



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 010234

Introduced April 19, 2001

Councilmember Clarke

**Referred to the
Committee on Streets and Services**

AN ORDINANCE

Granting permission to The WXIII/PHL Real Estate Limited Partnership, its successors and assigns to construct, maintain and operate, replace, and remove ductbanks for certain telecommunications uses under and in the public rights-of-way and City streets; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to The WXIII/PHL Real Estate Limited Partnership, c/o Archon Group, L.P., 1275 "K" Street, Suite 900, Washington, D.C. 20005 and its successors, assigns, and agents (collectively, "WXIII") to construct, maintain, operate, replace, and remove a fiber ductbank in and under the public rights-of-way and streets of the City of Philadelphia (the "City"), for the purpose of providing access by telecommunications service providers to the existing building located at 440 N. Broad street, which contains space for facilities for telecommunication switching, Internet access and electronic commerce, and related telecommunications services and activities.

(a) WXIII is authorized to construct, maintain and operate, replace and remove ductbanks consisting of ducts and manholes in and under the public rights-of-way and streets as follows:

Phase I

Phase I consists of two (2) separate sections as follows:

Phase I, Section 1 consists of two (2) new 6' x 6' x 6' manholes and 26-4" ducts. These improvements begin at a new manhole in and under the bed of North Fifteenth street

City of Philadelphia

BILL NO. 010234 continued

approximately 65 feet south of Callowhill street, north to a second new manhole just north of Callowhill street. From the second manhole the ducts will be attached to the underside superstructure of the North Fifteenth street bridge, extending north to a point located approximately 260 feet north of Callowhill street. Continuing then east under the North Fifteenth street bridge from a point 12 feet west of the westerly curb line of North Fifteenth street to a point 12 feet east of the easterly curb line of North Fifteenth street.

Phase I, Section 2 consists of two 12' x 6' x 20' elevated manholes and a new 38-4" conduit in the bed of and under the North Broad street bridge. The improvements begin at a new manhole located approximately 198 feet north of Callowhill street and 22 feet east of North Broad street, extending west under Broad street to a second manhole approximately 22 feet west of the westerly curb line of North Broad street.

Phase II

Phase II consists of two new 6' x 6' x 6' manholes and 32-4" conduit. Phase II begins at a new manhole just south of the intersection of Thirteenth and Noble streets, then extends west parallel to Noble street into and through a second manhole, and for a total distance of approximately 435 feet to a point just to the southeast of the intersection of Broad street and Noble street. The conduit then extends south parallel to and just east of Broad street for a distance of about thirty feet, connecting to the new manhole described above as the point of beginning for Phase I, Section 2.

The permission granted by this Ordinance is conditioned upon WXIII constructing, maintaining and operating the ductbanks in all locations.

(b) WXIII must submit proof of authorization from the governmental body responsible for maintaining any highway bridge crossing over a railroad right-of-way, private property or over another public right-of-way if the ductbank is constructed on or attached to any such bridge(s).

City of Philadelphia

BILL NO. 010234 continued

(c) The ductbank 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 WXIII exclusively for the purposes set forth in this Section and in accordance with all ordinances and regulations of the City 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.

(d) WXIII shall reserve two (2) four (4) inch diameter ducts in each of the Phase I and II ductbanks solely for the use of the City for whatever purpose the City, in its sole discretion, may determine, and without conditions and at no cost or expense to the City for the construction, maintenance and/or use of the reserved duct(s).

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

(f) All facilities constructed pursuant to this Ordinance 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. WXIII has the sole responsibility to obtain any required Pennsylvania Public Utility Commission approval(s).

(g) Prior to the installation or operation in the ductbank authorized by this Ordinance of any telecommunications or other facilities or appurtenances thereto, including but not limited to fiber optic and other cables and facilities for the provision of telecommunications service as defined at 47 U.S.C. §153(46), the owner of the facilities and/or appurtenances must have obtained, by Ordinance of City Council, the City's permission to occupy a right-of-way in the City, and must submit to the City information on the proposed installation and/or operation, in form and content acceptable to the City, for the City's review and approval. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval for occupancy of the ductbank to any entity seeking to install telecommunications or other facilities or appurtenances in the ductbank.

SECTION 2. In the event that any portion of said ductbank must be relocated to accommodate a public improvement or public facility, whether such improvement or

City of Philadelphia

BILL NO. 010234 continued

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 WXIII with written notice at least one hundred eighty (180) days prior to the date any action would be required by WXIII to relocate said portion of the ductbank. Within one hundred eighty (180) days of service of said notice upon WXIII, WXIII shall relocate said portion of the ductbank and restore the roadway and footway disturbed by the relocation to the condition it was in prior to the relocation, without cost or expense to the City. In the event that WXIII is required to remove any portion of the ductbank at the request of the City, the Department of Streets shall cooperate with WXIII in order to identify a replacement and alternative right-of-way for the relocation of said portion of the ductbank which may be utilized without unreasonable inconvenience; such alternative location as may be approved by the Streets Department is hereby authorized.

SECTION 3. The Philadelphia Code §11-204(5) does not apply to the ductbanks authorized by this Ordinance.

SECTION 4. The permission granted to WXIII by this Ordinance shall be and is subject to the terms and conditions of this Ordinance and other applicable ordinances of the City, including, but not limited to, all ordinances of general application currently in existence or subsequently enacted that are related to the right-of-occupancy and use of property in, under, over, along and across the streets, sidewalks, alleyways, easements and rights-of-way within the City.

SECTION 5. Nothing in this Ordinance authorizes WXIII (i) 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; or (ii) itself to furnish “telecommunications service” as defined at 47 U.S.C. §153(46); or (iii) to install or operate, or permit any other entities to install or operate, any fiber optic or other cables or facilities or appurtenances thereto in the ductbank authorized by this Ordinance for the purpose of WXIII itself providing such telecommunications service; or (iv) to permit occupancy of the ductbank by an entity that has not obtained permission to occupy a right-of-way in the City by ordinance of City Council and all permits required by the City for such occupancy.

SECTION 6. Before exercising any rights and privileges under this Ordinance, WXIII shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that WXIII 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

City of Philadelphia

BILL NO. 010234 continued

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 the WXIII ductbank;

(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 WXIII ductbank;

(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 may now or in the future impose for a licensee's occupation of City property, streets and rights-of-way;

(f) Remove any or all portions of the ductbanks from the public rights-of-way pursuant to applicable City specifications within sixty (60) days when the ductbanks or a portion of the ductbanks is no longer used for the purpose authorized by this Ordinance or existing law;

(g) Make necessary adjustments, or reimburse the City for making adjustments, to any manhole constructed as part of the ductbanks when instructed to do so by the Streets Department in preparation of a street paving project;

(h) Mark each manhole constructed as part of the ductbanks with identification of the owner of the manhole in a manner designated by the City;

(i) Not sell or transfer any individual duct within the ductbanks to another entity without the express authorization of the City.

The permission granted by this Ordinance, and the rights and privileges provided herein, are strictly conditional on WXIII entering into such Agreement.

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.

City of Philadelphia

BILL NO. 010234 continued

SECTION 8. The permission granted to WXIII to construct, maintain and operate, replace and remove ductbanks for telecommunications use under and in the public rights-of-way and City streets listed in Section 1 of this Ordinance shall expire without any further action by the City if WXIII has not entered into the Agreement as required by Section 6 within one (1) year after this Ordinance becomes law.

SECTION 9. The permission granted to WXIII for installation and/or construction of the ductbank along the route identified in this Ordinance shall expire without any further action by the City unless WXIII has substantially completed the construction of the ductbank authorized herein within two (2) years after the date this Ordinance becomes law. A change in ownership of the assets of WXIII does not, without express written permission of the City, extend the time for substantially completing the construction of the ductbank authorized herein.

SECTION 10. The City reserves the right to charge a transfer fee for any agreement transferring the rights-of-way license from one entity to another so as to insure that all costs incurred by the City related to the transfer are reimbursed. The transferee must pay all costs incurred by the City 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 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.