

ORDINANCE 2374

AN ORDINANCE APPROVING AN AMENDED MASTER LICENSE AGREEMENT ("MLA") WITH NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS FOR THE INSTALLATION OF SMALL CELL EQUIPMENT IN PUBLIC RIGHTS-OF-WAY

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless previously sought and obtained consent to install small cell antenna equipment as a way to address network gaps and improve broadband capacity for wireless consumers throughout the Borough of South Plainfield; and

WHEREAS, the Borough previously determined and continues to believe that reduction of network gaps and improvement of broadband data transmission capacity proposed by New York SMSA Limited Partnership d/b/a Verizon Wireless will benefit personal wireless service consumers in the Borough of South Plainfield; and

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless has requested consent to install small cell antennas on existing and replacement utility poles at various locations within the Public Rights-of-Way in the Borough; and

WHEREAS, the Borough has determined that its Public Rights-of-Way, such as they are or may be, themselves constitute a valuable resource, finite in nature, for the benefit of the public, and which therefore must be managed carefully ; and

WHEREAS, the Federal Telecommunications Act preserves local government's ability to "manage the public Rights-of-Way ... on a competitively neutral and non-discriminatory basis." 47 U.S.C. 253(c); and

WHEREAS, the Federal Telecommunications Act preserves local government's authority over the, "placement, construction and modification of personal wireless service facilities." 47 U.S.C. 332(c)(7)(A); and

WHEREAS, the Federal Telecommunications Act makes it unlawful for local government to prohibit or have the effect of prohibiting the provision of personal wireless service. 47 U.S.C. 332(c)(7)(B)(i)(II); and

WHEREAS, New Jersey municipalities may give consent for the placement of Small Cell Equipment on poles lawfully erected within the public Rights-of-Way pursuant to N.J.S.A. 48:3-19; and

WHEREAS, pursuant to the foregoing laws, and in furtherance of their respective goals and objectives, the Borough and New York SMSA Limited d/b/a Verizon Wireless have previously agreed to an acceptable Master License Agreement (“MLA”); and

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless has requested consent to install small cell antennas at eight additional locations within the Borough; and

WHEREAS, on September 18, 2017, the Borough adopted Ordinance No. 2090 which provided for the same terms and conditions for a Master License Agreement with “Verizon Wireless, Inc.”, and thereafter, it was requested that the Ordinance and Master License Agreement be amended to designate New York SMSA Limited d/b/a Verizon Wireless as the party to enter into agreement with the Borough; and

WHEREAS, on October 16, 2017, the Borough adopted Ordinance No. 2094 which provided for the same terms and conditions for a Master License Agreement and amended the Agreement as to the entity named, New York SMSA Limited Partnership d/b/a Verizon Wireless replacing Verizon Wireless, Inc.;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of South Plainfield, County of Middlesex, State of New Jersey adopts the following sections:

SECTION 1. The terms and conditions of the MLA with New York SMSA Limited Partnership d/b/a Verizon Wireless as amended are hereby approved. A copy of the MLA in substantially final form is attached to this ordinance as **Exhibit 1**. A copy of the fully executed agreement will be substituted for Exhibit 1 upon receipt of all signatures.

SECTION 2. The Mayor of the Borough of South Plainfield is authorized to execute the attached amended MLA, in substantially this form or with de minimus changes approved by the Borough Attorney, which is incorporated into this ordinance for all purposes.

SECTION 3. The Borough Engineer or the Borough Engineer’s designee is authorized to execute any documents and Supplemental Licenses as may be necessary to carry out the intent of this ordinance.

SECTION 4. Pursuant to N.J.S.A. 54:30A-124 and the terms of the MLA with New York SMSA Limited Partnership d/b/a Verizon Wireless the Borough shall recover reasonable fees for actual services incurred in the review of the MLA with New York SMSA Limited Partnership d/b/a Verizon Wireless and any Supplemental Licenses issued

therefrom. New York SMSA Limited Partnership d/b/a Verizon Wireless shall make an eight hundred (\$800.00) dollar deposit toward anticipated municipal expenses which shall be placed in an escrow account. If said escrow account contains insufficient funds to enable the Borough to perform its review, the chief financial officer shall provide New York SMSA Limited Partnership d/b/a Verizon Wireless a notice of insufficient balance. In order for review to continue, New York SMSA Limited Partnership d/b/a Verizon Wireless shall, within a reasonable time, post a deposit to the account in an amount to be mutually agreed upon.

This Ordinance shall take effect upon final passage and publication in accordance with New Jersey law.