

City of Philadelphia



(Bill No. 030349)

AN ORDINANCE

Granting permission to Sprint Communications Company, L.P., its successors and assigns to construct, maintain, operate, replace and remove telecommunications service connections and fiber optic cables in and under the public rights-of-way and City streets from existing legally constructed underground telecommunication lines to designated manholes serving 440 North Broad street and within new conduit or within existing conduit of other entities holding a grant pursuant to other City ordinance; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to Sprint Communications Company, L.P., 6391 Sprint Parkway, Overland Park, Kansas 66251, its successors and assigns (collectively “Sprint”), to construct, maintain, operate, replace and remove telecommunications service connections and fiber optic cables in and under the public rights-of-way and City streets from existing legally constructed underground telecommunication lines to designated manholes serving 440 North Broad street, as specified in Routes A and B below. Permission is subject to the consent of the property owner of 440 North Broad street, the owner of the designated manholes and conduit providing access to 440 North Broad street, the owner of the manholes to which Sprint is providing a connection, and the owner of the telecommunications lines to which Sprint is providing a connection. Sprint 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) Sprint is authorized to install telecommunications service connections and fiber optic cables, conduits, manholes and appurtenances in and under public rights-of-way and City streets along the following routes to serve 440 North Broad street:

Route A:

North Twentieth street

From PECO Energy, Inc. manhole #29712 on North Twentieth street near the northeast corner of Vine street - Northside and North Twentieth street to a new Sprint manhole to be constructed near the northeast corner of Vine street - Northside

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	and North Twentieth street and then to Vine street - Northside
Vine street - Northside	From North Twentieth street to North Nineteenth street
North Nineteenth street	From Vine street - Northside to Callowhill street
Callowhill street	From North Nineteenth street to North Fifteenth street
North Fifteenth street	From Callowhill street to manhole owned by WMXIII/PHL Real Estate Limited Partnership serving 440 North Broad street on west side of North Fifteenth street north of Callowhill street

Route B:

North Eleventh street	From PECO Energy, Inc. manhole #12418 at northeast corner of Eleventh street and Spring Garden street to Buttonwood street
Buttonwood street	North Eleventh street to North Thirteenth street
North Thirteenth street	From Buttonwood street to manhole owned by WMXIII/PHL Real Estate Limited Partnership serving 440 North Broad street on upper level of Noble street near North Thirteenth street

(b) The said telecommunications service connections and fiber optic cables 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 Sprint and/or its successors and assigns exclusively for the purposes set forth in this Section and in accordance with all ordinances and regulations of the City of Philadelphia, its departments, boards and commissions and regulations of the Committee of Highway Supervisors and governing the construction, maintenance, and operation of underground structures and the equipment, facilities and/or appurtenances placed therein.

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(c) The permission granted by this Ordinance is conditioned upon approval by the Department of Streets of the construction and installation of Sprint facilities at any specific location to serve the properties listed above and is not a guaranty that Sprint's facilities can be placed at any particular location under or in a public right-of-way or City street. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval that Sprint must by law obtain prior to construction in or under the public right-of-way of City street.

SECTION 2. In the event that any telecommunications service connection and fiber optic cable 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 Sprint with written notice at least one hundred eighty (180) days prior to the date any action would be required by Sprint to relocate said telecommunications service connection and fiber optic cable that is in or under the public right-of-way or City street. Within one hundred eighty (180) days of service of said notice upon Sprint, Sprint shall relocate said telecommunications service connection and fiber optic cable and restore the public right-of-way or City street disturbed by the relocation to the condition it was in prior to the relocation, without expense to the City. In the event that Sprint is required to remove any telecommunications service connection and fiber optic cable at the request of the City, the Department of Streets shall cooperate with Sprint in order to identify a replacement and alternative right-of-way for the relocation of said telecommunications service connection and fiber optic cable 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 routes 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, Sprint 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 that serve as replacement and alternative right-of-ways in relocating facilities of Sprint pursuant to Section 2 of this Ordinance. All deviations that extend more than three (3) City blocks from the approved route shall require additional authorization from City Council.

SECTION 4. Before starting construction of any telecommunications service connection and fiber optic cable, Sprint must submit to the City of Philadelphia the ordinance number that authorized the occupancy of the public right-of-way by the underground telecommunication line being utilized by Sprint. If the telecommunication line has not fulfilled all conditions of the ordinance authorizing occupancy of the public right-of-way, the authorization from the City of Philadelphia to Sprint to occupy the public right-of-

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way with the telecommunications service connections and fiber optic cables and connect to the telecommunications line is null and void until all of the conditions of the ordinance authorizing the telecommunication line have been completely fulfilled. Any time delay caused by the telecommunications line owner in completing the conditions of its ordinance does not extend the time requirements set forth in Section 9 and Section 10 of this Ordinance.

SECTION 5. The permission granted to Sprint to occupy public right-of-way and City streets with telecommunications service connections and fiber optic cables 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.

SECTION 6. Before exercising any rights and privileges under this Ordinance, Sprint shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City of Philadelphia Law Department, to provide that Sprint 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 Law Department of the City of Philadelphia 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 the Sprint telecommunications service connections and fiber optic cables.

(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 Sprint’s telecommunications service connections and fiber optic cables.

(d) Restore at no cost to the City of Philadelphia and pursuant to specifications determined solely by the City of Philadelphia any portion of a public right-of-way disturbed by Sprint when installing, maintaining, replacing or removing a telecommunications service connections and fiber optic cables.

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(e) Carry insurance protecting against liability for injury to persons or the property of others, naming the City as an additional insured party in such amounts as shall be reasonably satisfactory to the City of Philadelphia Law Department.

(f) 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.

(g) Remove any or all of the telecommunications service connections and fiber optic cables to the properties listed in Section 1 from the public right-of-way pursuant to applicable City of Philadelphia specifications within sixty (60) days when the telecommunications service connection and fiber optic cables are no longer used for the purpose authorized by the ordinance or existing law.

(h) Submit to the City within ninety (90) days of the completion of construction of each telecommunications service connection and fiber optic cable to a property listed in Section 1 a copy of the "as built" plans in a format designated by the City and at no cost or expense to the City.

SECTION 7. Each portion of the telecommunications service connections and fiber optic cables may be constructed only after each of the following conditions are fulfilled:

(a) Approval from the City of Philadelphia and the Committee of Highway Supervisors of the engineering plan identifying the specific location for the telecommunication service connection and fiber optic cable to the property.

(b) Documentation from the property owner of 440 North Broad street that Sprint has authorization to provide telecommunications service connections to 440 North Broad street at the locations in the approved plan.

(c) Documentation from WMXIII/PHL Real Estate Limited Partnership, owner of the manholes to be constructed at Noble street near North Thirteenth street and at North Fifteenth street near Callowhill street and the conduit to be constructed to provide access to 440 North Broad street, that Sprint has authorization to construct the telecommunication service connections to such manholes.

(d) Documentation from WTG-East, Inc. and/or each other owner of a telecommunication line to which Sprint intends to connect that Sprint has authorization to connect to such telecommunication line at the specific location in the approved plan.

(e) Documentation from PECO Energy Company, owner of the manholes at North Twentieth street near Vine street – Northside and at Spring Garden street near North Eleventh street to which Sprint intends to connect, that Sprint has authorization to construct its telecommunications service connections to such manholes.

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SECTION 8. 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 9. The permission granted to Sprint to construct, maintain and operate, replace and remove telecommunications service connections and fiber optic cables to specific properties in and/or 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 Sprint has not entered into the Agreement as required by Section 6 within one (1) year after this Ordinance becomes law.

SECTION 10. The permission granted to Sprint and its successors, assigns, and agents for installation and or construction of the telecommunications service connections and fiber optic cables to the existing properties identified in this Ordinance shall expire without any further action by the City of Philadelphia as to such telecommunications service connections and fiber optic cables not constructed two (2) years after the date this Ordinance becomes law. A change in ownership of the assets of Sprint does not, without express written permission of the City of Philadelphia, extend the time for substantially completing the construction of the telecommunications service connection and fiber optic cables to the specific properties authorized herein.

SECTION 11. The authorization by the City of Philadelphia to Sprint to install telecommunications service connections and fiber optic cables to the specific properties listed in Section 1 is not intended to be an exclusive right from the City of Philadelphia to Sprint to install telecommunication service connections and fiber optic cables to the properties listed in Section 1.

SECTION 12. 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 13. 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 5, 2003. The Bill was Signed by the Mayor on July 31, 2003.



Patricia Rafferty
Chief Clerk of the City Council