

City of Philadelphia



(Bill No. 010397)

AN ORDINANCE

Granting permission to WXIII/PHL Real Estate Limited Partnership, c/o Archon Group, LP, 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 WXIII/PHL Real Estate Limited Partnership, c/o Archon Group LP, 1275 K street, Suite 900, Washington D.C. 20005 and its successors, assigns, and agents (collectively, "WXIII/PHL") to construct, maintain, operate, replace, and remove ductbanks containing variable numbers of four inch diameter (4") ducts 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 telecommunications carrier buildings located along the Phase One and Phase Two Routes described below, that contain space for facilities for telecommunication switching, Internet access and electronic commerce, and related telecommunications services and activities.

(a) WXIII/PHL is authorized to construct, maintain and operate, replace and remove ductbanks consisting of thirty-six (36) four inch diameter (4") ducts and manholes in and under the public rights-of-way and streets and to perform such work in two phases, the "Phase One Route, Section 1 and Section 2" and the "Phase Two Route," as defined below.

Phase One Route, Section 1 consists of a thirty-six (36)- four inch (4") ductbank (to be constructed by WXIII/PHL and available for use by all telecommunications companies using the ductbank) and begins at the first new six foot by six foot by six foot (6'x 6'x 6') manhole located in the west footway of Fifteenth street at a point approximately fifty-eight feet (58') south of the south curb line of Callowhill street and ten feet (10') west of the west curb line of Fifteenth street. The duct bank proceeds northwardly across the entire Callowhill street right-of-way to a second new six foot by six foot by six foot (6'x 6'x 6') manhole located in the west footway of Fifteenth street at a point approximately fourteen feet (14') north of the north curb line of Callowhill street and ten feet (10') west of the west curb line of Fifteenth street. The ductbank proceeds in a northwardly direction through the south abutment and superstructure of the highway bridge structure (City Bridge Number #112) carrying Fifteenth street over the Conrail railroad right-of-way to a pull box on the underside of bridge span #6 of the superstructure at a point located in the west sidewalk bay of the bridge approximately

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five feet, six inches (5'-6") west of the west curb line of Fifteenth street and fourteen feet (14') north of steel bent #4. The pull box can also be located as being approximately two hundred and fifty-nine feet (259') north of the north curb line of Callowhill street. The ductbank goes through the pull box and continues in an eastwardly direction across the entire Fifteenth street right-of-way, supported by the bridge superstructure to the east right-of-way line of Fifteenth street and then in to the building known as 440 North Broad street.

Phase One Route, Section 2 begins as a forty-eight (48)-four inch (4") ductbank at the west right-of-way line of Broad street, at a point approximately one hundred and eighty-two feet (182') north of the north curb line of Callowhill street, under the bed of the PennDOT bridge carrying Broad street over a Conrail railroad right-of-way (City Bridge Number 64) north of Callowhill street. The forty-eight (48)-four inch (4") ductbank continues eastwardly across and under the entire right-of-way of Broad street, passing through two (2) elevated twelve foot by six foot (12'x 6') manholes with twenty foot (20') risers below which are to be installed in the west and east footway slab of the bridge. At the east footway manhole, the forty-eight -four-inch (4") ductbank divides into two (2) ductbanks. The first ductbank is a four (4)-four inch (4") ductbank that continues east beyond and under the east right-of-way line of Broad street and into the property 401 North Broad street. The second ductbank is a forty-four (44)-four inch (4") ductbank that runs north from the riser under east sidewalk bay of Bridge #64, under the east footway of Broad street and into an new twelve foot by eight foot by six foot (12'x 8'x 6') manhole located approximately ten feet (10') east of the east curb line of Broad street and seventeen feet (17') south of the north curb line of Noble street. The forty-four (44)-four inch (4") ductbank continues eastwardly under the Noble street cartway in a line offset approximately seventeen feet (17') south of the north curb line of Noble street (also identified as being approximately four feet (4') behind the front face of a stone retaining wall in the Noble street cartway) for approximately two hundred and thirty feet (230') to a new six foot by six foot by six foot (6'x 6'x 6') manhole. The new manhole is located approximately two hundred and forty feet (240') east of the east curb line of Broad street and seventeen feet (17') south of the north curb line of Noble street. At this new manhole, the forty-four (44)-four inch (4") ductbank divides into two (2) ductbanks. The first ductbank is an eight (8)-four inch (4") ductbank that runs northwardly from the new manhole and under the cartway and north footway of Noble street to the north right-of-way line of Noble street and into the property known as 1309 Noble street. The second ductbank is a thirty-six (36)-four inch (4") ductbank that runs eastwardly from the new manhole within and under the cartway of Noble street descends vertically at approximately forty-five degrees (45°) and under the bottom of the masonry west abutment of CSX Bridge #1468 which crosses over Thirteenth street. The thirty-six (36)-four inch (4") ductbank continues eastwardly below the bridge abutment, across and under the west footway and the cartway of Thirteenth street approximately ten feet (10') below the grade of the cartway and terminates in a new eight foot by six foot by twelve foot (8'x 6'x 12') manhole in the east footway of Thirteenth street and into the property 440 North Broad street. This manhole is located approximately seventeen feet (17')

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south of the north curb line of Noble street and approximately four feet (4') east of the east curb line of Thirteenth street.

Phase Two Route consists of two (2) twenty-six (26)-four inch (4") ductbank laterals from the north face of the Buttonwood street side of the building 440 North Broad street to a new six foot by six foot by six foot (6'x 6'x 6') manholes. This includes primary and diverse routes.

The new primary manhole link is located in the cartway of Buttonwood street approximately twenty-eight feet (28') east of the east curb line of Fifteenth street and six feet (6') north of the south curb line of Buttonwood street. The twenty-six (26)-four inch (4") conduit ductbank lateral continues southwardly from this manhole, under the cartway and south footway of Buttonwood street to the Buttonwood street south right-of-way line and into the property 440 North Broad street.

The new diverse manhole link is located in the cartway of Buttonwood street approximately seventy feet (70') west of the west curb line of Broad street and six feet (6') north of the south curb line of Buttonwood street. The twenty-six (26)-four inch (4") ductbank lateral continues southwardly from this manhole under the cartway and south footway of Buttonwood street to the Buttonwood street right-of-way line and into the property 440 North Broad street.

The permission granted by this Ordinance is conditioned upon WXIII/PHL constructing, maintaining and operating the ductbanks in the Phase One Route Section 1, Phase One Route Section 2 and the Phase Two Route.

(b) WXIII/PHL must submit, in a form acceptable to the City Solicitor's Office, 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 a ductbank is constructed on or attached to any such bridge(s).

(c) WXIII/PHL must submit, in a form acceptable to the City Solicitor's Office, proof of authorization from any non governmental entity that owns or is responsible for maintaining a bridge structure if the a ductbank is constructed on, under a footing or abutment or attached to any such bridge structure.

(d) WXIII/PHL must submit, in a form acceptable to the City Solicitor's Office, proof of authorization from the owner of any private property that the owner has no objection to the construction of a ductbank in, on or under the owner(s)' property.

(e) The ductbanks 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/PHL exclusively for

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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.

(f) WXIII/PHL shall reserve two (2) four (4) inch diameter ducts in each of the Phase One Route, Section 1, Phase One Route, Section 2, and Phase Two Route 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 ducts.

(g) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of the ductbanks at any location along the Phase One Route Section 1, Phase One Route, Section 2 or the Phase Two Route and is not a guaranty that the ductbanks can be placed at any particular location along either route. In the event that it is impossible or infeasible to construct and install any portion of the ductbanks along the Phase One Route, Section 1, Phase One Route Section 2 or the Phase Two Route, WXIII/PHL may propose and the Department of Streets may approve an alternative route for the location of such portion of the ductbanks; such alternative route as may be approved by the Department of Streets is hereby authorized. 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/PHL 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.

(h) 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/PHL has the sole responsibility to obtain any required Pennsylvania Public Utility Commission approval(s).

(i) Prior to the installation or operation of the ductbanks authorized by this Ordinance, or 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.

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SECTION 2. In the event that any portion of said ductbanks 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 WXIII/PHL with written notice at least one hundred eighty (180) days prior to the date any action would be required by WXIII/PHL to relocate said portion of the ductbanks. Within one hundred eighty (180) days of service of said notice upon WXIII/PHL, WXIII/PHL shall relocate said portion of the ductbanks 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/PHL is required to remove any portion of the ductbanks at the request of the City, the Department of Streets shall cooperate with WXIII/PHL 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 Section 11-204(5) does not apply to any ductbank authorized by this Ordinance.

SECTION 4. The permission granted to WXIII/PHL 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/PHL to:

(a) 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;

(b) Furnish “telecommunications service” as defined at 47 U.S.C. § 153(46);

(c) 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/PHL itself providing such telecommunications service; or

(d) Permit occupancy of the ductbanks by any entity that has not obtained permission to occupy a right-of-way in the City by ordinance of City Council or obtained all permits required by the City for such occupancy.

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

(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 any WXIII/PHL 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 listed in Section 1 from the public rights-of-way pursuant to applicable City specifications within sixty (60) days when the ductbank(s) or a portion of the ductbank(s) are no longer used for the purpose authorized by this Ordinance.

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

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

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(i) Not sell or transfer any individual duct within any of the ductbanks described in Section 1 or a portion of the capacity of an individual duct within any ductbank ducts to another entity without the express authorization of the City.

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 WXIII/PHL 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/PHL 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/PHL for installation and or construction of the ductbanks along the route identified in this Ordinance shall expire without any further action by the City unless WXIII/PHL has substantially completed the construction the Phase One Route, Section 1, the Phase One Route, Section 2 and the Phase Two Route of the ductbanks authorized herein within two (2) years after the date this Ordinance becomes law. A change in ownership of the assets of WXIII/PHL does not, without express written permission of the City, extend the time for substantially completing the construction of the ductbanks 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.

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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