

City of Philadelphia



(Bill No. 010122)

AN ORDINANCE

Granting permission to MCImetro Access Transmission Services, LLC, a Delaware Corporation, its successors and assigns to construct, maintain and operate, replace, and remove a telecommunications system along, over, in and under the public rights-of-way and City streets, and to place such telecommunications system within the existing facilities owned by Verizon PA, Inc., Exelon Company, Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation Shared Assets, or other entities holding a grant pursuant to other City ordinances, subject to such owner's consent; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to MCImetro Access Transmission Services, LLC, 1801 Pennsylvania Avenue, NW, Washington, DC 20006 and its successors, assigns, and agents, to construct, maintain, operate, replace, and remove a telecommunications system and appurtenances along, in and under the public rights-of-way of the City of Philadelphia and within the existing facilities owned by Verizon PA, Inc., Exelon Company, Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation Shared Assets, or any other entities holding a grant pursuant to other City ordinances, subject to such owner's consent; and to construct, lay, operate, maintain, replace and remove new telecommunications cables, conduits, access manholes and associated appurtenances (collectively, the "Telecommunications System") to create a system used to transmit, receive and distribute telecommunications. MCImetro Access Transmission Services, LLC is not authorized by this Ordinance to provide to subscribers within the City "cable service," as defined at 47 U.S.C. § 522(5).

(a) MCImetro Access Transmission Services, LLC is authorized to install new conduit, manholes and/or appurtenances within the public rights-of-way at the following locations:

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|----------------------|---|
| Twenty-first street: | In the intersection of Twenty-first street and Lombard street |
| Lombard street: | From Eighteenth street to Fifteenth street |
| Kater street: | In the intersection of Fifteenth street and Kater street |
| Passyunk avenue: | From McKean street to Eighteenth street |
| Twenty-first street: | In the intersection of Twenty-first street and South street |

City of Philadelphia

(b) MCImetro Access Transmission Services, LLC is authorized to install facilities within existing underground ducts owned by Verizon PA, Inc. in the following public rights-of-way subject to the permission of the duct owner:

- Lombard street: From Twenty-first street to Eighteenth street
- Fifteenth street: From Lombard street to Kater street
- Snyder avenue: From Fifteenth street to Broad street

(c) MCImetro Access Transmission Services, LLC is authorized to attach aerial facilities to authorized existing Exelon Company utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

- Fifteenth street: From Kater street to McKean street
- McKean street: From Fifteenth street to Passyunk avenue
- Eighteenth street: From Passyunk avenue to Kater street
- Kater street: From Eighteenth street to Twenty-first street
- Twenty-first street: From Kater street to South street

(d) MCImetro Access Transmission Services, LLC, must submit proof of authorization from the governmental body responsible for maintaining any highway bridge crossing over a railroad right-of-way if the Telecommunications System listed in this Section is constructed on or attached to any such bridges.

(e) The said Telecommunications System shall be constructed in accordance with the requirements and under the supervision of the Department of Streets, without interference with any existing surface or subsurface structures, and shall be used by MCImetro Access Transmission Services, LLC and/or its successors and assigns exclusively for the purposes set forth in this Section and in accordance with all ordinances of the City of Philadelphia and regulations of the Committee of Highway Supervisors governing the construction, maintenance, and operation of underground structures and the equipment, facilities and or appurtenances placed therein and the construction, maintenance and operation of aerial facilities.

(f) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of MCImetro Access Transmission Services, LLC facilities at any location along the specified route and is not a guaranty that MCImetro Access Transmission Service LLC facilities can be placed at any particular location along that route. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval that MCImetro Access Transmission Services, LLC must by law obtain prior to construction or occupancy of existing conduit in the public right-of-way.

(g) All telecommunication facilities constructed pursuant to this Ordinance within a railroad right-of-way that includes an alteration to a rail/highway crossing,

City of Philadelphia

BILL NO. 010122 continued

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which includes such crossings as they are defined under state law, must have, in addition to the approvals set forth in this Ordinance, the appropriate approval of the Pennsylvania Public Utility Commission.

SECTION 2. In the event that any portion of said Telecommunications System must be relocated to accommodate a public improvement or public facility, whether such improvement or facility is constructed by the City or by another governmental entity, or by contract with the City or with any governmental entity, the Department of Streets shall provide MCImetro Access Transmission Services, LLC with written notice at least one hundred eighty (180) days prior to the date any action would be required by MCImetro Access Transmission Services, LLC to relocate said portion of the Telecommunications System. Within one hundred eighty (180) days of service of said notice upon MCImetro Access Transmission Services, LLC, MCImetro Access Transmission Services, LLC shall relocate said portion of the Telecommunications System and restore the roadway and footway disturbed by the relocation to the condition it was in prior to the relocation, without expense to the City. In the event that MCImetro Access Transmission Services, LLC is required to remove any portion of the Telecommunications System at the request of the City, the Department of Streets shall cooperate with MCImetro Access Transmission Services, LLC in order to identify a replacement and alternative right-of-way for the relocation of said portion of the Telecommunications System which may be utilized without unreasonable inconvenience.

SECTION 3. Pursuant to subsection 11-204(5) of The Philadelphia Code, the permission granted by this Ordinance shall include permission to extend from the route described in Section 1 by no more than three (3) City blocks, said blocks to be demarcated by major City streets and not by intervening pathways or alleyways. Before any such extensions are made, MCImetro Access Transmission Services, LLC shall first obtain the approval of the Department of Streets. This Section shall govern all deviations from the route approved in Section 1, including those deviations which serve as replacement and alternative right-of-ways in relocating MCImetro Access Transmission Services, LLC pursuant to Section 2 of this Ordinance. All deviations which extend more than three (3) City blocks from the approved route shall require additional authorization from City Council.

SECTION 4. The permission granted to MCImetro Access Transmission Services, LLC to occupy the public right-of-way and City streets with its Telecommunications System shall be and is subject to the terms and conditions of this Ordinance, and other applicable ordinances of the City of Philadelphia, including, but not limited to, all ordinances of general application currently in existence or subsequently enacted related to the right-of-occupancy and to use of property in, under, over, along and across the streets, sidewalks, alleyways, easements and right-of-ways within the City of Philadelphia. Such permission is also subject to the terms and conditions of all applicable agreements, to the extent that such agreements are consistent with the terms and conditions of this Ordinance.

City of Philadelphia

BILL NO. 010122 continued

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SECTION 5. Before exercising any rights and privileges under this Ordinance, MCImetro Access Transmission Services, LLC shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that MCImetro Access Transmission Services, LLC shall, *inter alia*:

(a) Furnish the City with a bond with corporate surety in an amount required by the Department of Streets and in form satisfactory to the City Solicitor to ensure the compliance with all the terms and conditions of this Ordinance and the Agreement and to protect and to indemnify the City from and against all damages or claims for damages which may arise directly as a result of the construction, maintenance, operation or removal of MCImetro Access Transmission Services, LLC Telecommunications System;

(b) Secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entity as may be required by law;

(c) Assume the costs of all changes and adjustments to, and relocation and abandonment of, all utilities and structures wherever located as may be necessary by reason of the installation of MCImetro Access Transmission Services, LLC Telecommunications System;

(d) Carry insurance protecting against liability for injury to persons or property of others, naming the City as an additional insured party in such amounts as shall be reasonably satisfactory to the City Solicitor;

(e) Pay all charges, rents, franchise fees or other fees that the City of Philadelphia may now or in the future impose for a licensee’s occupation of City property, streets and rights-of-way;

(f) Submit confirmation in a form acceptable to the City Solicitor from the owner of any existing utility pole and/or existing underground conduit that MCImetro Access Transmission Services, LLC has authorization to occupy the underground conduit or attach to the utility pole; and

(g) Remove any or all portions of the Telecommunications System listed in Section 1 from the public rights-of-way pursuant to applicable City of Philadelphia specifications within sixty (60) days when the Telecommunications System or a portion of the Telecommunications System is no longer used for the purpose authorized by the ordinance or existing law.

SECTION 6. The City Solicitor shall include in the Agreement such other terms and provisions as shall be deemed necessary to protect the interest of the City.

City of Philadelphia

BILL NO. 010122 continued

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SECTION 7. The permission granted to MCImetro Access Transmission Services, LLC to construct, maintain and operate, replace and remove a telecommunication system along, in and under rights-of-way, public rights-of-way and City Streets listed in Section 1 of this Ordinance shall expire without any further action by the City of Philadelphia if MCImetro Access Transmission Services, LLC has not entered into the Agreement as required by Section 5 within one (1) year after this Ordinance becomes law.

SECTION 8. The permission granted to MCImetro Access Transmission Services, LLC and its successors, assigns, and agents for installation and or construction of the new facilities along the route identified in this Ordinance shall expire without any further action by the City of Philadelphia as to such portions not constructed two (2) years after the date this Ordinance becomes law unless MCImetro Access Transmission Services, LLC, its successors, assigns, and agents have substantially completed the construction of the new facilities authorized herein. A change in ownership of the assets of MCImetro Access Transmission Services, LLC does not, without express written permission of the City of Philadelphia, extend the time for substantially completing the construction of the new facilities authorized herein.

SECTION 9. The City of Philadelphia reserves the right to charge a transfer fee for any agreement transferring the right-of-way license from one entity to another so as to insure that all costs incurred by the City of Philadelphia related to the transfer are reimbursed. The transferee must pay all costs incurred by the City of Philadelphia associated with such transfer within thirty (30) days of the date the City submits such costs to the transferee or the transferee's authorized agent.

SECTION 10. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after this Ordinance becomes law.

City of Philadelphia

BILL NO. 010122 continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on April 26, 2001. The Bill was Signed by the Mayor on May 9, 2001.



Marie B. Hauser
Chief Clerk of the City Council