

Legislation Text

File #: 020762-A, **Version:** 1

Granting permission to Cogent Communications, Inc., its successors and assigns to construct, maintain, operate, replace and remove telecommunications service connections and fiber cables in and under the public rights-of-way and City streets from existing legally constructed underground telecommunication lines to specific properties 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 Cogent Communications, Inc., 1015 31st Street, NW, Washington, D.C. 20007, its successors and assigns (collectively “Cogent”), to construct, maintain, operate, replace and remove telecommunications service connections and fiber cables in and under the public rights-of-way and City streets from existing legally constructed underground telecommunication lines to certain designated properties as specified in routes A through CC below. Permission is subject to the consent of the property owner for each designated property and the owner of the telecommunications line to which Cogent is providing a connection. Cogent 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) Cogent is authorized to install telecommunications service connections and fiber cables, conduits, manholes and appurtenances in and under public rights-of-way and City streets along the following routes to serve the below-designated properties:

Route A: One S. Penn Square - Widener Building (BID-1503)

Chestnut Street From Juniper Street to Broad Street

Broad Street From Chestnut Street to S. Penn Square

S. Penn Square From Broad Street to Building at 1 S. Penn Square

Route B: 100 Penn Square East - Wanamaker Building (BID-1502)

Market Street From 13th Street to East Penn Square

East Penn Square (Juniper Street) From Market Street to Building at 100 Penn Square East

Route C: 1528 Walnut Street (BID-2994)

Walnut Street From 15th Street to Building at 1528 Walnut Street

Route D: 230 South Broad Street (BID-5316)

Walnut Street From 16th Street to 15th Street

15th Street From Walnut Street to Chancellor Street

Chancellor Street From 15th Street to Broad Street

Broad Street Chancellor Street to Building at 230 S. Broad Street

Route E: 260 South Broad Street (BID-2025)

15th Street From Lombard to Manning Street

Manning Street From 15th Street to Broad Street

Broad Street From Manning to Building at 260 S. Broad Street

Route F: 417 North 8th Street (BID-6025)

Spring Garden Street From 9th Street to 8th Street

8th Street From Spring Garden Street to Building at 417 N. 8th Street

Route G: 600 Chestnut Street - Public Ledger Building (BID-2027)

6th Street From Samson Street to Chestnut Street

Chestnut Street From 6th Street to Building at 600 Chestnut Street

Route H: 1800 JFK Boulevard (BID-3479)

18th Street From Market Street to JFK Boulevard

JFK Boulevard From 18th Street to 19th Street

19th Street From JFK Boulevard to Commerce Street

Commerce Street From 19th Street to Building at 1800 JFK Boulevard

Route I: 1880 JFK Boulevard (BID-3480)

19th Street From Market Street to JFK Boulevard

JFK Boulevard From 19th Street to 18th Street

18th Street From JFK Boulevard to Commerce Street

Commerce Street From 18th Street to Building at 1880 John F. Kennedy Blvd.

Route J: Two Logan Square, 100 North 18th Street (BID-2012)

Arch Street From 19th Street to 18th Street

18th Street From Arch Street to Cherry Street

Cherry Street From 18th Street to Building at 100 N. 18th Street

Route K: One Logan Square, 130 North 18th Street (BID-2011)

Arch Street From 19th Street to 18th Street

18th Street From Arch Street to Cherry Street
Cherry Street From 18th Street to Building at 130 N. 18th Street

Route L: 1801 Market Street (BID-1487)

Market Street From 19th Street to 18th Street
18th Street From Market Street to Commerce Street
Commerce Street From 18th Street to Building at 1801 Market Street

Route M: 2000 Market Street (BID-1492)

Market Street From 21st Street to 20th Street
20th Street From Market Street to Ludlow Street
Ludlow Street From 20th Street to Building at 2000 Market Street

Route N: 3624 Market Street (BID-5342)

Market Street From 37th Street to Building at 3624 Market Street

Route O: 1617 JFK Boulevard - 1 Penn Center (BID-2045)

Market Street From 16th Street to 17th Street
17th Street From Market Street to Cuthbert Street
Cuthbert Street From 17th Street to Building at 1617 John F. Kennedy Blvd.

Route P: 1650 Arch Street (BID-2014)

Market Street From 16th Street to 17th Street
17th Street From Market Street to Arch Street
Arch Street From 17th Street to Building at 1650 Arch Street

Route Q: 1818 Market Street (BID-1488)

Market Street From 18th Street to 19th Street
19th Street From Market Street to Ludlow Street
Ludlow Street From 19th Street to Building at 1818 Market Street

Route R: 1835 Market Street - 11 Penn Center (BID-1489)

Market Street From 19th Street to 18th Street
18th Street From Market Street to Commerce Street
Commerce Street From 18th Street to Building at 1835 Market Street

Route S: 2001 Market Street - Commerce Square (BID-1493)/

Route T: 2005 Market Street - Commerce Square (BID-1494)

Market Street From 21st Street to 20th Street
20th Street From Market Street to Commerce Street
Commerce Street From 20th Street to Buildings at 2001 Market Street and 2005 Market Street

Route U: 30 South 17th Street - United Engineers Building (BID-2010)

Market Street From 18th Street to 17th Street
17th Street From Market Street to Ranstead Street
Ranstead Street From 17th Street to Building at 30 S. 17th Street

Route V: One Penn Square West - Graham Building (BID-3481)

15th Street From Chestnut Street to Ranstead Street
Ranstead Street From 15th Street to Building at 1 Penn Square West

Route W: 1515 Market Street (BID-1479)

Market Street From 16th Street to 15th Street
15th Street From Market Street to Building at 1515 Market Street

Route X: 1628 John F. Kennedy Blvd. - 8 Penn Center (BID-3482)

Market Street From 17th Street to 16th Street
16th Street From Market Street to JFK Blvd.
JFK Blvd. From 16th Street to Building at 1628 John F. Kennedy Blvd.

Route Y: 400 Market Street (BID-5339)

Market Street From 5th Street to 4th Street
4th Street From Market Street to Ludlow Street
Ludlow Street From 4th Street to Building at 400 Market Street

Route Z: 2000 Hamilton Street (BID-2040)

Hamilton Street From 18th Street across 20th Street to Building at 2000 Hamilton Street

Route AA: 210 Church Street (BID-2997)

Market Street From 4th Street to 3rd Street
3rd Street From Market Street to Church Street

Church Street From 3rd Street proceed east to Building located at 210 Church Street

Route BB: 240 Arch Street (BID-6074)

Arch Street From 4th Street, proceed east across 3rd Street to Building located at 240 Arch Street

Route CC: 10 Strawberry Street (BID-6075)

Market Street From 4th Street to Strawberry Street

Strawberry Street From Market Street proceed south to Building located at 10 Strawberry Street

(b) The said telecommunications service connections and fiber 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 Cogent 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.

(c) The permission granted by this Ordinance is conditioned upon approval by the Department of Streets of the construction and installation of Cogent facilities at any specific location to serve the properties listed above and is not a guaranty that Cogent'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 Cogent 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 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 Cogent with written notice at least one hundred eighty (180) days prior to the date any action would be required by Cogent to relocate said telecommunications service connection and fiber 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 Cogent, Cogent shall relocate said telecommunications service connection and fiber 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 Cogent is required to remove any telecommunications service connection and fiber cable at the request of the City, the Department of Streets shall cooperate with Cogent in order to identify a replacement and alternative right-of-way for the relocation of said telecommunications service connection and fiber 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, Cogent Communications, Inc. 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 which serve as replacement and alternative right-of-ways in relocating facilities of Cogent Communications, Inc. 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. Before starting construction of any telecommunications service connection and fiber cable, Cogent 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 Cogent. 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 Cogent to occupy the public right-of-way with the telecommunications service connections and fiber 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 Cogent to occupy public right-of-way and City streets with telecommunications service connections and fiber 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, Cogent 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 Cogent 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 Cogent telecommunications service connections and fiber 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 Cogent’s telecommunications service connections and fiber 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 Cogent when installing, maintaining, replacing or removing a telecommunications service connections and fiber cables.

(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 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 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 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 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 cable to the property.

(b) Documentation from the property owner that Cogent has authorization to construct the telecommunication service connection and fiber cable to the property at the location in the approved plan.

(c) Documentation from the telecommunication line owner that Cogent has authorization to connect to the telecommunication line at the specific location in the approved plan.

(d) Documentation from the owner of any existing conduit utilized by Cogent for the telecommunications

service connection to a specific property that Cogent has authorization to use the existing conduit with its fiber cable.

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 Cogent to construct, maintain and operate, replace and remove telecommunications service connections and fiber 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 Cogent 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 Cogent 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 such telecommunications service connections and fiber cables not constructed three (3) years after the date this Ordinance becomes law. A change in ownership of the assets of Cogent 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 cables to the specific properties authorized herein.

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