and authority hereby granted shall be for a period of fifteen (15) years. Such permission and authority shall be automatically extended for additional periods of five (5) years each; provided, however, that either party may cancel such permission and authority effective at the end of the currently effective term with a minimum of one (1) year’s prior written notice to the other.

I certify the above to be a true copy of a Resolution adopted by the Merchantville Borough Council at a meeting held on November 10, 2008.

APPROVED:

ATTEST:

Frank M. North
MAYOR

Denise Brouse
BOROUGH CLERK