

# City of Philadelphia



(Bill No. 040504)

## AN ORDINANCE

Granting permission to TCG Delaware Valley, Inc., a Delaware corporation, its successors and assigns to construct, maintain and operate, replace, and remove telecommunications service connections and fiber optic cables for telecommunications purposes along, over, in and under the public rights-of-way of State Road; all under certain terms and conditions.

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

**SECTION 1.** (a) Permission is hereby granted to TCG Delaware Valley, Inc., a Delaware corporation, 630 Freedom Business Center – Suite 200, King of Prussia, PA 19406, and its successors, assigns, and agents (collectively “TCG”), to construct, maintain, operate, replace and remove telecommunications service connections including underground conduit and aerial and underground fiber optic cables and associated appurtenances (“Telecommunications Facilities”) along, over, in and under the public rights-of-way and City streets from existing legally constructed aerial telecommunication lines to the Philadelphia Prison Facilities on State Road, as described in Route A below, to create an infrastructure system used to transmit, receive and distribute telecommunications.

**Route A. Service Connection to Philadelphia Prison Facility on State Road:** TCG is authorized to install Telecommunications Facilities along a portion of State Road described below, including new aerial fiber optic cable on existing PECO Energy poles from a PECO Energy pole on the west footway of State Road approximately two thousand eight hundred and three feet (2803’) north of the north curblineline of Rhawn Street approximately one thousand sixty-six feet (1066’) south to a point outside the Philadelphia Prison Facility at a distance approximately one thousand seven hundred and thirty seven feet (1737’) north of the north curblineline of Rhawn Street, where the fiber optic cable enters an underground four inch (4”) diameter conduit containing three (3) one-and-one-quarter-inch (1 ¼”) diameter innerducts west under the footway of State Road and into the property line of the Philadelphia Prison Facility. The encroachment description is as follows:

1) **Aerial Portion** - A splice will occur at a PECO Energy pole on the west footway of State Road approximately two thousand eight hundred and three feet (2803’) north of the north curblineline of Rhawn Street, where TCG will connect its new aerial fiber to existing Comcast fiber which it will lease. TCG will install new aerial fiber optic cable on the existing PECO Energy poles located on the footways of State Road as follows:

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- From the splice location the new aerial fiber optic cable will proceed southward approximately eight hundred feet (800') on existing PECO Energy poles along the west footway of State Road to a pole approximately two thousand and three feet (2003') north of the north curblines of Rhawn Street.
- The aerial cable will proceed eastward across the roadway and into the east footway of State Road for approximately sixty-four feet (64') to a existing PECO Energy pole.
- The aerial cable will proceed southward, along the east footway of State Road on existing PECO Energy poles, for approximately two hundred and sixty-six feet (266') and terminate at a PECO Energy pole located one thousand seven hundred and thirty-seven feet (1737') north of the north curblines of Rhawn Street.

2) **Underground Duct** - The fiber optic cable will proceed down the PECO Energy pole on the east footway of State Road and into a four inch (4') diameter conduit containing three (3) one-and-one-quarter-inch (1 1/4") diameter innerducts. The conduit will proceed eastward under the footway of State Road for approximately eight feet (8') and into the property line of the Philadelphia Prison Facility at a distance of approximately one thousand seven hundred and thirty-seven feet (1737') north of the north curblines of Rhawn Street.

(b) The said Telecommunications Facilities shall be installed 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 TCG 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 aerial or underground structures and the equipment, facilities and/or appurtenances placed therein.

(c) The permission granted by this Ordinance is conditioned upon approval by the Department of Streets of the construction and installation of TCG Telecommunications Facilities at any specific location to serve the properties listed above and is not a guaranty that TCG's Telecommunications 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 TCG 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 Facilities 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

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the City or with any governmental entity, the Department of Streets shall provide TCG with written notice at least one hundred eighty (180) days prior to the date any action would be required by TCG to relocate said Telecommunications Facilities that are in or under the public right-of-way or City street. Within one hundred eighty (180) days of service of said notice upon TCG, TCG shall relocate said Telecommunications Facilities 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 TCG is required to remove any Telecommunications Facilities at the request of the City, the Department of Streets shall cooperate with TCG in order to identify a replacement and alternative right-of-way for the relocation of said Telecommunications Facilities which may be utilized without unreasonable inconvenience.

**SECTION 3.** The Philadelphia Code, Chapter 11-204(5), does not apply to the construction of the Telecommunications Facilities listed in Section 1.

**SECTION 4.** Nothing in this Ordinance authorizes TCG 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.

**SECTION 5.** The permission granted to TCG to occupy public right-of-way and City streets with Telecommunications Facilities 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, TCG 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 TCG shall, *inter alia*:

(a) Furnish the City with a form of security satisfactory to the Law Department of the City of Philadelphia in an amount required by the Department of Streets 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 TCG Telecommunications Facilities.

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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 TCG's Telecommunications Facilities.

(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 TCG when installing, maintaining, replacing or removing Telecommunications Facilities.

(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 Facilities listed in Section 1 from the public right-of-way pursuant to applicable City of Philadelphia specifications within sixty (60) days when such Telecommunications Facilities 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 Facility 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.

(i) Make necessary adjustments, or reimburse the City for making adjustments, to any manhole constructed as part of the conduit approved in Section 1 when instructed to do so by the Streets Department in preparation of a street paving project.

(j) Mark each manhole constructed as part of the conduit approved in Section 1 with identification of the owner of the manhole in a manner designated by the City.

(k) Provide that TCG shall not sell or transfer any Transportation Facilities authorized in Section 1 or a portion of the capacity of an individual duct within the conduit to another entity without the express authorization of the City.

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**SECTION 7.** Each portion of the Telecommunications Facilities listed in Section 1 may be installed or 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 particular Telecommunications Facility.

(b) Documentation from Comcast that TCG has authorization to connect to the telecommunication line at the specific locations in the approved plan.

(c) 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. TCG has the sole responsibility to obtain any required Pennsylvania Public Utility Commission approval(s).

**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 TCG to construct, maintain and operate, replace and remove Telecommunications Facilities 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 TCG 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 TCG and its successors, assigns, and agents for installation and or construction of the telecommunications service connections and fiber cables to the existing properties identified in this Ordinance shall expire without any further action by the City of Philadelphia as to Telecommunications Facilities not constructed three (3) years after the date this Ordinance becomes law. A change in ownership of the assets of TCG does not, without express written permission of the City of Philadelphia, extend the time for substantially completing the construction of the Telecommunications Facilities to the specific properties authorized herein.

**SECTION 11.** The authorization by the City of Philadelphia to TCG to install Telecommunications Facilities to the specific properties listed in Section 1 is not an intended to be an exclusive right from the City of Philadelphia to TCG to install Telecommunications Facilities 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 ownership or control of the Telecommunications Facilities authorized by this Ordinance, or any rights of TCG pursuant to this Ordinance, from one

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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 3, 2004. The Bill was Signed by the Mayor on June 21, 2004.



Patricia Rafferty  
Chief Clerk of the City Council