

Legislation Text

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Granting permission to PF.Net, Inc., its successors and assigns, to construct, maintain, 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 Shared Assets, AT&T 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 PF.Net, Inc., a Delaware Corporation licensed and authorized to conduct business in the Commonwealth of Pennsylvania, located at 600 Kendrick Street, Suite A-5, Houston, Texas 77060 (hereinafter "PF.Net") 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 Shared Assets, AT&T 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 PF.Net 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) PF.Net is authorized to install eight (8) one and one half inch (1½") inner diameter HDPE conduits within the public rights-of-way at the following locations:

- Market street: from Philadelphia City Limits to Sixty-third street/Cobbs Creek parkway
- Cobbs Creek parkway: from Market street to Walnut street
- Walnut street: from Cobbs Creek parkway to Twenty-third street
- Twenty-third street: from Walnut street to Lombard street
- Lombard street: from Twenty-third street to Twenty-seventh street
- Twenty-seventh street: into the property 500 South Twenty-seventh street

(2) The 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 PF.Net and/or its 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.

(3) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of PF.Net's facilities at any location along the specified route and is not a guaranty that PF.Net'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 PF.Net must by law obtain prior to construction or occupancy of existing conduit in the public right-of-way.

(4) All telecommunication facilities within a railroad right-of-way 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.

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 PF.Net with written notice at least one hundred eighty (180) days prior to the date any action would be required by PF.Net to relocate said portion of the Telecommunications System. Within one hundred eighty (180) days of service of said notice upon PF.Net, PF.Net shall relocate said portion of the Telecommunications System and restore the roadway and footway disturbed by the relocation to the condition it was in prior to the relocation, without expense to the City. In the event that PF.Net is required to remove any portion of the Telecommunications System at the request of the City, the Department of Streets shall cooperate with PF.Net 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 any such extensions are made, PF.Net 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 PF.Net 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 PF.Net 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, PF.Net shall enter into an agreement ("Agreement") with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that PF.Net shall, *inter alia*:

(1) 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 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 PF.Net's Telecommunications System;

(2) 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;

(3) 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 PF.Net's Telecommunications System;

(4) 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; and

(5) 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.

SECTION 6. PF.Net must submit documentation in a form satisfactory to the City of Philadelphia that:

(1) PF.Net has authorization to install its facilities in the building 500 South Twenty-seventh street from the owner of the property.

(2) any facility or appurtenance within the public right-of-way that will be occupied or utilized by PF.Net is legally within the public right-of-way.

(3) PF.Net has authorization to install its facilities on or in a highway bridge from the appropriate governmental entity responsible for maintaining the highway bridge.

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 PF.Net 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 PF.Net 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 PF.Net 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 PF.Net, its successors, assigns, and agents have substantially completed the construction of the new facilities authorized herein. A change in ownership of the assets of PF.Net 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.