

City of Philadelphia



(Bill No. 010393)

AN ORDINANCE

Granting permission to 3rd Wire, Inc., its successors and assigns to construct; maintain and operate; replace; and remove a telecommunications system along, in and under the public right-of-ways and City streets and/or to place such telecommunications system within the existing facilities owned by Verizon-PA, Inc., PECO Energy Company, Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation or other entities holding a grant pursuant to other City ordinances; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to 3rd Wire, Inc., 148 East Lancaster avenue, Wayne, Pennsylvania 19087 (hereinafter "3rd Wire") and its successors, assigns, and agents, to construct, maintain, operate, replace and remove a telecommunications system and appurtenances along, in and under the public right-of-ways of the City of Philadelphia and within existing facilities owned by Verizon-PA, Inc., PECO Energy Company Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation or other entities holding a grant pursuant 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, provided that 3rd Wire is not authorized by this Ordinance to provide to subscribers within the City "cable services" (as defined at 47 U.S.C. §522(6)), or "video programming" (as defined at 47 U.S.C. §522(20)) as an open video system operator pursuant to 47 U.S.C. §573(a) or otherwise.

(a) 3rd Wire is authorized to install its facilities with existing underground conduits that are in the public right-of-ways at the following locations, subject to the permission of the owner of each conduit and provided that the existing underground conduits in the public right-of-ways listed in this section are legal and authorized by the City of Philadelphia:

Broad street:	From the SEPTA manhole at Broad street and Noble street to J.F.K. Boulevard
J.F.K. Boulevard:	From Broad street to a SEPTA right-of-way two hundred feet (200') west of Broad street

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Market street:	From Fifteenth street to Thirty-third street
Market street:	From Thirty-third street to Fortieth street
Fortieth street:	From Market street to Walnut street
Walnut street:	From Fortieth street to Thirty-third street
Walnut street:	From Thirty-third street to Twenty-third street
Twenty-third street:	From Walnut street to Locust street
Locust street:	From Twenty-third street to 2401 Locust street
Locust street:	From 2401 Locust street to Twenty-third street
Twenty-third street:	From Locust street to Walnut street
Walnut street:	From Twenty-third street to Eighteenth street
Eighteenth street:	From Walnut street to Sansom street
Sansom street:	Eighteenth street to Seventeenth street
Seventeenth street:	Sansom street to Walnut street
Walnut street:	From Seventeenth street to Fifteenth street
Fifteenth street:	From Walnut street to Chestnut street
Chestnut street:	From Fifteenth street to Juniper street
Juniper street:	From Chestnut street to Walnut street
Walnut street:	From Juniper street to Ninth street
Ninth street:	From Walnut street to Chestnut street
Chestnut street:	From Ninth street to Fifth street
Fifth street:	From Chestnut street to Market street
Market street:	From Fifth street to Fourth street

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Fourth street:	From Market street to Arch street
Arch street:	From Fourth street to Sixth street
Sixth street:	From Arch street to Race street
Race street:	From Sixth street to Tenth street
Tenth street:	From Race street to Vine street
Vine street:	From Tenth street to Thirteenth street
Thirteenth street:	From Vine street to Callowhill street
Callowhill street:	From Thirteenth street to Broad street
Broad street:	From SEPTA manhole at Broad street and Noble street to Callowhill street
Callowhill street:	From Broad street to Sixteenth street
Sixteenth street:	From Callowhill street to Arch street
Arch street:	From Sixteenth street to Twenty-third street
Twenty-third street:	From Arch street to Cuthbert street
SEPTA Right of Way:	From Cuthbert street to Thirtieth street
Thirtieth street:	From SEPTA right-of-way to Market street
Fortieth street:	From Walnut street to Spruce street
Spruce street:	From Fortieth street to Thirty-eighth street
Thirty-eighth street:	From Spruce street to University avenue
University avenue:	From Thirty-eighth street to Civic Center Boulevard
Civic Center Boulevard:	From University avenue to Thirty-fourth street
Thirty-fourth street:	From Civic Center Boulevard to Thirty-third street
Thirty-third street:	From Thirty-fourth street to South street

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South street: From Thirty-third street to Twenty-third street

Twenty-third street: From South street to Locust street

(b) 3rd Wire is authorized to install new underground conduit within the public right-of-way at the following location provided that any existing manhole within the public right-of-way utilized by 3rd Wire is legal and authorized by the City of Philadelphia:

SEPTA Right of Way: From SEPTA right-of-way two hundred feet (200') to Fifteenth street and Market street

(c) The said Telecommunications System shall be constructed in accordance with the requirements of, and under the supervision of, the Department of Streets. The Telecommunications System shall be constructed without interference with any existing surface or subsurface structures, and it shall be used by 3rd Wire 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 equipment, facilities and/or appurtenances placed therein.

(d) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of 3rd Wire facilities at any location along the specified route and is not a guaranty that 3rd Wire 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 3rd Wire must by law obtain prior to construction or occupancy of existing conduit in the public right-of-way.

(e) All telecommunication facilities within a railroad right-of-way that include an alteration to a rail/highway crossing, 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. Obtaining such approval from the Pennsylvania Public Utility Commission is the sole responsibility of 3rd Wire.

(f) 3rd Wire must submit proof of authorization from the governmental body responsible for maintaining any highway bridge crossing over a railroad right, other highway, watercourse or real property if the Telecommunications System listed in this Section is constructed on or attached to any such bridges.

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

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improvement or facility is constructed by the City or other governmental entity, or by contract with the City or with any governmental entity, the Department of Streets shall provide 3rd Wire with written notice at least one hundred eighty (180) days prior to the date any action would be required by 3rd Wire to relocate said portion of the Telecommunications System. Within one hundred eighty (180) days of service of said notice upon 3rd Wire, 3rd Wire shall relocate said portion of the Telecommunications System and restore the roadway and footway disturbed by the relocation to the condition it was prior to the relocation, without expense to the City. In the event that 3rd Wire is required to remove any portion of the Telecommunications System at the request of the City, the Department of Streets shall cooperate with 3rd Wire 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 intervening pathways or alleyways. Before any such extensions are made, 3rd Wire 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 which serve as replacement and alternative right-of-ways in relocating 3rd Wire 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 3rd Wire 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 hereafter enacted related to the right of occupancy and to use of property in and under 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 agreements, to the extent that such agreements are consistent with terms and conditions of this Ordinance.

SECTION 5. Before exercising any rights and privileges under this Ordinance, 3rd Wire shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that 3rd Wire 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

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which may arise directly as a result of the construction, maintenance, operation or removal of 3rd Wire 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 3rd Wire 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; and

(e) pay all charges, rents, franchise fees or other fees that the City of Philadelphia may now or in the future impose for Licensee's occupation of City property, streets and rights-of-way.

SECTION 6. 3rd Wire must submit documentation in a form satisfactory to the City of Philadelphia that the existing facilities that 3rd Wire facilities and appurtenances will occupy as identified Section 1(a) are within the public right-of-way under legal authority from the City of Philadelphia.

SECTION 7. 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.

SECTION 8. The permission granted to 3rd Wire 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 3rd Wire has not entered into the Agreement as required by Section 5 within one (1) year after this Ordinance becomes law.

SECTION 9. The permission granted to 3rd Wire and its successors, assigns, and agents for installation and or construction of the 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 within three (3) years after the date this Ordinance becomes law unless 3rd Wire, its successors, assigns, and agents have substantially completed the construction of the facilities authorized herein. A change in ownership of the assets of 3rd Wire does not, without express written permission of the City of Philadelphia, extend the time for substantially completing the construction of the facilities authorized herein.

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SECTION 10. 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 the City of Philadelphia's costs associated with such transfer within 30 days of the costs being submitted to the transferee or the transferee's authorized agent.

SECTION 11. 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.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 14, 2001. The Bill was Signed by the Mayor on August 31, 2001.



Marie B. Hauser
Chief Clerk of the City Council