COUNCIL OF THE CITY OF PHILADELPHIA
PUBLIC HEARING AND PUBLIC MEETING
BEFORE THE COMMITTEE OF THE WHOLE

- - -

Room 400, City Hall
Philadelphia, PA
March 14, 2001
10:30 a.m.

- - -

Bill No. 000420 - Resolution authorizing the City Council Committee of the Whole to hold hearings concerning the management of public right-of-ways. (Full text attached.)

PRESENT: COUNCIL PRESIDENT ANNA VERNA
COUNCILWOMAN JANNIE BLACKWELL
COUNCILMAN MICHAEL NUTTER
COUNCILWOMAN MARIAN B. TASCO
COUNCIL BRIAN O'NEILL
COUNCILMAN FRANK DICICCO
COUNCILMAN RICHARD T. MARIANO
COUNCILMAN FRANK RIZZO
COUNCILMAN DARRELL CLARKE

VINCENT VARALLO ASSOCIATES, INC.
Registered Professional Reporters
1835 Market Street, Suite 600
Philadelphia, PA 19103
(215) 561-2220

COMMITTEE OF THE WHOLE

I N D E X

Page

Paul Levy, Executive Director, Center City.....3

John Shutleworth, Northeast Region Director.....26

James Ginty, AT&T.....34

John Cunningham, Right of Way Manager.....41

Joeseph James, Deputy Commissioner.....41

Tom Robinson, River Oaks.....42

Frank Stanton, CTO, National Network Tech.....62

Dan Monagle, Esquire, Verizon.....70

Jesse Guarneri, Verizon.....70

Denise Early, Director of Public Policy.....78

Robert Lane, Esquire, Sprint.....78

COUNCIL PRESIDENT VERNA: Good morning, everyone. This is a public hearing of the Committee of the Whole regarding Resolution No. 000420. I would ask Mr. McPherson to read the title of the resolution.

MR. MCPHERSON: Resolution 000420 authorizing the City Council Committee of the Whole to hold hearings concerning the management of the public right-of-ways in the City of Philadelphia and to hear testimony on reasonable fees for the same for the telecommunications industry pursuant to Section 253 under the Federal Telecommunications Act of 1996.

COUNCIL PRESIDENT VERNA: Is Paul Levy here?

(Speaker steps forward.)

COUNCIL PRESIDENT VERNA: Please approach the witness table. Good morning. Please identify yourself, for the record and proceed with your testimony.

MR. LEVY: Good morning. My name is Paul Levy. I'm the Executive Director of the Center City District. I'm pleased to have the opportunity to offer testimony on Resolution No. 420.

I believe you have copies of that.

Resolution 000420

If not, we have additional copies. What I would like to report on first is some work we did jointly with the City Streets Department about a year ago mapping all the telecommunications fiberoptic infrastructure that's been installed in the downtown since 1996 when the Telecommunications Act passed.

In addition to both PECO and the descendants of the Bell system, who are utilities who have blanket permission, we were able to identify, based on looking at ordinances that this Council passed, 13 separate carrier companies who have installed over 832 miles of fiberoptic cable beneath the streets of Center City.

I think my basic point is that while the installation of this cable at times has been disruptive and inconvenient for all of us, it's important to note this fiberoptic network is absolutely essential to the competitiveness of Philadelphia as a business location, as an educational center and a place for people to live.

If you look at the map attached on

the easle to your left, what I think you see right away is the darker, thicker colors represent multiple carriers under the street. With the exception of the telecommunications hub that's emerged up at Broad and Spring Garden, Broad and Callowhill, you'll notice the thickest lines run on Market Street, Chestnut and Walnut Street.

I think the basic point here is while we talk a lot about the so-called new economy, this telecommunication infrastructure is supporting our traditional office sectors, law firms, architectural firms, engineering and accounting firms all more and more begin to use the Internet and other forms of information technology.

So I think the simple message here is that we are very well wired. I think that's a very, very big positive. As I quote here a conversation with one of the major installers a couple of years back, I asked him how you make your decisions where you install your cable and he said we use the BSB principal. I asked what is that and he said it stands for big, shiny

buildings. We look for where all the big buildings are and the dense concentration and we put our fiber there.

I think it's important to note this is a very important infrastructure for traditional old economy firms. There's a second map attached which shows at least 162 new technology, new economy firms that are in the downtown as well.

Again, my first message is this redundancy is incredibly important and a real asset. In fact, we have posted the map that you see here on the easle on our web site and treat it as part of a business retention, business attraction strategy. To the best of our knowledge, only the City of San Diego has been able to map the entire fiberoptic infrastructure.

The second point is while there is a certain amount of disruption that we need to regulate better, we should not only look at the telecommunications company, but our own water department and gas works, who are constantly ripping up streets, et cetera.

So it is a disruption and

inconvenience. But if we're going to manage the right-of-way, it's not simply the telecommunications companies, it is gas works and electric company and the water department.

We've had any number of circumstances when we've done street scape improvements where they come back in. One model which I think is very helpful, I just got it this morning and I'll share it, is the City of Los Angeles is essentially proposing a downtown infrastructure coordinating committee in which all the various agencies meet and have to jointly improve in any dense area all construction so it's coordinated.

I think all of us, whether in residential neighborhoods or commercial area, live with this frustration of work just being done, the street being repaved and someone else comes in. I think I offered here from a survey we did from other cities a couple of models.

One is San Diego, who was probably a leader in this who installed in their city conduit which then became the place where all fiberoptic infrastructure had to be installed.

They were ahead of the curve. Instead of multiple street cuts, they put in one system of conduit and urged everyone to use that.

It's very late in the day for Center City, as we begin to look at other areas of the City that are not currently wired, I think the San Diego model is an interesting one in which the City takes the lead in seeing conduit installed and then requiring everyone to use existing conduit. I know some of the telecommunications companies will have some reservations about that, but that is one model.

I then offer some examples from both Auston as well as from Houston. I think looking at Denver, Colorado they did regulate but had incredibly low fees so all the people installing basically ignored the fees, ignored the permits.

To conclude, I make really three recommendations in the effort to look at this comprehensively: One, we shouldn't over-regulate. This is a goose that is laying golden eggs. We were a dominant City when the railroads were the primary means of moving goods

and services that built all our neighborhoods. We missed out on the highway technology in many ways. Many of those highways bypassed us. This is the information superhighway for the 21st century.

We should regulate this but recognize we have a competitive advantage over the suburbs. Dense areas are more wired than suburban areas. We should encourage this industry, but regulate uniformly. If we're going to make rules for telecommunications companies, those should apply to the gas works and water department.

Second, this is a key and obvious point, the current City ordinances require all telecommunications companies and all utility companies not only to get permits, but to provide what are called as-built drawings, which is after they're done what are the routes.

Very few of those companies have delivered the as-built drawings and the City has not always followed up with them. As-built drawings, I think are absolutely key.

The third point which I would

highly recommend, our map is done by simply GIS system, a computer mapping program. The City would be very well served to extend its current GIS or geographic information service systems to include the electronic mapping of these telecommunication systems. It should require any and all utility providers to provide these not only as hardcopy as-built drawings, but as electronic files.

We post this on the web site. I see Denver and Los Angeles are now looking to post their fiberoptic routes. Businesses looking to locate look for this infrastructure. We ought to regulate it reasonably, uniformly, but also get the data back from these installers so that we can be well served.

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilwoman Blackwell.

COUNCILWOMAN BLACKWELL: Thank you. In your opinion, Mr. Levy, what do you think is an adequate time frame for a street to be excavated for the purpose of installing fiberoptics?

We assume in your opinion that

they should do or could do several sites at one time. Do you have any opinion on prioritizing? How do you see this in terms of what we do with our on City utilities?

MR. LEVY: I'm not an expert to offer how long this should take. I can say there are cities that have created incentives for companies that coordinate so that when you do one trenching on the street, multiple providers might go in at the same time.

I think any incentives we have to encourage that coordination -- some cities have taken extreme steps, which I wouldn't recommend, to say we're only opening the street once every five years to put stuff in. I think that could be counter-productive.

I would defer to the Traffic and Engineering division of the City and others. It's clearly appropriate to regulate the time in which construction occurs, day or night, rush hour, non-rush hour. It's clearly appropriate to place limits on the time a street can be opened. It's clearly appropriate to say how the site is maintained, how equipment is stored.

Resolution 000420

I would really urge, particularly for those people crossing sidewalks, that we require them to put back in whatever material was there. We've had too many experiences of granite pavers being replaced by macadam. That's not done by telecommunications companies; that's our Municipal utilities.

So the condition of the street or sidewalk prior, I think you ought to be looking at requiring anyone who excavates has got to repair to the standard in place before excavation.

COUNCILWOMAN BLACKWELL: Well, I think a few Mayors ago we talked about coordinating services. That was even before we had the ruling from the controller that you couldn't do curves and sidewalks, not that we really got any anyway; hit and miss here and there.

We found out that the few you get, maybe if you got a couple blocks, four blocks, that one utility or another came in. I think a few Mayors ago, they started Friday meetings in the Managing Director's office to coordinate all of that. It's very frustrating to wait for 20

years to get a street redone or a curb and sidewalk redone only to have it patched again after you just got it leveled.

Certainly, we do not propose to have a new kind of problem in this telecommunications era with them. So we would hope that that would be included in whatever plan has come about.

This is a great map, not that I understand it. But we think it's a great map. Certainly, this is, to my colleague who introduced the resolution, it's an idea whose time has come. Thank you.

COUNCIL PRESIDENT VERNA: Thank you. The Chair recognizes Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Madam Chair. Good morning.

You mentioned in LA that there's this infrastructure committee. We actually had some testimony in early budget hearings about some of the members' concerns about the City and related agencies continuously tearing up the streets and putting in gas mains and coming back, putting in water mains, and we were told at the

time that there was such a committee. Are you familiar with that?

MR. LEVY: I'm not. I may not be the expert. All I can say is given the amount of uncoordinated construction we see, I think we need to do better even if there is a committee.

Let me say, I sent e-mails to about 20 different cities, my counter-parts. Every city is wrestling with this issue now. Streets are being torn up all over. People in London are complaining as well. It's not unique to us.

I would be glad to share -- I just got this this morning from Los Angeles. This is a recommendation they have not implemented yet. I have information from Denver. I'll be glad to share with Council models we've gotten from other cities.

I think coordination is key in all cities, reasonable fees that cover it, the expenses of the City. But then getting the information -- these maps were created by reading the legal descriptions of every single ordinance this Council passed since 1996, because the

as-built drawings were not available. If they were -- for example, there are whole sections in the City which major portions of fiber run through. That ought to be part of our economic development strategy.

We're looking, for example, at the Hunting Park industrial district which the main fiber line from New York City to Washington runs right through. That's a competitive advantage. If we know where these main routes are, we could be making development decisions in the City.

I really urge gathering that information. Obviously the telecommunications companies have concerns about security. They don't want their lines cut. If you show it's in the street and not where, you can protect their right as well as achieve the public good. I make a simple point in my testimony. Imagine if we had built the interstate highway and said we're sorry, we're not providing any maps.

This is the interstate highway system for the 21st Century. We need to know where it is and obviously protect the security of it as well. But we can drive economic

development decisions by tapping off of these lines.

COUNCILMAN CLARKE: If you can forward the information on the LA system, that would be helpful.

MR. LEVY: I'd be glad to do that.

COUNCIL PRESIDENT VERNA: Thank you. The Chair recognizes Councilman Mariano.

COUNCILMAN MARIANO: Thank you.

Mr. Levy, do you think we ought to establish a master schedule? From your testimony, it looks like Auston, Texas, you wouldn't be in favor of what they did. They came out and said we'll resurface the streets, you've got so much time to get your stuff in and then for five years we're not doing anything.

MR. LEVY: I think that's an extreme situation. They're looking for a happy medium. You need to hear from the members of the industry, because this is a fast-changing industry. I don't know if what's happened in the last five years predicts what will happen in the next five years.

We have a lot of competitors out there. Whether they're all going to be there is

a key question. One of the important issues, as I've shown you the map of downtown, and obviously these companies have wired where the business is, we need to make sure that all portions of the City are well wired. That's a key issue. I think the rules we make going forward, we can learn from what happened here.

COUNCILMAN MARIANO: Most people don't know a whole lot about this. I know a little because of the business I was in before that. Technology jumped so fast. We basically could put conduit in the street and run fiberoptic cables into conduits. It comes in different sizes; half inch all the way up to four, five, special 12-inch if you want. It's not carrying electricity, but electronic signals.

Couldn't we, as a City, just put this conduit in the ground and come back -- if Councilman Diccico's company, not that he has one, says, Frank, we already have the conduit in there. When he comes around with a company, we would say, Here's the conduit; here's the map; it belongs to the City of Philadelphia; pull the cable; junction boxes are here; only Public Property or someone knows where they are and

they're locked up and nobody gets copies of the map except for Public Property and Engineering. Is that something we could do?

I hear what you're saying about Auston. I like it to an extreme. This never ends. This is like a street in Juniata. I get it done in my first term, people are happy; next thing you know, Street Department is putting water pipes in. Why didn't you do that -- we've got to sit back and figure this plan out.

MR. LEVY: Remember that most of the 13 telecommunications providers I talked about are not regulated public utilities; they're private businesses. They're going to go where the market is.

When we are doing major excavation -- I think there's a happy medium. I think this five years or you can't be in the street is an extreme we should avoid. With good coordination, with lighting projects or water projects that are running major lengths, it's conceivable we could install conduit in those streets at the same time.

COUNCILMAN MARIANO: Most are in the areas you deal with. The exceptions will be the

Resolution 000420

Hunting Parks.

MR. LEVY: The challenge is obviously you're not going to install conduit in every street in the City. You start to make priorities and get into some difficult --

COUNCILMAN MARIANO: If 1600 Chestnut Street is dug up for water and gas mains, let's throw some conduit in there. When I was an electrician, that was job security. Nobody knew I put the extra conduit in there but me. If they were dumb enough to let me go, they never knew about that extra conduit.

MR. LEVY: When we do lighting, we're digging up streets and putting in conduit. The only caution I would offer was -- San Diego was way ahead of the curve ten years ago. They installed this conduit and now there's so much additional fiber that they can't fit it and they have to dig up again.

COUNCILMAN MARIANO: In this business, I'm not trying to be smart with you, when I buy my son a computer, in a year he's saying, "This isn't fast enough." We can't sit and do nothing. We've got to do something, not for the sake of doing something, but so we can compete in the market.

MR. LEVY: There are three things to

be balanced here, the obvious public concern over disruption and inconvenience, which is an issue.

There are the needs of these telecommunication companies who are for-profit businesses trying to go where the market is. There's a broader public interest to make sure that as much of this City is wired as possible.

Those are the three things you've got to balance through this resolution and the means. And making sure you balance the public interest and the private interest is the difficult one.

COUNCILMAN MARIANO: How much do you think this brings into the economy?

MR. LEVY: It's very big.

COUNCILMAN MARIANO: More than Councilman's Diccico's work, basically.

MR. LEVY: You do business with any law firm, everything is moving electronically; you do business with architectural firm and it's moving electronically. This is not just the "dot coms." Everyone's business is being transformed by this and that makes us more competitive.

COUNCILMAN MARIANO: My own

16-year-old son, we're moving into a new house, the computer access isn't fast enough for him. In six months, that won't be fast enough. I'm sure Comcast was smart enough, or whoever it would be, to say this is good for now, while pulling the cable, let's have enough string in there to pull some more cable.

MR. LEVY: Absolutely.

COUNCILMAN MARIANO: That's all.

COUNCIL PRESIDENT VERNA: Chair recognizes Councilman Rizzo.

COUNCILMAN RIZZO: I would like to chime in on an observation that I have. When communication companies, utility companies, City of Philadelphia subcontractors come in and work, I believe that there's a specification on how the job is supposed to be done, how it's supposed to be managed.

One of my big concerns, and I believe it's by design, many of these contractors low-ball because they know they can get away with certain things, that they don't put the required work area protection to keep pedestrian and vehicular traffic where it should be.

I believe that they're supposed to

leave the shop sites -- it's atrocious when on the weekend and evenings, people have to drive through some of our streets, specifically Center City, and find a ditch that was put across the roadway that wasn't backfilled properly.

On a rainy night, the excavation washes away and you come down and you bend a wheel because of someone not following the specification. If the specifications aren't in these jobs, they should be. There should be oversight to make sure that a contractor has to get out of bed at 2:00 o'clock in the morning to come with a pile of stone and dirt to fill the hole he should have done properly to protect the pedestrian and vehicular traffic.

Again, I believe they think that they can come in and not do all the things that they're supposed to do, and that converts into money into the job. I believe that we need to insist and have oversight, whether it's a job site inspector, to make sure at the end of the workday that job site is left safe and in the condition it's supposed to be left in.

That's what we're paying for, for

them to do that. Every little bit they don't do, I don't want to use the word steal, but I think that's what they're doing, from the tax payers. Our responsibility as a Government is to oversee these jobs and make sure the subcontractors are doing it right. I think that's our responsibility to do a better job.

You pointed out a piece of granite is missing. Germantown Avenue; beautiful. The bulging blocks were put in there. Every time the utility company, whether PECO, gas or Water Department digs up the street, another area becomes blacktop instead of the bulging blocks being replaced. That's a shame.

MR. LEVY: I agree with you. One of the balancing acts, and I think it would be helpful if both the Department of Licenses and Inspections and Streets Department talk about this, is we want them to do enforcement around basic life safety issues, the really critical issues.

What you're really talking about here is enforcement around quality of life issues as well. Clearly, an imminently dangerous collapsing house is a bigger public safety issue

than the pothole in the street.

What drives us all crazy is those quality of life issue as well. We need to be asking our enforcement departments to look both at the real critical safety issues, but to have a higher standard around quality of life.

I can start ranting and raving about a project overseen by one City agency where they dug up sidewalks in January around the park and left it open for four months. Those are quality of life issues which are frustrating. We need both to deal with the life safety and high quality issues.

COUNCILMAN RIZZO: I'm talking more now about business. I'm talking about the fact we let out a million dollar contract to do X, Y and Z and in the contract it says at the end of the business day, the job is supposed to have covering boards, steel plates, resurface.

Many of these contracts -- you'll drive through the City streets and see a job backfill, the plumbers ditch, where they just throw the dirt back. After 50 vehicles pass over it, there's a ledge that, in fact, is four or

five inches because of the erosion of the vehicular traffic.

In those contracts they're supposed to be temporary blacktop over those. Guess what? If 50 ditches don't get temporary blacktop and just the dirt thrown back on, that could turn into $10,000 in profit to the contractor. So it's beyond quality of life. It's plain old not doing what you're being paid to do. When we write these very complicated contracts, there's money put into the job for the proper restoration of that ditch. There's money put in that job to put work area protection of traffic cones, et cetera.

How many times I've come up on a construction job where there's not one sign on the pedestrian vehicle. You hit a ditch -- the inside mirror fell off the car one day the hole was so bad. Even the Streets Department when they do the street milling, they leave some of these streets for weeks and weeks and months and months, as you mentioned about the sidewalks, they leave them in a situation where they mill the street and stop milling, they have a curb

where the car almost does a summersault when you hit it.

For us to have City vehicles, sure you go to the shop and get a new tie, but Joe Smoe that blows out two front fire tires and has to write a check for 300 bucks, it's a big deal.

Thank you, Madam Chair.

COUNCIL PRESIDENT VERNA: Next witness, John Shuttleworth.

(Speaker steps forward.)

COUNCIL PRESIDENT VERNA: Good morning.

MR. SHUTTLEWORTH: My name is John Shuttleworth. I'm with Level Three Communications. I appreciate the opportunity to speak to you today on behalf of our company and from our perspective.

COUNCIL PRESIDENT VERNA: Mr. Shuttleworth, do you have copies of your testimony?

MR. SHUTTLEWORTH: I do not.

Just a little background on me. I'm the Regional Director for the East Region for Network Development for Level Three based in Washington, D.C. I have the east coast from Boston to Miami. I have worked on a lot of these

issues and ordinances throughout the east coast. We do have just a facility at 401 North Broad here in Philadelphia and Metro Network here.

To set a tone, I've been in this business 17 years and have seen the first wave of fiber companies come through in the mid '80s and we've had the same situation, probably not quite at the level that we have now.

We saw late in the '90s beginning probably 1998, is when you saw the level of activity that began then and all the companies racing. Level Three certainly recognizes the pains that the cities have gone through.

Just to take a step back in how a lot of the concerns and the cities and the carriers got to where they were building at different times, which is the biggest, I think, headache that everybody has, when we first started out, those of us in our roles had not developed our relationships with our competitors so much.

We, after a couple of years, have gotten to know our competitors well. We don't compete with them on the sales level and we've

developed good relationships with them. We've found what works well in most of the municipalities that have more of an informal process, whether monthly or weekly meetings, joint coordination efforts with each other.

We tend to interact more as we develop these relationships. We are definitely not opposed -- Level Three, and I can't speak for every carrier, but most of the carriers are not opposed to sharing information any longer. It used to be we used to keep a lot of it close to our vest. But anymore, we really realize we need to share this information so we can establish the joint builds.

We've taken the lead on a number of joint builds, most notably in Boston. Level Three is building that network there with probably 100 plus conduits on the ground on that build, the D.C. area, and Atlanta.

Again, it's a more informal process that we've seen that have worked through just establishment of relationships between our competing carriers. We certainly support the City's need to provide a coordinated effort and a

schedule. What we saw in some of the other cities like in Washington -- and originally there was not a coordinated schedule, so we had contractors and companies that were working one right after the other.

We're actually seeing much more improvement there, as well as in other cities, where the City has acted as more of a facilitator in getting us all together and helping us get -- they share their schedules with us on their repaving projects and their water projects and we share our schedules with them. It's starting to work very well in just that informal sharing process.

Regarding any of the fees, we feel that it's appropriate to pay fees that are commensurate with the cost to the City of regulating and administering our efforts, as long as all the carriers are treated equally. We have no problem with that.

Level Three is currently working with the Streets Departments on providing the as-built drawings that have been requested. We've submitted them to the Streets Department

and they're currently under review.

Just to address the previous comment, Councilman Rizzo's comment, on the trenches that are open and the lack of the specifications and lack of enforcement.

We're not opposed, we've done this in the past, to supply an escalation list to the contractor up to the Level Three responsible personnel, where if there is something in the street found to be not right, those phone calls should be made and we should be responsible for getting out and fixing the problems.

That's basically all I had regarding the joint builds and joint build efforts. We're certainly not opposed to joint builds and joint coordinated efforts, as long as we have certain time lines that if we advertise a joint bill or are in the lead or another company advertises or they're in the lead, that we're allowed to proceed timely, that the notification process doesn't drag on.

COUNCIL PRESIDENT VERNA: Thank you. Are there any questions of this witness?

Councilman Mariano.

Resolution 000420

COUNCILMAN MARIANO: Thank you. Let me ask you a couple questions. If you were to access another firm's facilities, like conduit or towers, in every City, is it a different fee?

MR. SHUTTLEWORTH: If you were to lease -- yes, it is. It's generally when you're -- there are standard rates set if you're leasing the Bell system conduit.

COUNCILMAN MARIANO: They're set in municipalities? Boston may be more expensive than Philadelphia?

MR. SHUTTLEWORTH: I believe they are set by the PUC of either that State or municipality. It could be different.

COUNCILMAN MARIANO: Do you currently pay the City of Philadelphia access for the rights-of-way right now?

MR. SHUTTLEWORTH: We pay a fee for the ordinance and then the permit fees.

COUNCILMAN MARIANO: Do you know how much that is?

MR. SHUTTLEWORTH: $200, I believe.

COUNCILMAN MARIANO: For the permit?

MR. SHUTTLEWORTH: For the ordinance.

Resolution 000420

The permit fees are probably different depending on maybe the length. I'm not familiar with the exact permit fees once we go to dig.

COUNCILMAN MARIANO: You mentioned Boston. That's one of my favorite towns. There's a couple Councilpeople up there I'm friendly with. We would have flew them down here and they would have testified, with the Council President's permission. They're experts on Philadelphia's politics.

How much do you pay up in Boston?

MR. SHUTTLEWORTH: Boston was a unique situation. We installed a -- we're the lead company. And the way it worked there was as long as we installed the conduit for all the other carriers and then we installed additional conduit on speculation, that other carriers would come.

As of right now, those additional conduits, we don't pay an actual fee per linear foot for those. We install them. It's my understanding that the City is evaluating -- may evaluate their policy in the future. And other carriers that come into lease those additional conduits from the City that were installed would potentially pay a fee.

Resolution 000420

COUNCILMAN MARIANO: You don't do the installation yourself; you sub it out?

MR. SHUTTLEWORTH: Yes.

COUNCILMAN MARIANO: Say you did that in Philadelphia or Boston -- they have to be bonded, of course, to make sure they don't do substandard work, and that's a little bit -- when you talked about what Councilman Rizzo talked about -- of course, you wouldn't want anybody to fall down a hole.

In certain municipalities, and the lawyers in this room will agree, it's better to fall down holes than in other municipalities, because of soft tissue and whatever all that means. Philadelphia is probably a good City to fall down holes. I heard on the news the doctors were having this big thing at the State House yesterday to stop all that stuff for the suing, not that everyone falls down a hole, but that's what goes on.

Do you inspect these sites personally or let the municipalities themselves inspect the actual job site before it's finished to make sure it's safe?

Resolution 000420

MR. SHUTTLEWORTH: We have inspectors on the site that are making sure that it complies with Level Three specifications as well as the City specification. Again, if there's something that the City finds that we haven't done, we can provide escalation lists and those phone calls should be made.

COUNCILMAN MARIANO: Could I safely assume that Level Three's specification are higher than any municipality, because of the liability?

MR. SHUTTLEWORTH: Our specifications are probably one of the most stringent in the industry.

COUNCILMAN MARIANO: Thank you.

COUNCIL PRESIDENT VERNA: We appreciate your coming into testify. I understand you're supposed to be taking an 11:30 train. I do hope you're able to make it.

MR. SHUTTLEWORTH: Thank you for letting me speak early.

COUNCIL PRESIDENT VERNA: Next witness is James Ginty from AT&T.

(Speaker steps forward.)

MR. GINTY: Good morning, Council

Resolution 000420

President. How are you this morning?

COUNCIL PRESIDENT VERNA: Fine. Thank you.

MR. GINTY: I'm Jim Ginty and I'm president of AT&T Pennsylvania. I have with me today Betty Holland and Leo Synder, who are experts, in case Councilman Mariano has some expert questions for me.

We have previously filed the testimony of Anthony Giovannucci, who is our area manager. Unfortunately, he couldn't be with us this morning.

Let me just say the purpose of my being here this morning is really to applaud the Council for looking into this issue. It's very timely and is something that needs to be addressed. It's also to emphasize how important this issue is, not just for AT&T, but for telecommunications providers in general, and I would hope for the City of Philadelphia. I don't think I have to add very much to what Mr. Levy said as to the importance of keeping Philadelphia in the forefront of technology.

First of all, I want to make clear

that AT&T believes that the City is justified over its concerns that City streets not be torn up, regularly torn up, unnecessarily or improperly. As a footnote to that, as a person who lives in Philadelphia, works in Philadelphia, takes advantage of our growing entertainment and restaurants in the City, I have a very personal interest in ensuring that that disruption is kept to an absolute minimum.

AT&T had a longstanding relationship with the City of Philadelphia dating back to the 1880s; we have a continuing one. Initially on the long distance side, but as we and other providers begin to enter into the local service market, there is a necessity for upgrading our facilities. That really is a continuing need that we and other companies will have.

I would urge that as the Council considers this issue that the City makes sure that facilities can be deployed quickly and at a cost that continues to make Philadelphia an attractive place to make telecommunications investment.

Resolution 000420

The City, as Mr. Levy pointed out in his study, has made tremendous progress. This is one of the most wired cities in the country. It's important as we look to continuing development in this City. As a matter of fact, I believe that in Mayor Street's State of the City Address, they're setting up a separate economic development organization to look at attracting high-tech industries to the City. I think this is part of that broader view.

So we look forward to working with the Council. I understand there are going to be technical workshops where we would be able to sit down with the City and make sure that the Council's efforts meet the needs of the Telecommunications Act of 1996 and continue to keep Philadelphia in the forefront of the new economy, as well as the old economy that Mr. Levy mentioned.

I think it's important certainly to AT&T, but I think it's important to the City as well. I'll will happy to answer questions.

COUNCIL PRESIDENT VERNA: Are there any questions from members of the Committee?

Resolution 000420

The Chair recognizes Councilman Mariano.

COUNCILMAN MARIANO: Thank you. I appreciate you coming out. I have talked to Mr. Giovannucci. I hope you didn't take those Boston comments personally.

MR. GINTY: I've relished the opportunity to make this statement to City Council. I've been active in the City, as some of you might know. I'm one of those people who elected to come back to Philadelphia and elected to stay in Philadelphia because of the quality of life that we have here.

COUNCILMAN MARIANO: I appreciate that. We appreciate that. When I spoke with your representatives before, from the very beginning they were okay with what we were trying to do here.

MR. GINTY: It has to be done.

COUNCILMAN MARIANO: They've been helpful, especially AT&T, as most of the communication companies.

The problem in my mind -- everyone understands we want safe street scapes. It's the fee. Finding out what the right fee is and not

charge too much, but charge what we can get away with charging because we need most of the income we can.

I know no one from a communication company is going to give me an exact number and say it should be $100 here and $1000 there. If we work this out from the City level where we bring people like yourself in, and I'm glad to hear you're a Philadelphian, and that means a lot, but even if you weren't, you'd be helpful because your company is here and here to stay, we need a lot of people letting us know that's too much. I'm not asking you to give us a price.

MR. GINTY: We fully expect to pay reasonable prices. I'm genuine on this. This needed to be looked into. The present process isn't working for anybody. As I understand it, it's not working for the City, it's not working for AT&T and the other companies, and it's not working for our citizens.

Again, I applaud you for doing this. Let's sit down and work it out.

COUNCILMAN MARIANO: How would your company feel about the City, much like Boston from what I'm reading here, actually manages the conduits?

Boston seems like they hired a contractor, XYZ Contractor, you get the conduit, put it in, we pay you to put it in. The fees go to the City, but you will manage it; much like hiring a management company, I would suppose, to run your apartment building.

MR. GINTY: It's something we can talk about. As you had mentioned it before, I whispered to Mr. Snyder, I said, "Where are we on this?"

He said, "It's something we can work with." Let's sit down -- it might be cheaper. I think the important thing -- again, I applaud you, Councilman, on bringing all parties together on this. I'm confident we'll work it out. We have the same interest at heart, and that's to do what's right for Philadelphia and right for the citizens of Philadelphia.

COUNCILMAN MARIANO: No further questions.

COUNCIL PRESIDENT VERNA: Thank you for coming in to testify.

MR. GINTY: It was a pleasure.

COUNCIL PRESIDENT VERNA: Next witnesses will be John Cunningham from the Streets

Department, I believe, and also someone who will be testifying from River Oaks Communications, and Joe James, Deputy Commissioner of Public Property.

(Speakers step forward.)

COUNCIL PRESIDENT VERNA: Good morning. Please identify yourself for the record and proceed with your testimony.

(Witness reads testimony verbatim, which is attached hereto.)

COUNCIL PRESIDENT VERNA: Thank you. We'll now hear from Joe James.

MR. JAMES: Thank you for inviting me here, Council President, members of the Committee. I'm Joseph James, Deputy Commissioner of the Department of Public Property.

(Witness read testimony verbatim, which is attached hereto.)

COUNCIL PRESIDENT VERNA: Is the gentleman from the River Oaks Communications going to testify?

MR. JAMES: Yes.

COUNCIL PRESIDENT VERNA: Identify yourself for the record.

MR. ROBINSON: Good morning

Resolution 000420

Council President and Members of Council. I'm Tom Robinson, now the executive vice president of CBG Communications, Incorporated, the consultant to the City on right-of-way management issues. I'm the former director of regulatory affairs for River Oaks Communications.

(Witness read into the record verbatim testimony which is attached hereto.)

COUNCIL PRESIDENT VERNA: Mr. Robinson, when were you retained as a consultant?

MR. ROBINSON: We've been working with the City since late summer of 1999.

COUNCIL PRESIDENT VERNA: Have you submitted a report or do you have a report of your findings?

MR. ROBINSON: Actually, we have volumes of materials that we've gathered and have placed those internally in support of the number of different initiatives, including the pending right-of-way management ordinance. To date, we have not submitted a formal report, no.

COUNCIL PRESIDENT VERNA: When do you anticipate submitting a formal report?

MR. ROBINSON: At the same time the

draft ordinance is submitted -- sorry, the actual ordinance is submitted.

COUNCIL PRESIDENT VERNA: I'm requesting that every Councilmember receive a copy of that report, please.

The Chair recognizes Councilman Rizzo.

COUNCILMAN RIZZO: I want to make sure I understand. We've had a consultant consulting the City since 1999 and we have no report from a consultant?

COUNCIL PRESIDENT VERNA: That's correct. There's no formal report as yet.

COUNCILMAN RIZZO: Commissioner James, I assume that report was to Public Property, that consultant was hired by Public Property?

MR. JAMES: The way the engagement has been, we've been using the consulting for the formulation of information from gathering information. It wasn't designed to hire him specifically or the company specifically to produce a report, but to sit down, work with the various departments, do a lot of interviewing and investigation, extracting a lot of data necessary for

us to formulate where are the areas we need to make improvement, where are the modifications that are necessary in the different regulations that are existing in the departments.

It wasn't designed just to produce a report.

COUNCILMAN RIZZO: Let's forget the word "report." What we're suggesting here is we have a consultant that hasn't done anything.

COUNCIL PRESIDENT VERNA: That's not so.

COUNCILMAN RIZZO: I'm interpreting that.

COUNCILMAN MARIANO: We did have a briefing through Councilman Dicicco's office this summer.

COUNCILMAN RIZZO: If I can finish, you'll understand where I'm going here. Maybe we don't have a report, but I would think we have some letters, some communications, some memos. That's all I want to make sure.

We have hired a consultant that has provided a service to the Department of Public Property, but maybe not in the form of a

report; is that fair enough?

MR. JAMES: That is fair enough. The efforts that River Oaks have done so far have been in working with the departments and developing components of the ordinance. So River Oaks also participated with us when we gave a Council briefing in September of last year, just to kind of release some of that information. Because it wasn't in a form that we provided that type of report or were not ready to release the ordinance.

COUNCILMAN RIZZO: I'm a member of the Public Property Committee and I have no knowledge or have never been requested to meet with this group.

COUNCILMAN DICICCO: Announcements were put out. We did extensive briefings in the Mayor's reception room, if I'm correct. All of Council was invited. We had about 30 people there that day. The briefings took the better part of three hours. There was enough information coming out of that briefing, I think, that would probably address some of the issues that are being asked again this morning. That's okay. We want to refresh ourselves on the issues.

I was going to ask, when it

becomes my turn, that Mr. James could just give us a brief history of that briefing so that maybe we can get through this resolution, this hearing, more quickly. Many of the things coming up now have already been brought up as a result of that briefing and prior testimony that was before this Council after that briefing.

COUNCILMAN RIZZO: That would be helpful.

COUNCIL PRESIDENT VERNA: Mr. James, can you walk us through this, please?

MR. JAMES: Sure. The seminar was on September 7th of 2000. The agenda included introduction from the Councilman and myself on where we were to date with our efforts in the areas of right-of-way.

We then went into a background of the City's existing program for managing in the right-of-ways, use and why changes are necessary. We boarded, I believe, and showed to all the members present what is the current process flow for getting an ordinance, and the elongated period it takes from start to finish and all the check points in the process.

Resolution 000420

We also proposed where areas of improvements would be as part of redoing that process to streamline it and reduce it down significantly. We also talked about the impact of the industry and the demand in the right-of-way. We talked both areal and underground construction that existed in Philadelphia and where we saw points of congestions.

We also talked about the City's authority to regulate telecommunication providers in the use of right-of-way. We talked about background information relative to the Telecommunication Act of 1996 and those specific sections that relate to the Act. We also discussed the state law limitations which was very helpful from River Oaks. That kind of gave us perspective in some states. State authority doesn't permit local municipalities to regulate the right-of-way. In some states, states have overruled what the local municipalities efforts have been in that area.

It's helpful to understand where we stood in the Commonwealth and in the context

of where we stood in the broad range of efforts across the country. We talked about right-of-way cost in Philadelphia. There was information that River Oaks provided as part of their investigation of where the costs are associated for the City, where the impact is in the areas of permitting, inspection and enforcement.

We had discussions around the best practices, what are being done in other cities. I think what you hear, some of the discussions talk about joint-use trenching, joint-use manholes, which is another area, construction on an area where you actually allow back-poling where you can run more than one area of cable in the same pole so that you don't have to do more construction or raise the height of the pole.

We talked about what occurred in Boston and some of the cities that Mr. Robinson has discussed. We had a brief question-and-answer session by members or Council that were present or their staff members. That's what we did.

COUNCIL PRESIDENT VERNA: Thank you. Mr. James, when can Council expect to receive the

legislation updating our codes?

MR. JAMES: As the managing director said in his testimony, we would have that within 30 days. We're running a little behind where we should be, but we anticipate having something to Council by the end of this month.

COUNCIL PRESIDENT VERNA: Thank you.

The Chair recognizes Councilman Mariano.

COUNCILMAN MARIANO: Thank you. This is to any one of you three that wants to answer this, the fees is what I'm concerned about. We've had briefings. Obviously, the briefings are good. We understand that the findings are coming.

It's the fees. I don't expect you to blurt out a number. Are we getting close to the fees? They're going to be comparable to Boston and New York. That's where we're going to be. We want to make sure we get what we can get so we can -- we're not going to say we'll cut taxes. That would be great.

This is an industry where we're missing the bus. When an AT&T guy came to see me -- because everybody got real nervous when we

started talking about this before. Councilman, you can't do hearings -- what a Councilman wants to hear is they can't do something, then we do it.

Councilman Dicicco had a bill. I had a bill. That's why this got into separate things. When we get these fees -- of course, we're not going to be able to lower taxes. If I could do that, I'd be sitting downstairs on the second floor, not going through all this.

The fees are very important, because we don't know what we're going to get here. It's like when you get something you don't quite know what it's worth and you sell it at e-bay, but you want to put it at a higher -- anybody that does that e-bay stuff -- my son does that. You want to list it for at lest $100, but you're thinking I might be able to list it for $500. That's all we're trying to do here.

Obviously, River Oaks, we appreciate your help. It was nice of you to come here. Are we that close?

MR. ROBINSON: Yes.

COUNCILMAN MARIANO: Could we say

within six months or a year we'll be up and running?

MR. ROBINSON: Well, the fee structure will be within the ordinance when it comes to you.

COUNCILMAN MARIANO: Again, I don't want any numbers, are they that far apart in different municipalities compared to ours?

MR. ROBINSON: Let me give you a background. I can tell you, the City is significantly under-recovering its cost in every single area; in application fees, in permit fees, in inspection fees, in any kind of fee related to recovery of degradation to the streets.

We have focused on all those areas. And the range is wide in local Governments across the country, just to give you an example. The permit fee, many times based on linear feet can range up to $4.50 per foot. That's the high end. The average is somewhere in the $1 to $2 per-foot range.

I can't tell you until the ordinance is placed exactly what it will be. It will be consistent with what other cities will charge. You will recover your cost.

MR. JAMES: Part of setting the fees

is not necessarily a market comparison with other Cities. Because the keenly important part is that the fee has to be based on what it cost us here in Philadelphia. The Philadelphia market has to be what we focus our cost structure on. We have to look at what is driving the cost here in Philadelphia, manpower, resources, what is the cost for the degradation in the street, and then associate a fee appropriate for that. Once the bill gets introduced, it will be a debate over what is the --

COUNCILMAN MARIANO: There's fees for the private right-of-ways, too. Can you explain that? For private industries to access to their right-of-way infrastructure. Explain the difference in the fees. What is that?

MR. ROBINSON: I can give you some examples. I think the members of the industry here could better tell you what they charge.

Certainly, any access to the private right-of-way or private property of those companies is going to be a revenue generator. It's set up not just to recover their cost, but to generate revenues. That's the way their fee structures are put together.

Resolution 000420

That can include anything from the lease of conduit capacity to the lease of fiber infrastructure to lease of space and equipment, vaults. There's a number of different.

COUNCILMAN MARIANO: A lot is location, location. If they're aware someone else wants to go, it's driven --

MR. ROBINSON: As I think one of the members of the industry mentioned earlier, there are some tariff rates required by the State on access to certain facilities of the public utilities. Other than that, it's a competitive market.

COUNCILMAN MARIANO: My next question is for Mr. Cunningham. Explain to us the current permit process in Philadelphia to get this right-of-way for the excavation. A company comes in and said, We didn't do anything in Philadelphia, they come and see you?

MR. CUNNINGHAM: That's right. The first thing that we let the telecommunications company be aware of is that they need an ordinance of City Council before they can get a permit to open the street.

We sit down with them and go over

their proposed route. We actually help them draft that proposed ordinance for submittal into Council. Once they get an ordinance to Council, they still need clearances from all the other users in the right-of-way where they may be putting their structure.

Subsequently, they submit detailed engineering drawings, which are distributed to other users in the right-of-way along their route, and get those clearances from them. We also check to see our capital program, if there are any streets along that route that are going to be resurfaced, we'll also notify them there and make adjustments to the schedule, if need be. Once they have all those clearances, we can issue them a permit.

COUNCILMAN MARIANO: Can you provide us with the idea of the amount of excavations per year and relative -- probably be an increase from the Telecommunication Act that broke this all open. It's an increase, right?

MR. CUNNINGHAM: Definitely. It would be better to look at it by a mileage basis than excavation. Historically, we permit about 40, 50

miles of streets being open by our companies, plus the water department and the gas company.

Since the Telecom Act, we're averaging in the 75, 85 range. In 1998 we peaked at 95 miles. It's dropped off somewhat. In fact, we're looking at a trend that some of the industry is focusing now on pulling through fiber rather than excavating, which is -- we do appreciate that.

COUNCILMAN MARIANO: How many inspections does the Department perform a year on these excavations?

MR. CUNNINGHAM: Well, our inspection program began only last August. I was able to hire them in June and we did an orientation with them. The Republican National Convention dominated our work in July. We actually launched the three inspectors beginning in August. They made some 500 inspections during that time.

COUNCILMAN MARIANO: These are civil service employees you hired?

MR. CUNNINGHAM: Yes. They work for the Department of Streets.

COUNCILMAN MARIANO: What penalties

and enforcement mechanisms currently exist in cases which the contractor or subcontractor performs insufficient repairs of the streets after they're done?

MR. CUNNINGHAM: There isn't a fine in place at the moment. What we do is stop their work, we point out to them what needs to be done, then we make follow-up inspections to see if it is being done. If not, we will shut the project down and also debar them from future permits.

COUNCILMAN MARIANO: You shutdown a project? They're bonded so that doesn't just sit there forever?

MR. CUNNINGHAM: Correct. In the body of their ordinance, there's an agreement between the City and the company. In the body of that agreement are a number of stipulations for bonding and insurance.

COUNCILMAN MARIANO: That would be your mechanism to make sure the work is completed?

MR. CUNNINGHAM: If we had to do that, we could do that. We've never had to do that.

COUNCILMAN MARIANO: If a contractor says they just can't come back, how long are they

barred from doing work here?

MR. CUNNINGHAM: We'd like to shun them forever.

COUNCILMAN MARIANO: We find this problem -- and I'm not picking here. This company is owned by so-and-so and he does this work. Well, he's doing other work in the City of Philadelphia, maybe water mains. Do we call the Water Department and say Mariano's not doing a good job, we're banning him, he doesn't get to put more water work in until he finishes this job and then go after his bonding company, which cost money anyhow?

MR. CUNNINGHAM: We do. We notify License and Inspections and the Water Department, if this company is working with them.

We also immediately go right to the company that this contractor is working for. In many cases, this is not the forces of the industry. I think we should make that clear, that the telecommunications companies themselves are not out there on every case. These are people they hire. We go directly to who hired them to make a correction as well.

COUNCILMAN MARIANO: The thought

behind that is the telecommunication -- we'll pick on AT&T, because we know who they are, they're not going to play around with any little contractor; they'll go after them and say, You finish this or you'll never do any work again. Because there's no way AT&T never wants to do business here.

That particular contractor they hired to do that work -- what I'm trying to get at is how deep do we delve into this? Do we find out who the principal owners of this subcontractor is and make sure he's not owner in another company? Does Joe Marks run around with these numbers and people in his head?

We often find out -- someone calls and says, Why is so-and-so doing this when he did it over there? It's not on you. I'm wondering if there is any mechanism in place to do that.

MR. CUNNINGHAM: I don't know anyone in particular with that, no.

COUNCILMAN MARIANO: That's all the questions I have.

COUNCILWOMAN BLACKWELL: Let me ask one question. How does this relate, in terms of charges and fee schedules, to non-telecommunications

companies like our utilities and all that? How do or would the fee schedules compare?

MR. CUNNINGHAM: It would be non-discriminatory, non-biased. Whatever the telecoms pay, so would everyone else pay, whatever that fee is.

COUNCILWOMAN BLACKWELL: Thank you.

COUNCILMAN MARIANO: Do you know the cost of enforcing our current policy? And do we know the cost of our current programs to the tax payers via reduced street life and increase resurfacing cost?

MR. CUNNINGHAM: With respect to the program, I can tell you that the estimated cost for the right-of-way unit is approximately a million dollars. That's a full cost, not just salaries. That's benefits and equipment vehicles and the like. So that's a good number for you.

With respect to the deterioration of the street, we have just engaged an engineering firm who is in the process of studying that fact. We are expecting a report at the end of May. The findings in that report will determine if street excavations do shorten the

street life of Philadelphia. If they do, we will have a fee that recovers that cost.

COUNCILMAN MARIANO: In your opinion, would it be better for the Department to perform all the resurfacing related to these excavations? Do you think this would increase or decrease the cost to the Department? Would such a process be beneficial in protecting the interest of the tax payers?

MR. CUNNINGHAM: I think we would gain more control if we were administering a contract to do this work. As you know, we don't have the staff to do it. We couldn't do that work in-house. That work is also seasonal in many cases. If we were to bring on a number of employees to do that type of work, what we would do in the wintertime?

COUNCILMAN MARIANO: Possibly do something like the Housing Authority did with the building trades. The Arts Program; people worked directly seasonally for the PHA. We could do something like that.

MR. CUNNINGHAM: In terms of whether it's effective or does it make sense, we could have more control in that we would know when a utility was going to work, when he was going to open the street,

when he was going to close the street.

I think the better solution would be to continue on the path we're going, which is to tighten up all the regulations we have in place and issue new ones accordingly.

We have a pretty good working relationship with a number of the telecoms in the City today. We've made proposals to them to do -- for example, a new restoration technique. During the winter, instead of putting the asphalt back, put concrete all the way up to the top of the street, it's much more stable and can withstand the traffic load. We experimented with that with AT&T.

There's an example of that on our street, if you want to take a look at that. 1300 Arch. In many ways, it looks better than the street does. We're getting cooperation on that area. We're testing that technique. It looks like it is successful, so we'll probably include that in our new regulations.

COUNCILMAN MARIANO: I hope that works better than that hot resurfacing. That was a brainstorm too, not on you, but I think it's

Resolution 000420

terrible. You look two years later, it's worn out.

MR. CUNNINGHAM: There were some problems with it. That's under a different area, though.

COUNCILMAN MARIANO: The concrete sounds better. Nothing further.

MR. MCPHERSON: Next is John Saidel, which submitted testimony given to the stenographer.

Next is Mr. Frank Stanton.

COUNCILWOMAN BLACKWELL: Good morning. Welcome. Thank you for your patience. Please identify yourself and begin your testimony.

(The witness read into the record verbatim, which is attached hereto.)

COUNCILWOMAN BLACKWELL: Thank you very much. Councilman Rizzo.

COUNCILMAN RIZZO: Madam chair, not specific to this communication, and I'm pleased that we can share this information with you. It sounds like you have a good policy and program in effect. Maybe the Streets Department can listen to this.

I don't know what we can do, but it's in reference to the similar -- the mark-outs

that you do in Boston. We have Pennsylvania One Call. Before we can excavate, it's obviously to the benefit of the contractor or even the private citizen before they dig to call Pennsylvania One Call.

I just tried to do a list of the people that respond when we do an excavate: We've got water, gas, electric, cable, telephone, we've got other communication providers. We've got to do something about what I call is the legitimate graffiti that our neighborhoods are starting to get affected.

I'm talking about the mark-out we do; the blue paint for this utility, green paint for gas, yellow for this one. I pulled down a particular street the other day, the whole street -- they tell you this is temporary. I went back to streets that were marked out months and months ago and the streets are still covered with paint.

I would like the Streets Department to possible coordinate with the people that are -- I don't know how it works in Boston, but I think we have people in our utilities here

for the water department, gas to go out and physically do do the mark-out to be more considerate of absolutely the need for the area that they mark-out. I'll tell you, they are really making a mess of sidewalks, curbs and streets that seem to never go away on their own.

Again, I appreciate what I heard from you. I'm hoping the Streets Department, if they're listening, could take an interest in the mark-out process that we use during the excavation projects.

Do you have a similar situation there?

MR. STANTON: Well, the rules that we're governed by now, notification is within 72 hours to perform the mark-out. After the mark-out is done, that mark-out is only good for seven business days, meaning, after the mark-out you have seven business days to perform construction.

If you do not perform construction, currently it's not in effect. In answer to your question, I would say the company that requested the mark-out, if they did not perform the construction, they should remove the

mark-out.

COUNCILMAN RIZZO: I've suggested that. There were brand-new sidewalks and one of the utilities, I won't name names, came and sprayed lines from the middle of the street right to the front door of the property. That paint will be on that sidewalk, I'll bet, five years from now.

I don't believe it's a paint that's water soluble. It looks terrible to see this new business district with all these utility mark-outs. You're right; they never dug a hole. They were doing exploratory work there.

Now that whole block, the business district, has got the rainbow of colors from the street to the sidewalk to the property lines. In my opinion, it's a shame. Thank you again.

COUNCIL PRESIDENT VERNA: Any others questions from members of the Committee?

The Chair recognizes Councilman Mariano.

COUNCILMAN MARIANO: It sounds like your method is working there. It sounds good. Explain to me the conduit idea, what you're doing in Boston with the conduit, and how it saves the street

life, if it does.

MR. STANTON: The way the joint trench partner agreement has been evolved is when one company wants to excavate and put in an underground facility, they have to advertise to the abutters list to all of the licensed recognized telecommunication companies in that City that are registered with that specific City.

That's a five-day business process. Letters go out that there is a build going on from Point A to Point B. Those other companies have to respond within an allotted time. If they are interested in joining the build, fine. If they're not, they don't respond.

At the end of that period, there is a PIC committee hearing. All of the companies are presented at that time. Then one of those parties is designated as the lead partner. That is the company who is responsible to satisfy all of the ordinances, permitting and everything involved for the City and for the construction.

COUNCILMAN MARIANO: Let me ask you this: Having been an electrician, never been involved in telecommunication, when you put them

conduits in the ground, I know some foreman is saying I'll put an extra one in here and there so the lead company is going to make out. I know you got a building coming here, we did that building across the street and I know we have a vault over there and there's an extra conduit there. Does that happen?

MR. STANTON: Each partner designates how many pathways they have. Before that goes to the City, depending on the amount of pathways, the City gets shadow or spare duct for that. After all of those conduits are filled with cable, the City leases their shadow duct to the new companies.

COUNCILMAN MARIANO: If I got this right, when the lead company is installing the conduit, the City is getting extra stuff put in at no cost?

MR. STANTON: Exactly. That's a revenue stream for the City.

In addition to that, we go through extensive research before we do construction to find out what the existing condition is of the utilities that are there. Then we present that information to the City engineer.

The course of our construction may

cause damage to old existing utilities. If that's the case, it's our responsibility to replace those utilities under that bill.

COUNCILMAN MARIANO: Who is holding all the as-builts?

MR. STANTON: The City chief engineer and the Commissioner of DPW. We have an allotted time that we have to turn over the as-builts after the temporary restoration has been performed. That's 60 days from when the road is capped.

COUNCILMAN MARIANO: Do you think that would work in all of Philadelphia, or just in the busy parts of Center City?

MR. STANTON: If you evolve the disciplines and policies and you enforce them, it would have to work. Boston and Cambridge are very, very tough.

COUNCILMAN MARIANO: You heard Mr. Levy, who knows a lot, and I agree with most he was saying, he talked about Atlanta's plan where they do the five-year thing. Do you agree with that?

MR. STANTON: It's an interesting question because right now we are doing curb-to-curb restoration where the Boston Marathon is going to be

running. There's a five-year moratorium on that area. We had to advertise to all the companies to build laterals from the main trench to the different buildings.

COUNCILMAN MARIANO: You're not going to be digging up that street for five years?

MR. STANTON: Right.

Even more interesting, and it was announced in the newspaper two weeks ago, the area that's the big dig in Boston, once that is done, the City is going to be deeming a 15-year moratorium. So with those type of disciplines and enforcements, they do manage the streets.

COUNCILMAN MARIANO: I think I knew where Mr. Levy was coming from. He didn't want to be quite that strict. It might not be that strict in the overall sense of the whole scheme compared to what other -- I mean, 15 years. You're giving them plenty of notice to build the lateral?

MR. STANTON: Exactly. Again, the cities get spare or shadow duct in the build. If there are future companies, they have the ability to lease ducts.

COUNCILMAN MARIANO: The big dig is

still going on. If we took a Council road trip and drove up there, we could see all this?

MR. STANTON: Absolutely.

COUNCILMAN MARIANO: It's all between Cambridge and Boston?

MR. STANTON: Absolutely. The back bay area is good area to see April 16, before we cap that final restoration. There we placed all of the manholes in the sidewalks. The main trench is in the center of the street, but all manholes are on the sidewalks because they wanted to make sure that ongoing maintenance activity -- they wouldn't block traffic.

COUNCILMAN MARIANO: Thank you. No more questions.

COUNCIL PRESIDENT VERNA: Thank you.

Next is Dan Monagle and Jesse Guarneri. Please identify yourself for the record.

MR. GUARNERI: I'm Jesse Guarneri, I'm the manager for the Conduit Highway and Right-of-way of Eastern Pennsylvania and State of Delaware for Verizon.

MR. MONAGLE: I'm Dan Monagle,

assistant general counsel for Verizon Pennsylvania, Incorporated.

COUNCIL PRESIDENT VERNA: Thank you. Do you have testimony to present?

(Mr. Guarneri and Mr. Monagle read testimony into the record verbatim, which is attached hereto.)

COUNCIL PRESIDENT VERNA: Thank you. The Chair recognizes Councilman Rizzo.

COUNCILMAN RIZZO: My question, since you're the right guy to ask this question of, as I walk around town and I don't want to -- is there a politically correct word now for a manhole?

When I ride around town and walk around town, I assume every time I see a manhole lid that has a bell on it, that's a Verizon or Bell of Pennsylvania or Bell Telephone facility. Something that is really troubling me is the recessed manholes that are starting to exist all over the town.

People in the audience might not know what I'm referring to is when you're driving down the street and all of a sudden your car goes like this, and you know you didn't hit a pothole.

Resolution 000420

What you hit was a manhole lid that has sucken two or three inches below grade.

I understand there's a program right now -- walking is just as bad. You could be crossing at an intersection and encounter -- not just a Bell manhole, the water department, PECO Energy.

It seems as though, and I hope it's not that our foundation is starting to crumble. I don't understand. Maybe you can explain why it seems we have so many of these manholes that are starting to recess and creating a pedestrian tripping hazard, and like I just described, the terrible encounter you have when you hit some of these things with your vehicle.

MR. GUARNERI: What is happening is those manhole lids, coin-shaped, if you will, those round manhole lids sit on castings they're called, a cone-shaped holder. Either they've settled ever so slightly, an inch or two, or they've been paved up to and haven't been raised correctly when the repaving happened.

We have a process in place with streets where we try and put conduit in ahead of

paving so we don't have to come back and disturb the guaranteed street, if you will. We call it conduit ahead of paving. Part of that process is, in fact, if we don't need to reinforce the existing conduit runs, we at the very minimum work with the contractor, whoever has the bid, to raise our castings to the appropriate level so we don't have that type of an issue.

COUNCILMAN RIZZO: I don't know whether you heard my conversation earlier, there's a specific engineering plan that when a street is resurfaced to do what you just described. If a contractor doesn't raise, during the course of that project, that manhole -- that contractor is being paid in many cases to do that.

If they don't do it, they're violating the details of that contract. I can speculate that raising that manhole so it's again flush with the road surface is not a cheap procedure.

MR. GUARNERI: It's in the normal course of engineering business. There's some accountability on the part of the owner of that manhole to be in the coordination process, to make

sure that does happen.

COUNCILMAN RIZZO: Is there a program right now if a citizen knows of an obstruction like this, is there a program where Verizon will come out and make a correction to that?

I know we have one here, and I'm not sure it's yours, right across from City Hall as you cross 15 Street. That manhole is five inches down below the grade of the roadway. If that were a Verizon facility, how would you respond, if any?

MR. GUARNERI: We would have a response. Typically what would happen, the request would come in any number of ways, either through the individual Streets district. We have a single point of contact for Verizon for Philadelphia, a City liaison, if you will.

Her responsibility is not only to protect Verizon's interest, but the interest of City. So if, in fact -- and it's interesting you said if it was, in fact, Verizon's. In most cases they aren't, but we send somebody out to make a distinction.

There are a lot of lids that have

no identification on them, especially with even more and more people putting manholes in or putting underground structures.

Then Clare would get that information to either one of the engineers or one of our conduit inspectors. We have two for the City of Philadelphia. We would go out and make that restoration.

COUNCILMAN RIZZO: You just made a good point. Our police officers aren't really, I think, well aware of the different facilities, whether they're cable wire or -- every wire down and the police officer pulls up to the scene, they go on radio, the next thing you know the fire truck shows up for a cable wire down. That's caution on the side of error.

I think that is something that -- the wild goose chases are expensive. It would be nice for you to only have to respond to facilities.

MR. GUARNERI: Having spent 28 years in the business, we take the opportunity to respond because we do enjoy traveling through the public right-of-way. To some degree, responding to those is

the cost of doing business. There are a lot of other people out there.

COUNCILMAN RIZZO: Now that I know about the bell, don't come up with the idea to switch them.

MR. GUARNERI: We thought long and hard for that bell. That bell is still with us.

COUNCILMAN RIZZO: Thank you.

COUNCIL PRESIDENT VERNA: The Chair recognizes Councilman Mariano.

COUNCILMAN MARIANO: Thank you. We've been through almost everything today. Castor Avenue, Oxford Circle up to Cottman Avenue, you guys did a whole project all summer, drove us crazy, I got a million calls, your people responded. It's been a year and it's falling apart. This is one of the main examples why we're doing this bill. If you could check into that.

MR. GUARNERI: I already did. I'll tell you, the restoration is not complete on Castor Avenue. That surface was brought up with a material called BCBC, if you will, an under-coating.

The final restoration is not complete. I believe Anderson was pulled off of

that after the RNC to go do other State -- everybody worked with everybody.

COUNCILMAN MARIANO: Usually Anderson does good work.

MR. GUARNERI: We're very pleased.

COUNCILMAN MARIANO: They took people off for something else. Was the problem after Anderson left?

MR. GUARNERI: I think the problem is a lot of people don't recognize it's temporary. It might be a communication thing in the sense it doesn't look like a normal road. That's that granular BCBC. That's what gives the road the support underneath the surface. This temporary was taken up to final grade, which --

COUNCILMAN MARIANO: It looks close enough. What I have up there is a very, very -- an association that's very active. They're out there every day. They see it. The trucks are taking up the parking spots. They understood. When it is going to be done?

MR. GUARNERI: That's a situation where a combination of Anderson, Streets Department and Verizon PA worked to get the conduit in before

Resolution 000420

the paving. We ran out of time in early November. I've already talked to Mike Canilia, (ph), who is the contract services inspector, if you will. He'll make contacts with the City and State.

COUNCILMAN MARIANO: Tell my office so we know. No further questions.

COUNCIL PRESIDENT VERNA: Thank you.

Next witness. Denise Early.

(Denise Early read testimony into the record verbatim which is attached hereto.)

COUNCIL PRESIDENT VERNA: Any questions of Ms. Early?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you again.

Our next witness, Robert Lane.

MR. LANE: Good afternoon. I'm Robert Lane of Morgan, Lewis and Bockius. I'm here on behalf of Sprint PCS.

Since Sprint was awarded the FCC license for PCS wireless communications for the Philadelphia area in 1995, Sprint PCS worked very closely with the City in helping to evolve its telecommunications policy from zoning ordinances

to fiberoptics to emergency services and would like to reaffirm today its commitment to the City to work in this very important resolution area.

The two points that I will just emphasize, which many others have talked about, as the key is flexibility, so that access to the rights-of-way can be had on a regular and prompt basis, giving them the vitality and importance of telecommunication services to the City, and that the fees be non-discriminatory and cost-base, as you've heard at length.

With that I would close, and just again emphasize Sprint would like to work with the technical committee in evolving the details of the proposal.

COUNCIL PRESIDENT VERNA: Thank you very much. Any questions of this witness?

(No response.)

COUNCIL PRESIDENT VERNA: Anyone else to testify to this resolution?

(No response.)

COUNCIL PRESIDENT VERNA: Thank you all very much for the time and patience you have given us today. This resolution or Committee will

not consider this today. We will continue this resolution to the call of the Chair. Thank you all again.

Resolution 000420

C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of March 14, 2001, were reported and accurately by me, and that this is a correct transcript of same.

_____

MAUREEN E. BRODERICK, RPR and
Notary Public