

City of Philadelphia



(Bill No. 010574)

AN ORDINANCE

Granting permission to Level 3 Communications, LLC, a Delaware limited liability company, registered to do business in Pennsylvania, and its successors, assigns and agents 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/or to place such telecommunications system within and/or attached to the existing facilities owned by PECO Energy Company, Verizon Pennsylvania, Inc., Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern, Consolidated Rail Corporation Shared Assets and/or other entities authorized by 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 Level 3 Communications, LLC, a Delaware limited liability company, registered to do business in Pennsylvania (hereinafter "Level 3"), and its successors, assigns, and agents, subject to the terms and conditions hereinafter set forth, to construct, maintain, operate, replace, and remove a telecommunications system and appurtenances along, in, over and under the public rights-of-way of the City of Philadelphia and/or to place such telecommunications system within and/or attached to the existing facilities owned by other entities authorized by 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. Level 3 is not authorized by this Ordinance to provide to subscribers within the City "cable service," 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) Level 3 is authorized to install, construct, maintain, operate, replace and remove underground facilities, including telecommunications cables, conduits, ducts, manholes, and /or appurtenances, in and under the following public rights-of-way:

	FROM	TO
WALNUT ST 38 TH ST	24 TH ST WALNUT ST	38 TH ST LANCASTER AV

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LANCASTER AV

38TH ST

CITY LINE AV
(To City Limits)

(b) Before entering into the Agreement provided in Section 5 below, Level 3 must submit proof of authorization from Pennsylvania Department of Transportation for placement of its facilities on the Walnut Street bridge over the Schuylkill River and railroad tracks of the Southeastern Pennsylvania Transportation Authority, Amtrak, and CSX Corporation, and from the governmental body responsible for maintaining any other highway bridge crossing over a railroad right-of-way, private property or over another public right-of-way if the Telecommunications System listed in this Section is constructed on or attached to any other such bridges.

(c) 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 Level 3 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.

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

(e) All telecommunication facilities constructed pursuant to this Ordinance within a railroad right-of-way that includes 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.

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 Level 3 with written notice at least one hundred eighty (180) days prior to the date any action would be required by Level 3 to relocate said portion of the Telecommunications System. Within one hundred eighty (180) days of service of said notice upon Level 3, Level 3 shall relocate said portion of the Telecommunications

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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 Level 3 is required to remove any portion of the Telecommunications System at the request of the City, the Department of Streets shall cooperate with Level 3 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, Level 3 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 Level 3 facilities 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 Level 3 and its successors and assigns 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, all other applicable ordinances of the City of Philadelphia, all ordinances of general application currently in existence or subsequently enacted that are related to the City of Philadelphia's management of the public rights-of-way, the right-of-occupancy of the public rights-of-way, and/or the use of property in, under, over, along and/or 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 the Agreement provided in Section 5 of this Ordinance and all other applicable agreements, and to Level 3's compliance with such terms and conditions, to the extent that such agreements are consistent with the terms and conditions of this Ordinance.

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

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(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 the Level 3 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 underground conduit or duct that Level 3 has authorization to occupy the underground conduit or duct; 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, together with the terms and provisions required by Section 5 of this Ordinance and such other terms and provisions as shall be deemed necessary to protect the interest of the City, provisions setting forth, as a condition of the permissions granted by this Ordinance, Level 3's representation, warranty, and agreement that it is subject to and will comply fully with (i) the terms and conditions of this Ordinance and all other applicable ordinances of the City of Philadelphia, and (ii) the terms and conditions of all ordinances of general application currently in existence or subsequently enacted that are related to the City of Philadelphia's management of the public rights-of-way, the right-of-occupancy of the public rights-of-way, and/or the use of property in, under, over, along and/or across the streets, sidewalks, alleyways, easements and rights-of-way within the City of Philadelphia.

SECTION 7. The permission granted to Level 3 and its successors, assigns and agents to construct, maintain and operate, replace and remove a telecommunication system along, in, over and under the 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 Level

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3 has not entered into the Agreement as required by Section 5 and Section 6 within ninety (90) days after this Ordinance becomes law.

SECTION 8. The permission granted to Level 3 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 Level 3, its successors, assigns, and agents have substantially completed the construction of the new facilities authorized herein. A change in ownership of the assets of Level 3 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.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on November 15, 2001. The Bill was Signed by the Mayor on November 28, 2001.



Marie B. Hauser
Chief Clerk of the City Council