

ORDINANCE NO. 3783

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF FRANKLIN, COUNTY OF SOMERSET, STATE OF NEW JERSEY, MORE PARTICULARLY APPENDIX CHAPTER A401, TELECOMMUNICATIONS FRANCHISE, NEW APPENDIX ARTICLE VI, LEVEL 3 COMMUNICATIONS, LLC.

SUMMARY

An ordinance amending the Code Appendix Chapter A401, Telecommunications Franchises by adding new Appendix Article VI, Level 3 Communications, LLC.

BE IT AND IT IS HEREBY RESOLVED that the Code of the Township of Franklin, County of Somerset and state of New Jersey is hereby amended as follows:

SECTION I

Appendix Chapter A401, Telecommunications Franchises, is amended by adding thereto a new Appendix Article VI, Level 3 Communications, LLC as follows:

**APPENDIX CHAPTER A401
FRANCHISE - LEVEL 3 COMMUNICATIONS, LLC**

A401-97. Definitions.

For the purpose of this Ordinance, the following terms, phrases and words shall have the meaning given herein:

- a. "Township" means the Township of Franklin, County of Somerset, State of New Jersey, and its government, including the Township Council and its administrative personnel.
- b. "Level 3 Communications, LLC" is the grantee of rights under this Ordinance and is known as Level 3 Communications, LLC, its servants, employees, agents, officers, directors and contractors.
- c. "Telecommunications Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- d. "Scope Offering" means any business or service offering, that Level 3 Communications, LLC currently or in the future may provide to any business or resident, whether or not currently contemplated.

A401-98. Findings and Conclusions.

The Township has reviewed all documentation regarding Level 3 Communications, LLC's request for use of the municipality's public road rights-of-way and feels that it is in the best interest of the residents of Franklin Township to grant said request.

A401-99. Grant of Consent.

The Township Council of the Township of Franklin hereby consents to the non-exclusive use of its right-of-way for a period of five (5) years. The conditions for the parameters of said use are set forth below. Said period shall begin on October 1, 2008 and shall expire five (5) years from said date on September 30, 2013. This consent shall permit Level 3 Communications, LLC to place and maintain in, upon, along, across, above, over the public highways and streets in Franklin Township, poles, wires, cable, and fiber optic cables and fixtures necessary for the maintenance and operation of the proposed use. The consent, however, is subject to the provisions of this Ordinance. In the event that Level 3 Communications, LLC violates any provision of this Ordinance, the Township will give notice of such violation and allow Level 3 Communications, LLC thirty (30) days to cure the violation unless additional time is granted by the Township Council. In the event that Level 3 Communications, LLC does not cure the

violation in the prescribed time, appropriate action will be taken on behalf of the Township which may include, but is not limited to, court intervention and the voidance of this Ordinance and the termination of any and all relationships between the Township and Level 3 Communications, LLC.

A401-100. Conditions of Grant of Public Street Rights-of-Way.

The grant of the above public street rights-of-way shall be for the purpose of providing Telecommunications Services.

A401-101. Level 3 Communications, LLC's Continuing Obligations.

The needs of the Township and the public to minimize interruption in street and sidewalk traffic and public and private business, to avoid congestion, environmental degradation, undue cost, inconvenience, reduction in property values, private interests and the like, frustration or burdening of Township planning for future utility installations and operations, maintenance of current utilities and general planning for development by the Township, shall be respected by Level 3 Communications, LLC and Level 3 Communications, LLC will notify the Township of the location of any cable or other fixtures permitted to be installed pursuant to this Ordinance prior to such installation.

A401-102. Territory.

The consent granted by this Ordinance shall apply to the entirety of Franklin Township. All questions of municipal boundary location, rights and interest in property, federal, state, county and/or other governmental or quasi-governmental rights, privileges and/or interests in real estate shall be investigated and researched at Level 3 Communications, LLC's own cost and expense; procedures necessary to gather relevant information and to resolve every such question shall be pursued in Level 3 Communication's own name and the Township shall never be under any obligation to perform investigations or research, conduct or prosecute proceedings, expend legal fees or pay the charge of engineers, surveyors, title searchers or others, or otherwise take any steps to define, delineate, establish or clarify the boundaries or rights of the Township.

A401-103. Compliance with Zoning and Other Ordinances.

The foregoing consent is and at all times shall be subject to full and complete compliance with the Township Development Ordinance, Chapter 112 of the Code of the Township of Franklin, all other Township Ordinances and regulations, and all rules, regulations and laws of the applicable jurisdictions as to all aspects of location, operation, and maintenance of the fiber optic cables and fixtures necessary thereto. Any fixture other than wires, cable, terminating equipment and electronics and fiber optic cables shall be subject to the Township's prior written approval before their installation.

A401-104. No Interest in Township Property.

No easement, title in fee, leasehold or other interest in real estate, nor any other interest in property of the Township, is hereby granted to Level 3 Communications, LLC.

A401-105. Fee.

In consideration of the rights and privileges granted to Level 3 Communications, LLC, Level 3 Communications agrees to pay the Township on an annual basis the following fees:

- A. Two Hundred (\$200) Dollars per mile of Level 3 Communications, LLC fiber optic cable located in the public road rights-of-way within the Township with a minimum annual fee of Five Hundred (\$500) Dollars.
- B. All payments due to the Township hereunder by Level 3 Communications, LLC shall be made on or before October 1 of each year in which access to the Township's public road rights-of-way is in effect. Any failure to accurately make the payment called for on or before October 1 of each said year will result in the

automatic revocation of the non-exclusive franchise granted to such Level 3 Communications, LLC by the applicable Authorizing Action.

A401-106. Conditions of Construction.

- A. Restoration. In the event level 3 Communications, LLC shall from time to time disturb any public or private pavement, street surfaces, curbs, gutters, sidewalks, driveways, above or below ground utilities, lines, fixtures, equipment or other facilities or trees, shrubs or other landscaping or surfaces in the natural topography or any other matter whatsoever, Level 3 Communications, LLC shall, at its sole expense, reasonable restore and replace such places and things so disturbed to and in not less than as good condition as existed prior to each disturbance. In doing so, Level 3 Communications, LLC shall comply with all applicable ordinances, resolutions, laws, rulings and regulations. All restorations shall be completed within thirty (30) working days of the work requiring the same.
- B. Relocation. If at any time during the period of this consent, the Township shall alter or change the grade of any public street or highway, or alter or change the location of grade of any public water or sewer facility or other utility facility, Level 3 Communications, LLC, upon reasonable notice by the Township, shall at its own expense, remove, relay and relocate its cables, equipment and other facilities.
- C. Temporary Removal of Cables. Level 3 Communications, LLC shall for the purpose of and upon request of the Township, at Level 3 Communications, LLC's expense temporarily raise, lower or remove its cables and associated facilities in order to facilitate the moving of buildings, equipment, vehicles and machinery and to accommodate other like circumstances. Level 3 Communications, LLC may suggest alternatives to the temporary removal of cables where such temporary removal may cause a disruption of services or otherwise interfere with the expectations of its customers. However, the Township retains the right to make the final decision regarding said cable removal.

A401-107. Underground Lines.

Level 3 Communications, LLC shall respond when requested to mark out underground lines, within forty-eight (48) hours of the request.

A401-108. Performance Bonds.

To secure the faithful performance by Level 3 Communications, LLC of all of its obligations to the Township, Level 3 Communications, LLC shall deliver to the Township and maintain in force throughout the duration of the use of the Township's said rights-of-way a surety bond in the penal sum of not less than Fifty Thousand (\$50,000) Dollars, conditioned on the faithful performance by Level 3 Communications, LLC of all of its undertakings pursuant to this Ordinance. Said bond must be acceptable in form and content to the Township Attorney. The bonding company shall be authorized to do business in the State of New Jersey.

A401-109. Liability Insurance.

During the term of the use of the Township's said rights-of-way, Level 3 Communications, LLC shall deliver to the Township and maintain in force, at its sole expense, sufficient combined automobile and comprehensive general liability insurance naming the Township as an additional insured and insuring against loss by any such claim, suit, judgment, execution or demand in the minimum amounts of:

- A. \$1,000,000.00 for bodily injury or death to one person.
- B. \$1,000,000.00 for bodily injury or death from any one accident.
- C. \$1,000,000.00 for property damage resulting from any one accident.
- D. \$5,000,000.00 "umbrella" excess liability coverage for both bodily injury and property damage for each occurrence and in the aggregate.

The insurance carrier must be acceptable to the Township Attorney and shall be authorized to do business in the State of New Jersey. Level 3 Communications, LLC shall assure that no such policy of insurance shall be canceled without a minimum of thirty (30) days notice to the Township or greater notice if required by regulations of the New Jersey Department of Insurance.

A401-110. Indemnity.

Level 3 Communications, LLC shall hold and save the Township harmless from and indemnify and defend the Township against every claim, loss and liability of every kind, arising in any and every way directly or indirectly, immediately or consequently from:

- A. The grant or use of this municipal consent;
- B. The acquisition or, or negotiation for the acquisition of, any interest in real estate, rights or privileges within or without the Township.
- C. The making, prosecuting or processing of any application for any governmental approval, permits or license, including all appeals;
- D. All proceedings of every kind by or against Level 3 Communications, LLC;
- E. Any act or omission of Level 3 Communications, LLC or any of its officers, directors, employees, agents, contractors, suppliers, materialmen or affiliated companies;
- F. The exercise or implementation, whether or not proper or lawful, of any right of privilege expressed or implied hereunder, by law or otherwise arising out of this municipal consent; or
- G. Level 3 Communications, LLC's action, inaction, franchise, operation, maintenance, construction or installation of the lines, cables and fixtures described herein.
- H. "Loss" shall include all legal fees and court costs.

A401-111. Limitations.

This Ordinance is for Level 3 Communications, LLC's nonexclusive use of the Township's said rights-of-way for Telecommunications Services. When and if Level 3 Communication, LLC increases its Scope Offering to any business or resident in the State of New Jersey and said increase in Scope Offering passes through the Level 3 Communications, LLC cable lines located within the Township, the within Ordinance shall be null and void. Level 3 Communications, LLC and the Township must then renegotiate the terms, conditions and fees of the proposed increase in scope. If agreement cannot be reached, this Ordinance will be deemed terminated. The Township is not obligated to accept any increase in scope proposed by Level 3 Communications, LLC.

Any proposed increase of scope of this Ordinance must be duly authorized and accepted by the Township after good faith negotiations and acceptance of the proposed change by the Township with the proper ordinance and/or agreement in place prior to Level 3 Communications, LLC's use of the Township's said rights-of-way for the increase in scope.

A401-112. Severability.

Should any provision of this Ordinance be determined invalid by a court or administrative tribunal of competent jurisdiction, such determination shall not affect the remaining provisions hereof.

A401-113. Captions.

The captions and titles assigned to the sections of this Ordinance are for convenience and reference only, and are in no way to be construed as defining, limiting or modifying the scope or intent of the various provisions of this Ordinance.

A401-114. Law Changes.

- A. In the event applicable law shall, during the term hereof, modify any provision of this Ordinance, the Ordinance shall be automatically modified to incorporate the change.
- B. If at any time during the term hereof, Level 3 Communications, LLC is deemed to be a public utility, as that term is defined in N.J.S.A. 48:2-13, by the appropriate governmental authority, then Level 3 Communications shall no longer be subject to this Ordinance except to the extent that other public utilities providing Telecommunications Service are subject to like requirements.

A401-115. Effective Date.

This Ordinance shall take effect immediately upon final passage and publication according to law and upon receipt by the Township of Level 3 Communications, LLC's written acceptance of the terms hereof. If such acceptance is not received by the Township Clerk within thirty (30) days of the final passage of the Ordinance, the same will automatically expire and be of no further effect.

ORDINANCE NO. 3783

THIS IS A TRUE COPY OF AN ORDINANCE ADOPTED BY THE TOWNSHIP COUNCIL,
TOWNSHIP OF FRANKLIN, SOMERSET, NJ

INTRODUCED: August 12, 2008
PUBLIC HEARING: September 9, 2008
ADOPTION: September 9, 2008
PUBLISHED: September 16, 2008
EFFECTIVE: September 29, 2008

Ann Marie McCarthy, Township Clerk