

ORDINANCE 222

AN ORDINANCE REGULATING THE STATUTORY AUTHORITY OF NEW JERSEY BELL TELEPHONE COMPANY, ITS SUCCESSORS AND ASSIGNS TO USE THE VARIOUS PUBLIC WAYS, SIDEWALKS, STREETS, ROADS, AVENUES, HIGHWAYS AND OTHER PUBLIC PLACES, AND PARTS THEREOF, ON ABOVE, AND BELOW THE SURFACE THEREOF FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF ITS LOCAL AND THROUGH LINES AND OTHER COMMUNICATIONS FACILITIES IN CONNECTION WITH THE TRANSACTIONS OF ITS BUSINESS AND PRESCRIBING THE CONDITIONS THEREOF IN AND BY THE VILLAGE OF LOCH ARBOUR, MONMOUTH COUNTY, NEW JERSEY.

BE IT ORDAINED by the Board of Trustees of the Village of Loch Arbour, in the County of Monmouth and State of New Jersey, as follows:

Section 1. 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 and subject to the provisions of section 4 hereof, permission and consent is hereby granted to New Jersey Bell Telephone Company (hereinafter referred to as "Company"), its successors and assigns, to erect, construct, reconstruct, remove, locate, relocate, replace, inspect, maintain, repair and operate its communications facilities and other transmissions or process equipment, including underground facilities such as conduits, manholes, cables, wires, and all other facilities appurtenant thereto, and aerial 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 ways, sidewalks, streets, roads, avenues, highways, bridges, waterways, and other public places, and parts thereof, throughout their entire length, and to effect the necessary street opening and lateral connections to curb poles, property lines and other facilities in the Village of Loch Arbour (hereinafter referred to as "Village") for said Company's local and through lines and other communications facilities in connection with the transaction of its business.

All of the public ways, including by way of illustration and not of limitation, the various sidewalks, street, roads, avenues, highways, bridges and waterways, and other public places, and parts thereof, throughout their entire length located in this municipality are hereby designated and prescribed for the uses and purposes of said Company as aforementioned.

In the event that any public street or way where the Company has facilities is vacated by the Village, the Municipality agrees to reserve unto said Company the rights granted the Company by the present Ordinance.

Section 2. All poles, posts, pedestals, cabinets, or other facilities hereafter to be erected, constructed, reconstructed, located, relocated, maintained, repaired, or operated shall be located and placed back of the curb lines where shown on the official map(s) of the Village, 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 ways, streets, roads, avenues, highways, or other public places as may be mutually agreed upon between the parties.

Section 3. The Company may bury its cables and associated equipment, fixtures, process equipment and appurtenances within the right-of-way of the various public ways, sidewalks, streets, roads, avenues, highways and other public places, and parts thereof 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 equipment, facilities, cables, conductors and other appurtenances or process equipment shall be placed below the surface of said public ways, sidewalks, streets, roads, avenues, highways, and other public places and parts thereof, 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. Underground conduits shall be placed at least eighteen (18) inches below the surface.

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, cables, conductors and other appurtenances or process equipment 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 or interfere with the safety or convenience of persons or vehicles.

Section 4. 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 Village, through its designated representative, of its intention to perform such work, including therewith a map or plan showing the location and size of such facilities. Such map or plans are for information of the municipality only and shall not be considered as construction specifications upon which the municipality or any third party may rely for subsequent excavation or other work. Prior to the opening or excavating of any public ways, sidewalks, streets, roads, avenues, highways or other public places, or parts thereof, for the purpose of installing, maintaining or operating its underground system as aforementioned, the Company shall only be required to first obtain such street opening or excavation permits and pay such reasonable fees therefore as may be lawfully required to cover the cost of administration and inspection, as provided by any ordinance regulating such openings or excavations. No building permits or zoning variances shall be required for the facilities covered by this Ordinance.

Section 5. The surface of the public ways, sidewalks, streets, roads, avenues, highways and other public places, and any pavement or other surface and/or planting disturbed by the Company in constructing its facilities, shall be restored to as good condition as it was before the commencement of work thereon. No highway or other public ways shall be encumbered for a period longer than shall be necessary to execute the work. Such restoration shall be subject to the approval of the Village after an inspection by its authorized representative upon completion of the work.

Section 6. The Company agrees to indemnify and save harmless the Village from and against all costs or expenses resulting from any loss of life or property, or 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, installations or maintenance connected with the work or equipment of said Company, or both when not attributable to the fault, failure or negligence of the Village, except that if such loss, injury or damage shall be caused by the joint or concurring negligence or fault of the company and the Village, the same shall be borne by them to the extent of their respective fault or negligence.

Section 7. 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 or highway in conjunction with road construction being performed by the Village, the Company shall change the location of its above ground facilities, covered by this Ordinance, so that the same shall be back of, and adjacent to, the new curb line so established, upon receipt of notice that the curb line has been so established, so long as the municipality has acted with reasonable care in establishing the new curb line and providing notice thereof.

Section 8. Any company or corporation having legal authority to erect and maintain poles, posts, or pedestals upon any of the public ways, sidewalks, streets, roads, avenues, highways, or other public places in the Village 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.

Section 9. 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) clear duct of standard size, for the sole benefit of the Village during the pendency of this Ordinance. Such space shall be provided for the exclusive use of the Village 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 private, commercial or residential location, and which is normally provided by a nongovernmental supplier; provided, further, that no such use or attachment by the village 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 Village. It shall be the

obligation of the Village to attach its wires to the poles or place its electric conductors in the conduits or manholes of the Company provided, however, that before proceeding with said work, either by itself or by a person, firm or corporation engaged to perform such work, the Village shall give the Company thirty (30) days prior notice in writing. All such work shall be performed under the supervision of said Company.

If any or all of the said streets or highways are later taken over by the Board of Chosen Freeholders of the County of Monmouth or the State of New Jersey, Department of Transportation, such Board of Chosen Freeholders or Department of Transportation shall have such rights and privileges and be subject to the same terms, conditions and limitations of use as herein granted by this Ordinance to the Village, provided, however, that satisfactory prior arrangements as may be necessary are made with the Village and the Company for the full protection of the respective interest of each.

Section 10. The Village agrees to indemnify, save harmless and in the event of suit to defend said Company from and against all losses, costs, damages, expense claims or demands arising out of or caused or alleged to have been caused in any manner by the Village use or enjoyment of the Company's plant or facilities provided under Section 9 above, including all suits of every kind or description brought against the Company, either individually or jointly with the Village, or another, including those brought by employees of said municipality, for or on account of any damage or injury to any persons or property caused or occasioned or alleged to have been caused by or on account of the acts, omission, fault, or willful conduct of the Village or its employees, agents or representatives which arise out of or in connection with the installation, maintenance, removal or use of any wires, cables, electrical conductors or other equipment or facilities attached to or located in said Company's plant or facilities.

Section 11. Nothing herein contained shall be construed to grant unto said Company, its successors and assigns an exclusive right or to prevent the granting of permission and consent to other companies for like purposes on any of the streets, roads, avenues or highways of the Village.

Section 12. The term "Village" as used in this Ordinance shall be held to apply to and include any form of municipality or government into which the Village or any part thereof may at any time hereafter be changed, annexed, or merged, and the term "Board of Trustees" or any other term herein used in referring to the governing body of the Village shall be held to apply to and include the governing body of such other form of municipality.

Section 13. 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 heretofore or hereafter erected, constructed, reconstructed, removed, located, relocated, replaced, maintained, repaired, or operated by the company, its predecessors, successors, or assigns within the Village.

Section 14. 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.

Section 15. In the event that any one or more of the provisions contained herein shall for any reason be illegal or unenforceable in any respect under applicable law, such illegality or unenforceability shall not affect any other provision of this Ordinance, and this Ordinance shall then be construed as if such illegal or unenforceable provision(s) had never been contained herein.

Section 16. This Ordinance shall continue in full force and effect for a period of fifty (50) years from the date it becomes effective subject to the right of the Company to seek such change herein as it may deem necessary and reasonable from time to time prior to the expiration of said period.

Throughout the full term of this Ordinance, the Company for itself, its successors and assigns agree to maintain its property within the Village in good order and shall furnish safe, adequate and proper service within the Village at just and reasonable rates. At and after expiration of the term of this Ordinance, the Company shall safeguard the public interest in continuous and uninterrupted service within the Village.

Following final passage of this Ordinance the Municipal Clerk shall provide the Company with written notice thereof by certified mail. As provided by applicable law, this Ordinance shall not become effective until acceptance thereof by the Company and approval thereof by the Board of Public Utilities.

NOTICE

PUBLIC NOTICE IS HEREBY GIVEN that Ordinance No. 222 was introduced at a meeting of the Board of Trustees of the Village of Loch Arbour, in the County of Monmouth and state of New Jersey, on the 12th day of October, 1988, and was then read for the first time. The said Ordinance will be further considered for final passage by the Board of Trustees at Village Hall at 8:30 PM on the 9th day of November, 1988. at such time and place, or at any time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said Ordinance.