

**BOROUGH OF BLOOMSBURY
COUNTY OF HUNTERDON
STATE OF NEW JERSEY**

ORDINANCE # 105-07

AN ORDINANCE REGULATING THE STATUTORY AUTHORITY OF UNITED TELEPHONE COMPANY OF NEW JERSEY, INC., ITS SUCCESSORS AND ASSIGNS TO USE THE VARIOUS PUBLIC ROADS, STREETS, OR HIGHWAYS IN THE BOROUGH OF BLOOMSBURY, HUNTERDON COUNTY, NEW JERSEY, FOR ITS LOCAL AND THROUGH LINES AND OTHER COMMUNICATIONS FACILITIES AND PRESCRIBING THE CONDITIONS THEREOF.

STATEMENT OF PURPOSE: The Borough of Bloomsbury has received a petition to continue to use public rights-of-way by the United Telephone Company of New Jersey, Inc. d/b/a Sprint. The Ordinance affords United Telephone non-exclusive permission to continue to use the various rights-of-way both above and below the surface for construction maintenance and operation of its local and through lines and systems. New Jersey utilities are required to obtain consent for their local and through lines with the communities with which they operate, which consent is then approved by the Board of Public Utilities. The petition requests permission to continue to use the public rights-of-way for fifty (50) years as permitted by statute. The Ordinance does not authorize United Telephone to construct wireless facilities nor switching stations in the Township's rights-of-way without separate permission.

BE IT ORDAINED by the Mayor & Council of the Borough of Bloomsbury, Hunterdon County, 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, non-exclusive permission and consent is hereby granted to United Telephone of New Jersey, Inc., ("Company"), its successors and assigns, to erect, construct and maintain the necessary poles, wires/cables, conduits, or other fixtures in, upon, along, over or under any public street, road, or highway, and parts thereof, throughout their entire length, and to effect the necessary street openings and lateral connections to curb poles, property lines and other facilities in the Borough of Bloomsbury (the "Borough") for said Company's local and through lines in connection with the transaction of its business. This Ordinance does not authorize placement of wireless telecommunications facilities within the Township's rights-of-way. This Ordinance also does not authorize Company to construct switching stations in the Township's rights-of-way without separate permission.

SECTION 2: All poles and above-ground facilities hereafter located within the rights-of-way shall be placed back of the curb lines where shown on the official map(s) of the Borough or other filed maps, surveys or approved site plans that are necessary to

establish the location of road rights-of-way. Said facilities shall be located in accordance with applicable standards, including, but not limited to, Borough ordinances, Residential Site Improvement Standards, and NJDOT standards, or at the points or places now occupied by the poles or other facilities of Company, or at such other convenient points or places in, upon, along, adjacent, or across the public streets and ways as may be mutually agreed upon between Borough and Company. Facilities to service all new residential sub-divisions will be constructed underground unless the property owner obtains the Borough's permission otherwise.

SECTION 3: Company may bury its facilities within the right-of-way of the various public streets and ways and at such locations as shall be mutually agreed upon by the parties. Underground conduits and associated facilities shall be placed at least eighteen (18) inches below the surface of said public streets and ways 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. 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 which 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 to interfere with the safety or convenience of persons or vehicles.

SECTION 4: Any such area affected by United Telephone Company in constructing its facilities shall be restored to as good condition as it was before the commencement of work thereon. No public streets or ways shall be encumbered for a period longer than shall be reasonable to execute the work. Company shall continue to keep in effect a Permit Bond in the amount of Five Thousand Dollars (\$5,000.) as a performance guarantee for restoration of disturbed areas. For projects where the estimated cost of restoration exceeds Five Thousand Dollars (\$5,000.) the Borough may request a supplemental bond for the difference.

SECTION 5: Company agrees to indemnify and save harmless the Borough from and against all claims and liabilities resulting from any injury or damage to the person or property of any person, firm or corporation caused by or arising out of conditions resulting from any negligent or faulty excavation, installation or maintenance connected with its work or equipment. The provisions of this Section shall not be interpreted to relieve the Borough from liability to Company or third parties in the event of joint or concurring negligence or fault of Company and the Borough; provided, however, that the legal liability of the Borough, if any, shall be determined under applicable law, taking into account the privileges and immunities afforded a governmental entity.

SECTION 6: 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 change the width or realign an existing street in conjunction with road construction being performed by the Borough, Company shall change the location of its above-ground and below-

ground facilities covered by this Ordinance, so that the same shall be back of, and adjacent to, the new curb line so long as the Borough has acted in accordance with applicable law and with reasonable care in establishing the new curb line and providing notice thereof. Company shall bear the costs so long as the relocation is not for aesthetic purposes or governed by N.J.S.A. 40A:26A-8.

SECTION 7: Any company or corporation having legal authority to place its facilities in the public streets and ways of the Borough may jointly use Company's poles, conduits or other fixtures for all lawful purposes, provided that Company consents to such use, on terms and conditions acceptable to Company and not inconsistent with the provisions of this Ordinance, and that said company or corporation has obtained consent from the Borough.

SECTION 8: If any or all of the said streets or ways are later taken over by the County of Hunterdon or the State of New Jersey, such County or State shall have the rights and privileges and be subject to the same terms, conditions and limitations of use as apply herein to the Borough, provided, however, that such satisfactory prior arrangements as may be necessary are made with the Borough and Company for the full protection of the respective interest of each.

SECTION 9: The term "Borough" as used in this Ordinance shall be held to apply to and include any form of municipality or government into which the Borough or any part thereof may at any time hereafter be changed, annexed, or merged.

SECTION 10: The permission and consent hereby granted shall apply to facilities, existing or hereafter constructed or operated by Company, its predecessors, successors, or assigns. This Ordinance shall cancel and supersede all prior consent ordinances between the Borough and Company regarding the subject matter hereof.

SECTION 11: This Ordinance shall not affect the ability of the Borough to impose real property taxes on the facilities of Company under current law. Further, if in the future applicable law should change so as to enable the Borough to impose a franchise fee or other fee, tax, charge, or monetary obligation on Company's operations or facilities hereunder, Company agrees that the provisions of this Ordinance shall not preclude the Borough from imposing or collecting such fee, tax, charge or other monetary obligation which may be permitted by law.

SECTION 12: Company shall maintain its property within the Borough in good condition and shall comply with applicable law for the provision of safe, adequate and proper service at just and reasonable rates, and safeguard the public interest in continuous and uninterrupted service.

SECTION 13: Nothing contained in this Ordinance shall be construed to impose an obligation on the part of the Borough to open any street not heretofore dedicated or opened to public use, and nothing herein shall be construed as an acceptance by the

Borough of any unaccepted street or any part thereof where any pole, wire, conduit, cable or other fixture may exist.

SECTION 14: In the event that any public street or way where any pole, conduit, cable or other fixture owned or used by Company exists is vacated by the Borough, the Borough agrees to reserve unto Company the rights granted by this Ordinance. Borough would have no further obligation or responsibility to maintain or provide access to the right-of-way.

SECTION 15: If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared to be unenforceable or invalid *for* any reason whatsoever, such decision or declaration shall not affect the remaining portions of this Ordinance, which shall continue in full force and effect; and to this end the provisions of this Ordinance are hereby declared severable.

SECTION 16: 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 Company has received a bill for said advertising.

SECTION 17: Following final passage of this Ordinance, the Borough Clerk shall provide Company with written notice thereof by certified mail. As provided by applicable law, this Ordinance, and any subsequent amendments, shall not become effective until acceptance by Company and approval by the Board of Public Utilities.

Effective Date:

This ordinance shall take effect following final passage and publication in accordance with law.

Repealer:

All Ordinances or parts of Ordinances which are inconsistent with this Ordinance shall be repealed as to their inconsistencies only.

Mark R. Peck, Mayor

Lisa A. Burd, RMC
Borough Clerk/ Administrator

First Reading:	July 24, 2007
Publication:	August 23, 2007
Second Reading:	September 25, 2007
Final Adoption:	September 25, 2007
Publication:	October 4, 2007