

City of Philadelphia



(Bill No. 010387)

AN ORDINANCE

Granting permission to GPU Telecom Services, Inc., its successors and assigns 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 the existing facilities owned by Verizon-PA, PECO Energy Company, Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation, National Railroad Passenger 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 GPU Telecom Services, Inc., Route 183 and Van reed Road, PO Box 15164, Reading, PA 19612-5164 (hereinafter "GPU") and its successors, assigns, and agents, to construct, maintain, operate, replace, and remove a telecommunications system and appurtenances along, in and under the public rights-of-way of the City of Philadelphia and within existing facilities owned by Verizon-PA, PECO Energy Company, Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation, National Railroad Passenger Corporation or other entities holding a grant pursuant to 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 GPU 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.

(1) GPU is authorized to install aerial facilities within the following existing railroad rights-of-way and where the railroad rights-of-way cross the following streets and highways, subject to the permission of the railroad owning the right-of-way and the governmental entity required to maintain any highway bridge structure:

(a) Northern Route beginning in the AMTRAK Northeast Corridor at Thirtieth street and Thirtieth Street Station:

(i) in existing underground conduit within the AMTRAK railroad rights-of-way at the following streets and highways:

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Thirtieth street at Thirtieth Street Station
Girard avenue
Thirty-fourth street

(ii) aerial facilities attached to existing AMTRAK catenary structures at the following streets and highways:

I-76
Kelly Drive
Thirty-third street
Oxford street
Cecil B. Moore Boulevard
Montgomery avenue
Twenty-ninth street
Ridge avenue
Diamond street
Twenty-fifth street
Dauphine street
York street
Twenty-second street
Margie street
Lehigh avenue
Seventeenth street
Broad street
Twelfth street
Germantown avenue
Allegheny avenue
Sixth street
Fifth street
Second street
Front street
B street
G street
I street
K street
Kensington avenue
Castor avenue
Frankford avenue
Wheatsheaf lane
Adams avenue
Church street
Orthodox street
Margaret street

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Wakeling street
Aramingo avenue
Bridge street
Van Kirk street
Comly street
Levick street
Magee street
Unruh street
Longshore avenue
Disston avenue
Princeton avenue
Cottman avenue
Rhawn street
Ashburner street
I-95
Linden street
Grant avenue

(b) Southern Route beginning in the AMTRAK Northeast Corridor at Thirtieth street and Thirtieth Street Station:

(i) in existing underground conduit within the AMTRAK railroad right-of-way at the following streets and highways:

Thirtieth street at Thirtieth Street Station
Market street
Chestnut street
Walnut street
South street
University avenue
Grays Ferry avenue
Forty-ninth street
Fifty-fourth street
Fifty-eighth street

(ii) aerial facilities attached to existing AMTRAK catenary structures at the following streets and highways:

Sixty-second street
Sixty-third street
Sixty-fourth street
Sixty-fifth street
Sixty-sixth street
Sixty-seventh street

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Seventieth street
Seventy-first street
Seventy-second street
Island avenue

(c) Western Route beginning in the AMTRAK Mainline at Thirtieth street and Thirtieth Street Station all in existing underground conduit within the AMTRAK railroad right-of-way at the following streets and highways:

Thirtieth street at Thirtieth Street Station
Spring Garden street
I-76
Thirty-fourth street
Fortieth street
Forty-first street
Forty-second street
Belmont avenue and Girard avenue
Fifty-second street
Fifty-ninth street
Woodbine avenue
City Line avenue

(d) Center City Route beginning in the Market/Frankford El at the Thirtieth Street Station, all in existing SEPTA conduit within the underground portion of the Market/Frankford Elevated Railway right-of-way at the following streets and highways:

Market street:	From Thirtieth street to Fifteenth street
Fifteenth street:	From Market street to South Penn Square
South Penn Square:	From Fifteenth street to Juniper street
Juniper street:	From South Penn Square to Filbert street
Filbert street:	From Juniper street to Thirteenth street
Thirteenth street:	From Filbert street to the SEPTA manhole in the intersection of Thirteenth street and Noble street

(b) GPU is authorized to install a new underground conduit within public right-of-way from a SEPTA manhole at the southeast corner of Thirteenth street to a Conectiv manhole in the west footway of Thirteenth street, south of Noble street, provided that the two (2) manholes referred to in this section are legal and authorized by the City of Philadelphia.

(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 GPU and/or its

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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 GPU's facilities at any location along the specified route and is not a guaranty that GPU's 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 GPU must by law obtain prior to construction or occupancy of existing conduit in the public right-of-way.

(e) All telecommunication facilities that include an alteration to a rail/highway crossing, as such alterations 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 approval from the Pennsylvania Public Utility Commission is the sole responsibility of GPU.

(f) GPU 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 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 GPU with written notice at least one hundred eighty (180) days prior to the date any action would be required by GPU to relocate said portion of the Telecommunications System. Within one hundred eighty (180) days of service of said notice upon GPU, GPU shall relocate said portion of the Telecommunications System and restore the roadway, footway or bridge structure disturbed by the relocation to the condition it was in prior to the relocation, without expense to the City. In the event that GPU is required to remove any portion of the Telecommunications System at the request of the City, the Department of Streets shall cooperate with GPU 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

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any such extensions are made, GPU 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 GPU 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 GPU 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, 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 5. Before exercising any rights and privileges under this Ordinance, GPU shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that GPU 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 GPU’s 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 GPU’s 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; and

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(f) assume the costs of all changes and adjustments to and relocation of any GPU facilities, whether in underground conduit, on catenary structures or attached to any highway bridge structure that are installed in any railroad right-of-way, SEPTA right-of-way or attached to any highway bridge when notified that said facilities must be relocated to accommodate a municipal or other governmental public improvement project at no expense to the governmental entity undertaking the public improvement project.

SECTION 6. GPU must submit documentation in a form satisfactory to the City of Philadelphia that any existing facilities or appurtenances identified in Section 1(a) as being in a public right-of-way 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 GPU 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 GPU 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 GPU 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 GPU, its successors, assigns, and agents have substantially completed the construction of the new facilities authorized herein. A change in ownership of the assets of GPU 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 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 all costs incurred by the City of Philadelphia associated with such transfer within 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.

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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