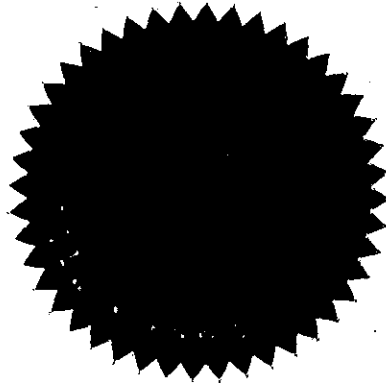


ORDINANCE _____ 4346 _____

PAMPHLET

FRONT OF PAMPHLET

TELECOMMUNICATIONS ORDINANCE



PUBLISHED IN PAMPHLET FORM THIS 20th DAY OF August, 1997.
BY ORDER OF THE CORPORATE AUTHORITIES OF THE VILLAGE OF LOMBARD,
DUPAGE COUNTY, ILLINOIS.

Lorraine G. Gerhard
Lorraine G. Gerhard
Village Clerk

Barbara Johnson
Barbara Johnson
Deputy Clerk

AN ORDINANCE AMENDING TITLE 11, CHAPTER 117,
OF THE LOMBARD VILLAGE CODE IN REGARDS
TO THE TELECOMMUNICATIONS ORDINANCE

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That Title 11, Chapter 117, of the Lombard Village Code is hereby amended in its entirety to read as follows:

Please see "Exhibit A" attached hereto.

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this 17th day of July, 1997.

First reading waived by action of the Board of Trustees this ___ day of _____, 1997.


Passed on second reading this 14th day of August, 1997.

Ayes: Trustees Borgatell, Tross, Schaffer, Jaugilas, Gatz & Kufrin

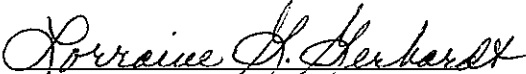
Nays: None

Absent: None

Approved by me this 14th day of August, 1997.


William J. Mueller
Village President

ATTEST:


Lorraine G. Gerhardt
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

VILLAGE OF LOMBARD

TELECOMMUNICATIONS

ORDINANCE

Exhibit A

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§ 126.01: General

(A) Purpose: The purpose and intent of this Section is to:

- (1) Establish a local policy concerning telecommunications providers and services;
- (2) Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;
- (3) Promote competition in telecommunications;
- (4) Minimize unnecessary local regulation of telecommunications providers and services;
- (5) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the Village;
- (6) Permit and manage reasonable access to the public ways of the Village for telecommunications purposes on a competitively neutral basis;
- (7) Conserve the limited physical capacity of the public ways held in public trust by the Village;
- (8) Assure that the Village's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs;
- (9) Secure fair and reasonable compensation to the Village and the residents of the Village for permitting private use of the public ways;
- (10) Assure that all telecommunications carriers providing facilities or services within the Village comply with the ordinances, rules and regulations of the Village;
- (11) Assure that the Village can continue to fairly and responsibly protect the public health, safety and welfare;
- (12) Enable the Village to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

(B) Definitions: For the purpose of this Section, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

AFFILIATE. A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person. For purposes of this definition "ownership" or "control" means the ownership of at least 50% of the total combined voting

power or at least 50% of the total value of the affiliate, and "common ownership or control" means ownership of at least 80% of total combined voting power or at least 80% of the total value of the affiliate and such other person.

AUXILIARY SERVICES. Any communication service in addition to "regular subscriber services" including, but not limited to pay TV, burglar alarm services, data or other electronic transmission services, facsimile reproduction services, meter reading services home, shopping services, etc.

BASIC SERVICE. Basic Service means all subscriber services provided by the grantee in one (1) or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. Basic service does not include optional program and satellite service tiers, a la carte services, per channel, per program, or auxiliary services for which a separate charge is made. However, grantee may include other satellite signals on the basic tier.

CABLE ACT. The Cable Communications Policy Act of 1984, 47 U.S.C. §532, *et seq.*, as now and hereafter amended.

CABLE OPERATOR. A telecommunications carrier providing or offering to provide "cable service" within Village as that term is defined in the Cable Act.

CABLE SERVICE. For the purpose of this Section shall have the same meaning provided by the Cable Act.

CABLE TELECOMMUNICATION SYSTEM or CATV SYSTEM. Community antenna television system as defined in Section 11-42-11 of the Illinois Municipal Code, and as amended from time to time, including a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, data, video, and other forms of electric, electrical, or optical signals, which includes cable television service and which is located in the Village. The definition shall not include any such facility that serves or will serve only subscribers which does not use Village rights-of-way.

CABLE TELEVISION FRANCHISE. Granting by the Village the right and privilege to establish, construct, operate and maintain a system and facilities in, over, upon, and under the public right-of-way and within easements or other rights to use property which are effective for the purpose of that grant; said system defined in 65 ILCS 5/11-42-11.

CHANNEL. A band of frequencies, six megahertz wide in the electro-magnetic spectrum capable of carrying either one audio-visual television signal and a few non-video signals or a large number of non-video signals.

COMMUNICATION. A discussion, presentation, either oral or written, or other transmission of information relating in any way to telecommunications in the Village.

CONVERTER. An electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated dial locations.

CORPORATE AUTHORITIES. The President and Board of Trustees of the Village.

DEPRECIATED VALUE. The value as shown on the grantee's books and records of all the cable telecommunication system's tangible assets after depreciation which shall be calculated to the end of the grantee's last fiscal year. Said value shall not include "good will" or any value that grantee's books and records attribute to the franchise.

EXCESS CAPACITY. The volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the public way that is or will be available for use for additional telecommunications facilities.

EXPENDITURE. The payment, distribution, loan, advance, deposit, political or campaign contribution or loan, a gift of money or anything of value, or employment, or the conferring of an economic benefit or the incurring of an economic cost, and includes a contract, promise, or agreement; whether or not legally enforceable; whether or not made or incurred in the Village; relating in any way to telecommunications in the Village. An expenditure includes expenditures by a person's parent corporation, subsidiary, predecessor, or other affiliated entity, or by any business or professional entity with which a person is affiliated or associated.

FAIR MARKET VALUE. The price that a willing buyer would pay to a willing seller for a going concern based on the system valuation of sale multiples prevailing in the industry.

FEDERAL COMMUNICATIONS COMMISSION (FCC). The Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

FRANCHISE. The non-exclusive rights granted hereunder to construct and operate a cable telecommunication system along the public way in the Village, or within specified areas in the Village, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the Village as may customarily be required by other ordinances and laws of the Village.

FRANCHISE AREA. That portion of the Village for which a franchise is granted under the authority of this Section. If not otherwise stated in the franchise, the franchise area shall be the corporate limits of the Village including all territory thereafter annexed to the Village.

FRANCHISE or GRANTEE. The natural person, partnership, domestic and foreign corporation, association, joint venture, or organization of any kind granted a franchise by the corporate authorities under this Section or its lawful successor, transferee, or assignee.

GROSS REVENUES. All revenue derived directly or indirectly by a grantee, its affiliates, subsidiaries, parents, and any person in which a grantee has a financial interest including, but not limited to, regular subscriber service, auxiliary services, advertising revenues, and the like,

including installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; studio or production equipment rentals; personnel fees; late or administrative fees; upgrade, downgrade or other change-in-service fees; revenues from home shopping and bank-at-home channels; revenues from the sale, exchange, use or cablecast of any programming developed on the system for community or institutional use, and any value (at retail price levels) of any non-monetary remuneration received by grantee in consideration of the performance of advertising or any other service of the system; or any service from or in connection with the operation of the cable system within the Village, but excluding revenues which do not qualify for purposes of computing the municipality's permissible franchise fee under the Federal Communications Commission regulations, and revenues received by a parent, subsidiary, or affiliate for services, programming, or merchandise upon which the grantee has also derived revenue.

The term Gross Revenues also includes revenues collected directly or indirectly from other ancillary telecommunications services, including, but not limited to: point-to-point telecommunications, point-to-point multi-point telecommunications, data transmissions, etc., but only to the extent that all other providers of such telecommunication services in the Village are subject to the same compensation requirements of the Village.

ILLINOIS COMMERCE COMMISSION (ICC). The State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the State of Illinois.

INTEREST. Any economic interest or relationship, whether by ownership, purchase, sale, lease, contract, option, investment, employment, gift, fee, or otherwise; whether present, promised, or reasonably expected; whether direct or indirect; whether or not legally enforceable; whether in a person itself or in a parent or a subsidiary corporation, or another subsidiary of the same parent. Interest shall not include ownership through purchase at fair market value of less than 1% of the shares of a parent, subsidiary, or other affiliated corporation whose shares are registered on a national security's exchange pursuant to the Security's Exchange Act of 1934. Interest shall also not include any interest provided without discrimination to all cable subscribers or to all persons who agree to become cable subscribers, or any interest publicly determined by the Corporate Authorities to be so minor that it does not reasonably constitute a natural or apparent conflict of interest.

MUNICIPAL CODE. The Municipal Code of the Village.

NET PROFIT. The amount remaining after deducting from gross revenues all of the actual, direct, and indirect expenses associated with operating the telecommunication system including the franchise fee, interest, depreciation, and federal or state income taxes.

OTHER WAYS. The highways, streets, alleys, utility easements or other rights-of-way within the Village, but under the jurisdiction and control of a governmental entity other than the Village.

OVERHEAD FACILITIES. Utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

PERSON. Includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

PUBLIC STREET. Any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the Village which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

PUBLIC WAY. Includes all public streets and utility easements, as those terms are defined herein, now or hereafter owned by the Village, but only to the extent of the Village's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for telecommunications facilities.

REGULAR SUBSCRIBER SERVICE. The distribution to subscribers of signals over the cable telecommunication system on all channels except those for which a per-program or per-channel charge is made, two-way services, and those intended for reception by equipment other than a television broadcast receiver.

REQUESTS FOR PROPOSAL. The Village's Requests for Proposal to construct and operate a cable communication system within the corporate limits of the Village.

SCHOOLS. Public and private schools offering some or all of grades kindergarten through 12th grade which have been granted a certificate of recognition by the State Board of Education pursuant to Sec. 2-3.25 of the Illinois School Code.

SPOKESPERSON. Any persons who, at any time, since January 1, 1981, are or were authorized to speak on behalf of a franchisee, or otherwise represent the franchisee, or to serve the franchisee in an agency capacity or by contract, with respect to any matters relating to cable communications within the Village. Spokespersons include, but are not limited to, all attorneys, consultants, franchise representatives, public relations advisors, or representatives, advertising agencies, marketing research firms, persons conducting needs' assessments on behalf of the franchisee, and the like, and any persons who are or were authorized to or who, on behalf of the franchisee, make any communication or engage in any activity relating to the content or approval of any requests for proposal, franchise applications, franchise, or ordinance concerning the cable communications within the Village. In the case of an individual Spokesperson, a Spokesperson also includes any firm or other business or professional association by which the individual is employed, or with which he or she is otherwise affiliated. In the case of a firm or other entity, a Spokesperson also includes any individuals who perform or will perform any of the activities as Spokesperson. Spokesperson includes any person employed by or retained by the franchisee or a parent corporation, subsidiary, or other affiliated entity whose responsibilities include any of the foregoing communications or activities.

STATE. The State of Illinois.

SUBSCRIBER. Any member of the general public who receives the regular subscriber service

and/or any one or more of such other services as may be provided by the grantee's cable telecommunication system, and does not further distribute such service.

SURPLUS SPACE. That portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Illinois Commerce Commission, to allow its use by a telecommunications carrier for a pole attachment.

SYSTEM. A telecommunications system composed of, without limitation, antennae, cables, wires, lines, towers, amplifiers, conductors, converters, and equipment or facilities designed, constructed, or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio or visual radio, television, electronic, or electrical signals to and from subscribers and located within the franchise area.

TELECOMMUNICATIONS CARRIER. Includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the Village, used or to be used for the purpose of offering telecommunications service.

TELECOMMUNICATIONS FACILITIES. The plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

TELECOMMUNICATIONS PROVIDER. Includes every person who provides telecommunications service over telecommunications facilities without any ownership or management control of the facilities.

TELECOMMUNICATIONS SERVICE. The providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

TWO-WAY SERVICE. The subscriber or any other location shall have the capability to choose whether or not to respond immediately or by sequential delay by utilizing any type of terminal equipment whatever, by push-button code, dial code, meter, voice or video including, but not limited to, audio and video, electrical or mechanically produced signal, display, or interrogation.

UNDERGROUND FACILITIES. Utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

USABLE SPACE. The total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Illinois Commerce Commission.

USER. A person or organization utilizing a system channel for purposes of production or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

UTILITY EASEMENT. Any easement owned by the Village and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

UTILITY FACILITIES. The plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the public ways of the Village and used or to be used for the purpose of providing utility or telecommunications services.

VILLAGE. The Village of Lombard, DuPage County, Illinois.

VILLAGE PROPERTY. Includes all real property owned by the Village, other than public streets and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the Village, which are not subject to right-of-way licensing and franchising as provided in this Section.

(C) Registration: Except as otherwise provided herein, all telecommunications carriers and providers engaged in the business of transmitting, supplying or furnishing of telecommunications originating or terminating in the Village shall register with the Village pursuant to Section 126.02.

(D) Telecommunications License: Except as otherwise provided herein, any telecommunications carriers who desire to construct, install, operate, maintain, or otherwise locate telecommunications facilities in, under, over or across any public way of the Village for the sole purpose of providing telecommunications service to persons and areas outside the Village shall first obtain a license granting the use of such public ways from the Village pursuant to Section 126.03.

(E) Telecommunications Franchise: Except as otherwise provided herein, any telecommunications carriers who desire to construct, install, operate, maintain or otherwise locate telecommunications facilities in, under, over or across any public way of the Village, and to also provide telecommunications service to persons or areas in the Village, shall first obtain a franchise granting the use of such public ways from the Village pursuant to Section 126.04.

(F) Cable Television Franchise: Except as otherwise provided herein, any telecommunications carriers who desire to construct, install, operate, maintain or locate telecommunications facilities in any public way of the Village for the purpose of providing cable service to persons in the Village shall first obtain a cable franchise from the Village as provided in Section 126.05.

(G) Application to Existing Franchise Ordinances and Agreements: This Section shall have no effect on any existing franchise ordinance or franchise agreement until:

- (1) The expiration of said franchise ordinance or agreement;
- (2) An amendment to an unexpired franchise ordinance or franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

(H) Penalties: Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Section shall be fined not less than One Hundred Dollars (\$100.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

(I) Other Remedies: Nothing in this Section shall be construed as limiting any judicial remedies that the Village may have, at law or in equity, for enforcement of this Section.

(J) Severability: If any section, subsection, sentence, clause, phrase, or other portion of this Section, or its application to any person, is, for any reason, declared invalid, in whole or in part by final decision of any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

§ 126.02: Registration of Telecommunications Carriers and Providers

(A) Registration Required: All telecommunications carriers and providers that offer or provide any telecommunications service for a fee directly to the public, either within the Village, or outside the corporate limits from telecommunications facilities within the Village, shall register with the Village pursuant to this Section on forms to be provided by the Village Clerk, which shall include the following:

- (1) The identity and legal status of the registrant, including any affiliates.
- (2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
- (3) A description of registrant's existing or proposed telecommunications facilities within the Village.
- (4) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the Village.
- (5) Information sufficient to determine whether the registrant is subject to public way licensing or franchising under this Section.
- (6) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal telecommunications tax, utility message tax or other occupation tax imposed by the Village.
- (7) Information sufficient to determine that the applicant has applied for and received any certificate of authority required by the Illinois Commerce Commission to provide telecommunications services or facilities within the Village.
- (8) Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the Federal

Communications Commission to provide telecommunications services or facilities within the Village.

(9) Such other information as the Corporate Authorities may reasonably require.

(B) Registration Fee: Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee of Twenty-Five Dollars (\$25.00).

(C) Purpose of Registration: The purpose of registration under this Section is to:

- (1) Provide the Village with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the Village, or that own or operate telecommunication facilities within the Village;
- (2) Assist the Village in enforcement of this Section;
- (3) Assist the Village in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the Village;
- (4) Assist the Village in monitoring compliance with local, State and Federal laws.

§ 126.03: Telecommunications License

(A) Telecommunications License: A telecommunications license shall be required of any telecommunications carrier who desires to occupy specific public ways of the Village for the sole purpose of providing telecommunications services to persons or areas outside the Village.

(B) License Application: Any person that desires a telecommunications license pursuant to this Section shall file an application with the Village which shall include the following information:

- (1) The identity of the applicant, including all affiliates of the applicant.
- (2) A description of the telecommunications services that are or will be offered or provided by the applicant over its existing or proposed facilities.
- (3) A description of the transmission medium that will be used by the applicant to offer or provide such telecommunications services.
- (4) Preliminary engineering plans, specifications and a network map of the facilities to be located within the Village, all in sufficient detail to identify:
 - (a) The location and route requested for applicant's proposed telecommunications facilities.

- (b) The location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities in the public way along the proposed route.
 - (c) The location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers.
 - (d) The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate.
- (5) If applicant is proposing to install overhead facilities, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.
- (6) If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:
- (a) The excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
 - (b) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.
- (7) If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public ways:
- (a) The location proposed for the new ducts or conduits;
 - (b) The excess capacity that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.
- (8) A preliminary construction schedule and completion dates.
- (9) A preliminary traffic control plan in accordance with the IDOT Manual on Uniform Traffic Control Devices.
- (10) Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
- (11) Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.
- (12) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services.
- (13) Whether the applicant intends to provide cable service, video dialtone service or

other video programming service, and sufficient information to determine whether such service is subject to cable franchising.

(14) An accurate map showing the location of any existing telecommunications facilities in the Village that applicant intends to use or lease.

(15) A description of the services or facilities that the applicant will offer or make available to the Village and other public, educational and governmental institutions.

(16) A description of applicant's access and line extension policies.

(17) The area or areas of the Village the applicant desires to serve and a schedule for build-out to the entire franchise area.

(18) All fees, deposits or charges required pursuant to Section 126.06.

(19) Such other and further information as may be requested by the Corporate Authorities.

(C) Determination by the Village: Within 120 days after receiving a complete application under Section 126.03(B) hereof, the Corporate Authorities shall issue a written determination granting or denying the application in whole or in part, applying the following standards. If the application is granted or denied, the written determination shall include the reasons for grant or denial, such as:

(1) The financial and technical ability of the applicant.

(2) The legal ability of the applicant.

(3) The capacity of the public ways to accommodate the applicant's proposed facilities.

(4) The capacity of the public ways to accommodate additional utility and telecommunications facilities if the license is granted.

(5) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the license is granted.

(6) The public interest in minimizing the cost and disruption of construction within the public ways.

(7) The service that applicant will provide to the community and region.

(8) The effect, if any, on public health, safety and welfare if the license or franchise is granted.

- (9) The availability of alternate routes and/or locations for the proposed facilities.
- (10) Applicable federal and state telecommunications laws, regulations and policies.
- (11) Such other factors as may demonstrate whether the grant to use the public ways will serve the community interest.

(D) Agreement: No license granted hereunder shall be effective until the applicant and the Village have executed a written agreement setting forth the particular terms and provisions under which the license to occupy and use public ways of the Village will be granted.

(E) Nonexclusive Grant: No license granted under this Section shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the Village for delivery of telecommunications services or any other purposes.

(F) Rights Granted: No license granted under this Section shall convey any right, title or interest in the public ways, but shall be deemed a license only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no license shall be construed as any warranty of title.

(G) Term of Grant: Unless otherwise specified in a license agreement, a telecommunications license granted hereunder shall be in effect for a term of five (5) years.

(H) License Route: A telecommunications license granted under this Section shall be limited to a grant of specific public ways and defined portions thereof.

(I) Location of Facilities: Unless otherwise specified in a license agreement, all facilities shall be constructed, installed and located in accordance with the terms and conditions set forth in Section 126.07(A).

(J) Construction Permits: All licensees are required to obtain construction permits for telecommunications facilities as required in Section 126.08, provided, however, that nothing in this Chapter shall prohibit the Village and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

(K) Compensation to Village: Each license granted under this Section is subject to the Village's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the licensee; provided, nothing in this Section shall prohibit the Village and a licensee from agreeing to the compensation to be paid.

(L) Service to Village Users: A licensee may be permitted to offer or provide telecommunications services to persons or areas within the Village upon submitting an application for approval pursuant to Section 126.04.

(M) Amendment of Grant:

- (1) A new license application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways of

the Village which are not included in a license previously granted under this Section.

(2) If ordered by the Village to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the Village shall grant a license amendment without further application.

(N) Renewal Applications: A grantee that desires to renew its license under this Section shall, not more than 180 days nor less than 90 days before expiration of the current license, file an application with the Village for renewal of its license which shall include the following information:

(1) The information required pursuant to Section 126.03(B).

(2) Any information required pursuant to the license agreement between the Village and the grantee.

(O) Renewal Determinations: Within 90 days after receiving a complete application under Section 126.03(N), the Corporate Authorities shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is granted or denied, the written determination shall include the reasons for the grant or non-renewal, such as:

(1) The financial and technical ability of the applicant.

(2) The legal ability of the applicant.

(3) The continuing capacity of the public ways to accommodate the applicant's existing facilities.

(4) The applicant's compliance with the requirements of this Section and the applicant's agreement with the Village.

(5) Applicable federal, state and local telecommunications laws, rules and policies.

(6) Such other factors as may demonstrate whether the continued grant to use the public ways will serve the community interest.

(P) Obligation to Cure As a Condition of Renewal: No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, or of the requirements of this Section, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Village.

§ 126.04: Telecommunications Franchise

(A) Telecommunications Franchise: A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public ways of the Village and to provide

telecommunications services to any person or area in the Village.

(B) Franchise Application: Any person that desires a telecommunications franchise pursuant to this Section shall file an application with the Village which shall include the information set forth in Section 126.03(B).

(C) Determination by the Village: Within 150 days after receiving a complete application under Section 126.04(B), the Corporate Authorities shall issue a written determination granting or denying the application in whole or in part, applying the following standards. If the application is granted or denied, the written determination shall include the reasons for grant or denial, such as the factors set forth in Section 126.03(C).

(D) Agreement: No franchise shall be granted hereunder unless the applicant and the Village have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use public ways of the Village will be granted.

(E) Nonexclusive Grant: No franchise granted under this Section shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the Village for delivery of telecommunications services or any other purposes.

(F) Term of Grant: Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of fifteen (15) years.

(G) Rights Granted: No franchise granted under this Section shall convey any right, title or interest in the public ways, but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant. Further, no franchise shall be construed as any warranty of title.

(H) Franchise Territory: A telecommunications franchise granted under this Section shall be limited to the specific geographic area of the Village to be served by the franchise grantee, and the specific public ways necessary to serve such areas.

(I) Location of Facilities: Unless otherwise specified in a franchise agreement, all facilities shall be constructed, installed and located in accordance with the terms and conditions set forth in Section 126.07(A).

(J) Construction Permits: All franchisees are required to obtain construction permits for telecommunications facilities as required in Section 126.08, provided, however, that nothing in this Chapter shall prohibit the Village and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

(K) Compensation to Village: Each franchise granted under this Section is subject to the Village's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for the property rights granted to the franchisee; provided, nothing in this Section shall prohibit the Village and a franchisee from agreeing to the compensation to be paid.

(L) Nondiscrimination: A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the

terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this Section shall prohibit a franchisee from making any reasonable classifications among differently situated customers.

(M) Service to the Village: A franchisee shall make its telecommunications services available to the Village at its most favorable rate for similarly situated users, unless otherwise provided in a license or franchise agreement.

(N) Amendment of Grant:

(1) A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways of the Village which are not included in a franchise previously granted under this Section.

(2) If ordered by the Village to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the Village shall grant a franchise amendment without further application.

(O) Renewal Applications: A grantee that desires to renew its franchise under this Section shall, not more than 240 days nor less than 150 days before expiration of the current franchise, file an application with the Village for renewal of its franchise which shall include the following information:

(1) The information required pursuant to Section 126.04(B).

(2) Any information required pursuant to the franchise agreement between the Village and the grantee.

(P) Renewal Determinations: Within 150 days after receiving a complete application under Section 126.04(O), the Corporate Authorities shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is granted or denied, the written determination shall include the reasons for the grant or non-renewal, such as the factors set forth in Section 126.03(O).

(Q) Obligation to Cure As a Condition of Renewal: No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise agreement, or of the requirements of this Section, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Village.

§ 126.05: Cable Franchise

Reserved for future amendments in relation to cable television.

§ 126.06: Fees and Compensation

(A) Purpose: It is the purpose of this Section to provide for the payment and recovery of all direct and indirect costs and expenses of the Village related to the enforcement and administration of this Section.

(B) Application and Review Fee:

(1) Any applicant for a license or franchise pursuant to Sections 126.03 or 126.04 shall pay a fee of One Thousand Five Hundred Dollars (\$1,500) or two (2) percent (2.0%) of the estimated cost of constructing applicant's proposed telecommunications facilities, as certified by the applicant's professional engineer and approved by the Village Engineer, whichever is greater.

(2) The application and review fee shall be deposited with the Village as part of the application filed pursuant to Section 126.03 or Section 126.04.

(3) An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within sixty (60) days of its application and review fee written request, be refunded the balance of its deposit under this Section, less:

(a) Two Hundred and Fifty Dollars (\$250.00) and

(b) All ascertainable costs and expenses incurred by the Village in connection with the application.

(C) Other Village Costs: All license or franchise grantees shall, within thirty (30) days after written demand therefor, reimburse the Village for all direct and indirect costs and expenses incurred by the Village in connection with any modification, amendment, renewal or transfer of the license or franchise or any license or franchise agreement.

(D) Reserved Compensation for Public Ways: The Village reserves its right to annually fix a fair and reasonable compensation to be paid for the property rights granted to a telecommunications license or franchise grantee. Nothing in this Section shall prohibit the Village and a grantee from agreeing to the compensation to be paid for the granted property rights.

(E) Compensation for Village Property: If the right is granted, by lease, license, franchise or other manner, to use and occupy Village Property for the installation of telecommunications facilities, the compensation to be paid shall be fixed by the Village.

(F) Construction Permit Fee: Prior to issuance of a construction permit, the permittee shall pay a permit fee equal to Fifteen Hundred Dollars (\$1,500) or two (2) percent (2.0%) of the estimated cost of constructing the telecommunication facilities, as certified by the applicant's professional engineer and approved by the Village Engineer, whichever is greater.

(G) Annual Fees: Unless otherwise agreed in a license or franchise grant agreement, each license or franchise grantee shall pay an annual license fee to the Village as reimbursement for the Village's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways on behalf of the public and existing or future users. The fee shall be \$.25 per each lineal foot of the telecommunications facilities, except for excess or surplus facilities not being

used, but required under this Section, located in the Village's public streets, public ways or other Village property. Any discrepancy in lineal footage actually installed will be reconciled by the parties upon submission of as-built drawings at the conclusion of the project.

Such annual fee shall serve as reimbursement for the Village's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public streets, property and ways on behalf of the public and existing and future users.

(H) Cable Fees: Cable television franchisees shall be subject to the franchise fees, payments and costs provided in Section 126.05.

(I) Regulatory Fees and Compensation Not a Tax: The regulatory fees and costs provided for in this Section, and any compensation charged and paid for the public ways provided for in Subsections 126.06(D) and (E) are separate from, and additional to, any and all federal, state, local and Village taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

§ 126.07: Conditions of Grant

(A) Location of Facilities: All facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a license or franchise agreement:

- (1) A grantee shall install its telecommunications facilities within an existing underground duct or conduit whenever excess capacity exists within such utility facility.
- (2) A grantee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
- (3) Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public way of the Village, a grantee with permission to occupy the same public way must also locate its telecommunications facilities underground.
- (4) Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the Village, a grantee that currently occupies the same public way shall relocate its facilities underground within a reasonable period of time, which shall not be later than the end of the grant term. Absent extraordinary circumstances or undue hardship as determined by the Village Engineer, such relocation shall be made concurrently to minimize the disruption of the public ways.
- (5) Whenever new telecommunications facilities will exhaust the capacity of a public

street or utility easement to reasonably accommodate future telecommunications carriers or facilities, the grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future carriers.

(B) Membership in J.U.L.I.E.: All license or franchise grantees shall, before commencing any construction in the public ways, comply with all regulations of J.U.L.I.E., and in addition, shall join and maintain an annual membership.

(C) Construction Permits: Shall be controlled by Section 126.08.

(D) Interference with the Public Ways: No license or franchise grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the Village, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the grantee, temporarily or permanently, as determined by the Village Engineer.

(E) Damage to Property. No license or franchise grantee nor any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any Village Property, public ways of the Village, Other Ways or other property located in, on or adjacent thereto.

(F) Notice of Work: Unless otherwise provided in a license or franchise agreement, no license or franchise grantee, nor any person acting on the grantee's behalf, shall commence any non-emergency work in or about the Public Ways of the Village or Other Ways without ten (10) working days advance notice to the Village.

(G) Repair and Emergency Work: In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee shall notify the Village as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

(H) Maintenance of Facilities: Each license or franchise grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

(I) Relocation or Removal of Facilities: Within thirty (30) days following written notice from the Village, a license or franchise grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the Corporate Authorities shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, repair, maintenance or installation of any Village or other public improvement in or upon the public ways.

(2) The operations of the Village or other governmental entity in or upon the public ways.

The Corporate Authorities reserve the right to place Village owned utilities in priority over any franchise in regard to the location (vertical or horizontal) of present or future utilities.

(J) Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the Village, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways of the Village shall, at its own expense, remove such facilities or appurtenances from the public ways of the Village. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- (1) Upon expiration or termination of the grantee's telecommunications license or franchise.
- (2) Upon abandonment of a facility within the public ways of the Village.
- (3) If the system or facility was constructed or installed without the prior grant of a telecommunications license or franchise.
- (4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- (5) If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications license or franchise.

(K) Emergency Removal or Relocation of Facilities: The Village retains the right and privilege to cut or move any telecommunications facilities located within the public ways of the Village, as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

(L) Damage to Grantee's Facilities: Unless directly caused by the willful, intentional or malicious acts by the Village, the Village shall not be liable for any damage to or loss of any telecommunications facility within the public ways of the Village as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public ways by or on behalf of the Village.

(M) Restoration of Public Ways, Other Ways and Village Property:

- (1) When a license or franchise grantee, or any person acting on its behalf, does any work in or affecting any Public Ways, Other Ways or Village Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the Village. Complete restoration shall be completed within one hundred and twenty (120) days.
- (2) If weather or other conditions do not permit the complete restoration required by this Section, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A grantee or other person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

(N) Facilities Maps: Each license or franchise grantee shall provide the Village with an accurate map or maps certifying the location of all telecommunications facilities within the public ways. Each grantee shall provide updated maps annually.

(O) Duty to Provide Information: Within ten (10) days of a written request from the Village, each license or franchise grantee shall furnish the Village with information sufficient to demonstrate:

(1) That grantee has complied with all requirements of this Section.

(2) That all municipal sales, message and/or telecommunications taxes due the Village in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.

(3) All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the Village at reasonable times and intervals.

(P) Leased Capacity: A license or franchise grantee shall have the right, without prior Village approval, to offer or provide capacity or bandwidth to its customers; provided:

(1) Grantee shall furnish the Village with a copy of any such lease or agreement.

(2) The customer or lessee has complied, to the extent applicable, with the requirements of this Section.

(Q) Grantee Insurance: Unless otherwise provided in a license or franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the Village, and its elected and appointed officers, officials, agents and employees as coinsureds:

(1) Comprehensive general liability insurance with limits not less than

(a) Five Million Dollars (\$5,000,000) for bodily injury or death to each person;

(b) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and,

(c) Five Million Dollars (\$5,000,000) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).

(5) The liability insurance policies required by this Subsection shall be maintained by the grantee throughout the term of the telecommunications license or franchise, and such other period of time during which the grantee is operating without a franchise or license hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the Village, by registered mail, of a written notice addressed to the Village Manager of such intent to cancel or not to renew. This insurance is primary to any insurance now or hereafter carried by the Village of Lombard, and not contributory."

(6) Within sixty (60) days after receipt by the Village of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this Subsection.

(R) General Indemnification: Each license or franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the Village and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a grant agreement made or entered into pursuant to this Section.

(S) Performance and Construction Surety: Before a license or franchise granted pursuant to this Section is effective, and as necessary thereafter, the grantee shall provide and deposit such moneys, bonds, letters of credit or other instruments in form and substance acceptable to the Village as may be required by this Section or by an applicable license or franchise agreement.

(T) Security Fund: Each grantee shall establish a permanent security fund with the Village by depositing the amount of \$50,000 with the Village in cash, an unconditional letter of credit, or other instrument acceptable to the Village, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the public ways of the Village.

(1) The fund shall serve as security for the full and complete performance of the grantee's duties under this Section, including any costs, expenses, damages or loss the Village pays

or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rule, regulations or permits of the Village.

(2) Before any sums are withdrawn from the security fund, the Village shall give written notice to the grantee:

- (a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the Village has incurred by reason of grantee's act or default;
- (b) Providing a reasonable opportunity for grantee to first remedy the existing or ongoing default or failure, if applicable;
- (c) Providing a reasonable opportunity for grantee to pay any moneys due the Village before the Village withdraws the amount thereof from the security fund, if applicable;
- (d) That the grantee will be given an opportunity to review the act, default or failure described in the notice with the Village Manager or his designee.

(3) Grantees shall replenish the security fund within fourteen (14) days after written notice from the Village that there is a deficiency in the amount of the fund.

(U) Construction and Completion Bond: Unless otherwise provided in a license or franchise agreement, a performance bond written by a corporate surety acceptable to the Village equal to at least 100% of the estimated cost of constructing grantee's telecommunications facilities within the public ways of the Village shall be deposited before construction is commenced.

(1) The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the Village Engineer, including restoration of public ways and other property affected by the construction.

(2) The construction bond shall guarantee, to the satisfaction of the Village:

- (a) Timely completion of construction;
- (b) Construction in compliance with applicable plans, permits, technical codes and standards;
- (c) Proper location of the facilities as specified by the Village;
- (d) Restoration of the public ways and other property affected by the construction;
- (e) The submission of "as-built" drawings after completion of the work as required by this Section;
- (f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

(V) Coordination of Construction Activities: All grantees are required to cooperate with the Village and with each other.

- (1) By February 1 of each year, grantees shall provide the Village with a schedule of their proposed construction activities in, around or that may affect the public ways.
- (2) Each grantee shall meet with the Village, other grantees and users of the public ways annually or as determined by the Village to schedule and coordinate construction in the public ways.
- (3) All construction locations, activities and schedules shall be coordinated, as ordered by the Village Engineer, to minimize public inconvenience, disruption or damages.

(W) Assignments or Transfers of Grant: Except as otherwise provided in the license or franchise agreement, ownership or control of a telecommunications system, license or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the Village, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then only on such reasonable conditions as may be prescribed therein.

- (1) No grant shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the license or franchise, unless otherwise provided in a license or franchise agreement.
- (2) Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.
- (3) Grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the Village not less than one hundred and fifty (150) days prior to the proposed date of transfer:
 - (a) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
 - (b) All information required of a telecommunications license or franchise applicant pursuant Section 126.03 or 126.04 with respect to the proposed transferee or assignee;
 - (c) Any other information reasonably required by the Village.
- (4) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this Section.
- (5) Unless otherwise provided in a license or franchise agreement, the grantee shall reimburse the Village for all direct and indirect fees, costs, and expenses reasonably

incurred by the Village in considering a request to transfer or assign a telecommunications license or franchise.

(6) Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior approval of the Village under this Section or pursuant to a license or franchise agreement shall be void and is cause for revocation of the grant.

(X) Transactions Affecting Control of Grant: Any transactions which singularly or collectively result in a change of ten percent (10%) or more of the ownership or working control of the grantee, of the ownership or working control of a telecommunications license or franchise, of the ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth of grantee's telecommunication system, facilities or substantial parts thereof, shall be considered an assignment or transfer requiring Village approval pursuant to this Section. Transactions between affiliated entities are not exempt from Village approval.

(Y) Revocation or Termination of Grant: A license or franchise granted by the Village to use or occupy public ways of the Village may be revoked for the following reasons:

- (1) Construction or operation in the Village or in the public ways of the Village without a license or franchise grant of authorization.
- (2) Construction or operation at an unauthorized location.
- (3) Unauthorized substantial transfer of control of the grantee.
- (4) Unauthorized assignment of a license or franchise.
- (5) Unauthorized sale, assignment or transfer of grantee's franchise or license assets, or a substantial interest therein.
- (6) Misrepresentation or lack of candor by or on behalf of a grantee in any application to or any document filed with the Village.
- (7) Abandonment of telecommunications facilities in the public ways.
- (8) Failure to relocate or remove facilities as required in this Section.
- (9) Failure to pay taxes, compensation, fees or costs when and as due the Village.
- (10) Insolvency or bankruptcy of the grantee.
- (11) Violation of material provisions of this Section.
- (12) Violation of the material terms of a license or franchise agreement.

(Z) Notice and Duty to Cure: In the event that the Village Manager believes that grounds exist for revocation of a license or franchise, the Village Manager shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature

and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- (1) That corrective action has been completed, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- (2) That rebuts the alleged violation or noncompliance.
- (3) That it would be in the public interest to impose some penalty or sanction less than revocation.

(AA) Hearing: In the event that a grantee fails to provide evidence reasonably satisfactory to the Village Manager as provided in Subsection (Z) above, the Village Manager shall refer the apparent violation or non-compliance to the Corporate Authorities. The Corporate Authorities shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

(BB) Employment Requirement: A grantee shall not refuse to hire, nor discharge from employment, nor discriminate against any person regarding compensation, terms, conditions, or privileges of employment as required by law.

(CC) Standards for Revocation or Lesser Sanctions: If persuaded that the grantee has violated or failed to comply with material provisions of this Section, or of a franchise or license agreement, the Corporate Authorities shall determine whether to revoke the license or franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) Whether the misconduct was egregious.
- (2) Whether substantial harm resulted.
- (3) Whether the violation was intentional.
- (4) Whether there is a history of prior violations of the same or other requirements.
- (5) Whether there is a history of overall compliance.
- (6) Whether the violation was voluntarily disclosed, admitted or cured.

§ 117.08: Construction Standards

(A) General: No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the Village except as provided in this Section.

(B) Construction Codes: Telecommunications facilities shall be constructed, installed, operated

and maintained in accordance with all applicable federal, state and local codes, rules and regulations.

(C) Construction Permits: No person shall construct or install any telecommunications facilities within the Village without first obtaining a construction permit therefore, provided, however:

(1) No permit shall be issued for the construction or installation of telecommunications facilities within the Village unless the telecommunications carrier has filed a registration statement with the Village pursuant to Section 126.02.

(2) No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the telecommunications carrier has applied for and received a license or franchise pursuant to Sections 126.03, 126.04 or 126.05.

(3) No permit shall be issued for the construction or installation of telecommunications facilities without payment of the construction permit fee established in Section 126.06.

(D) Applications: Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the Village and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.

(4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.

(5) The location of all other facilities to be constructed within the Village, but not within the public ways.

(6) The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public ways.

(7) The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

(E) Engineer's Certification: All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

(F) Traffic Control Plan: All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

(G) Issuance of Permit: If practicable, within forty-five (45) days after submission of all plans and documents required of the applicant and payment of the permit fees required by this Section, the Village Engineer, if satisfied that the applications, plans and document comply with all requirements of this Section, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he/she may deem necessary or appropriate.

(H) Construction Schedule: The permittee shall submit a written construction schedule to the Village Engineer 10 working days before commencing any work in or about the public ways. The permittee shall further notify the Village Engineer not less than 2 working days in advance of any excavation or work in the public ways.

(I) Compliance with Permit: All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the telecommunications facilities. The Village Engineer and his or her representatives shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

(J) Display of Permit: The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Village Engineer or his/her representatives at all times when construction work is occurring.

(K) Survey of Underground Facilities: If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standard, the permittee shall cause the location of such facilities to be verified by a registered Illinois land surveyor. The permittee shall relocate any facilities which are not located in compliance with permit requirements.

(L) Non-Complying Work: Upon order of the Village Engineer, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Section, shall be removed.

(M) Completion of Construction: The permittee shall promptly complete all construction activities so as to minimize disruption of the Village ways and other public and private property. All construction work authorized by a permit within Village ways, including restoration, must be completed within 120 days of the date of issuance.

(N) As-Built Drawings: Within sixty (60) days after completion of construction, the permittee shall furnish the Village with two (2) complete sets of plans, drawn to scale and certified to the Village as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit.

(O) Restoration of Improvements: Upon completion of any construction work, the permittee shall promptly repair any and all public property and provide improvements, fixtures, structures and facilities in the public ways or otherwise damaged during the course of construction, restoring the same as nearly as practicable to its condition before the start of construction.

(P) Landscape Restoration:

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of telecommunications facilities, whether such work is done pursuant to a franchise, license or permit, shall be replaced or restored as nearly as may be practicable to the condition existing prior to performance of work.

(2) All restoration work within the public ways shall be done in accordance with landscape plans approved by the Village Engineer. Complete restoration shall be completed within one hundred and twenty (120) days.

(Q) Construction Surety: Prior to issuance of a construction permit, the permittee shall provide a performance bond, as required by this Section.

(R) Exceptions: Unless otherwise provided in a license or franchise agreement, all telecommunications carriers are subject to the requirements of this Section 126.08.

(S) Responsibility of Owner: The owner of the facilities to be constructed and, if different, the license or franchise grantee, are responsible for performance of and compliance with all provisions of this Section.

§ 126.09: Telecommunications Ethics

(A) Definitions: For the purpose of this Section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FAMILY MEMBER. Includes spouse, parent, and children if they are members of the same household.

MANAGER. The Village Manager, or if such position is vacant, the temporary or Assistant Village Manager.

PERSON WITH WHOM A Village REPRESENTATIVE MAINTAINS A CLOSE ECONOMIC ASSOCIATION. A person associated with a Village representative in a partnership, professional service corporation, or other form of business association or professional association, whether as a partner, officer, employee, associate, principal, agent, or otherwise; provided that such association shall not include participation by both representatives and the other person as limited partners or other passive investors in an entity which neither owns or controls more than 1% of the equity of the entity.

VILLAGE ADVISOR. Any outside consultant, counsel or other person retained by the Village

with respect to telecommunications within the Village of Lombard.

VILLAGE EMPLOYER. Any employee who is actively working in a department dealing with the granting of the Cable TV franchise, all department heads, but unless otherwise specified in this Section, shall not include employees of the Village who have no association or no work-related tasks regarding a Cable TV franchise.

VILLAGE REPRESENTATIVE. The President, members of the Village Board, the Village Clerk, all Village officers whose positions are created by state statute, and all supporting staff of the Corporate Authorities.

(B) Disclosure by Applicant for License or Franchise:

(1) Each applicant for a license or franchise under this Section, or an authorized officer of the applicant, shall file with the Village Manager a written statement, subscribed under oath before a Notary Public, publicly disclosing the following information:

(a) The name and address of all spokespersons for the licensee or franchisee; the capacity in which each acts as spokesperson, the amounts of all compensation paid to or reasonably expected by each spokesperson for services rendered with respect to any matter relating to Village telecommunications at any time since January 1, 1981, or to be rendered as a spokesperson for the licensee or franchisee.

(b) All expenditures by or on behalf of the applicant at any time since January 1, 1981, itemized by categories and amounts regarding expenditures performed in regards to the Village.

(c) All information concerning ownership of licensee or franchisee. Such ownership information shall include disclosure of owners, including any beneficiary or beneficiaries of any trust or similar entity, and disclose their principals whenever any ownership is held by an agent or nominee.

(d) The identity of all Village employees, and family members of Village employees, all Village advisors and family members of Village advisors, Village representatives, family members of Village representatives, and persons with whom a Village representative maintains a close economic association who have or at any time since January 1, 1981, have had an interest in the licensee or franchisee, and the nature and amount of such interest.

(e) All communications by or on behalf of the licensee or franchisee with any Village representatives, family member, or person with whom a Village representative

maintains a close economic association, at any time since January 1, 1981, outside of the scope of public meetings in accord with the Open Meetings Act. The written statement disclosing such communication shall include the following information:

(i) The name, address, and telephone number to whom the communication was made;

(ii) The date, time and duration of the communication, and the circumstances under which it was made;

(iii) A brief statement describing any oral communications;

(iv) A copy of any written materials which were subject to the communications;

(v) Such disclosure statements shall be filed within 30 days after passage of this Section. These statements shall cover the period from January 1, 1981 to the date of this Section. Additional statements supplementing the information initially filed shall be filed on the last day of each quarter calendar thereafter until three months have passed after the award of any license or franchise for which the licensee or franchisee applied.

(vi) Each grantee shall make disclosures, consistent with the provision and intent of this Section, regarding changes of ownership, interest, spokespersons, expenditures, and other matters relating to telecommunications during the term of the license or franchise. Nothing herein shall be construed to prevent the Village Manager or the Corporate Authorities from requiring disclosure of additional information to comply with the terms of this Section.

(C) Disclosure by Village Representatives and Advisors:

(1) Each Village representative and advisor shall file with the Village Manager a written statement, subscribed under oath before a Notary Public, publicly disclosing the following information:

(a) All interests or other economic relationships which the Village representative or a member of his family has or had at any time since January 1, 1981, in any licensee or franchisee.

(b) All interests which the Village representative knows have been held, at any time since January 1, 1981, in a licensee or franchisee by a family member or by a person with whom the Village representative maintains a close economic association.

(c) All interests or other economic relationships which the Village advisor or a member of his family has or had at any time since January 1, 1981, in any licensee

or franchisee.

(d) All communications, direct or indirect, which the Village representative or member of his family, or advisor, at any time since January 1, 1981, has had with the licensee or franchisee, and any such communication relating in any way to telecommunications in the Village with a person who has a direct economic interest in the award of a license or franchise, outside of meetings held under the Open Meetings Act, and other public meetings.

(2) With respect to each of the interests or other economic relationships described in Subsections (1)(a), (b) and (c) above, the written statement shall contain:

(a) The name and address of the person who has had an interest, and that person's relationship to the Village representative or advisor.

(b) The dates any interest was acquired and held.

(c) The amount and nature of the interest, and a description of the transaction in which it was acquired.

(d) The name and address of the person in whom the interest is or was had.

(3) Village representatives and advisors shall file their disclosure statements within 30 days after passage of this Section. Additional statements supplementing the information initially filed shall be filed on the first day of each quarter calendar hereafter until three months have passed after the award of all licenses and franchises in the Village.

(D) Registration and Disclosure by Spokesperson:

(1) All spokespersons shall register with the Village Manager within 30 days of passage of this Section, or before engaging in any activities as a spokesperson, whichever is later.

(2) Any licensee or franchisee under this Section may register on behalf of all spokespersons who are full-time employees of itself and of any parent, subsidiary, or affiliated corporation. Each licensee or franchisee shall be responsible for informing all its spokespersons of the provisions of this Section in a timely manner, and for insuring that all its spokespersons comply with the provisions of this Section.

(3) Registration shall consist of filing with the Village Manager a written statement by the spokesperson, or by the licensee or franchisee in case of spokespersons who are its full-time employees, subscribed under oath before a Notary public, publicly disclosing the following information:

(a) The name and business address of the spokesperson.

(b) The name and address of any firm or any business or professional association with which an individual spokesperson is employed or otherwise affiliated, or in the case of the spokesperson which is a firm or other entity, the names and addresses of any individuals who perform or will perform any activities as spokespersons.

(c) The name and address of the licensee or franchisee on whose behalf the spokesperson acts or will act.

(d) The name and address of any person employing, retaining, or paying the spokesperson to act on behalf of the licensee or franchisee.

(e) All expenditures by the spokesperson on behalf of the licensee or franchisee, at any time since January 1, 1981 itemized by category and amount, and identifying the person to whom each amount of money or other expenditures were directly or indirectly paid relating to any license or franchise applied for or issued under this Section.

(4) Additional registration statements supplementing the information initially filed shall be filed within 30 days of July 7, 1982 and on the first day of each quarter calendar thereafter until three months have passed after the award of any license or franchise for which the licensee or franchisee applied. If the spokesperson made no expenditures or communications on behalf of the licensee or franchisee subsequent to those previously disclosed, the spokesperson shall file and so state in the additional registration statement. A spokesperson who no longer acts or is authorized to act as a spokesperson shall file a written notice of such termination, including therein a report of all expenditures and communications not previously reported.

(E) Ex Parte Communications:

(1) No licensee or franchisee, or person who supplies materials or services to a licensee or franchisee, shall directly or indirectly communicate with a Village employee, concerning any matter relating in any way to telecommunications in the Village, other than in the

license or franchise negotiating process, except in writing addressed to the Village Manager or Assistant Village Manager, 255 E. Wilson Avenue, Lombard, Illinois 60148. All responses on behalf of the Village or any Village employee to such communications shall be in writing and filed with the Village Manager. The Village Manager shall maintain and coordinate all such communications and responses in his office, available for public inspection during regular business hours.

(2) The foregoing shall not apply to communications consisting exclusively of:

- (a) Requests for schedule of meetings.
- (b) Requests for information regarding procedural matters not in dispute.
- (c) Any meetings held under the Open Meetings Act.
- (d) Negotiations or other discussions with licensees or franchisees publicly authorized by the Village Board.
- (e) Communications through the public media, such as statements in news interviews and in paid advertisements. In addition, nothing in this Section shall preclude the Village Board from publicly designating the Village Manager to respond to inquiries from licensees or franchisees concerning ascertainment of the needs of each department for possible use of the telecommunications system.

(F) Village Manager's Responsibilities:

- (1) Not less than 30 days before the due date for filing the initial statement required by this Section, the Village Manager shall send a written notice to each Village representative of his or her responsibility to file such statement.
- (2) All statements and reports are filed in the Village Manager's office pursuant to this Section.
- (3) All statements, reports, listings, and other documents filed pursuant to this Section shall be available for examination and copying by the public during regular business hours. A reasonable fee may be charged for copies. Each person requesting to examine a statement, report, or other document filed pursuant to this Section must fill out a form identifying the examiner and the person on whose behalf the examination is being conducted by name, address, occupation, and telephone number, and listing the documents to be examined and the date of examination.
- (4) The Village Manager shall notify the President and the Village Board of any alleged or apparent violations of this Section, and any reports or investigations relating thereto.

(G) Certain Acts Prohibited:

- (1) Spokespersons shall not directly or indirectly, knowingly:

- (a) Provide, offer, promise, suggest or otherwise communicate the possible provision of an interest to a Village employee, to any family member of the Village employee, to a Village advisor, family member of a Village advisor, to a Village representative, or to a person with whom a Village representative maintains a close economic association.
 - (b) Communicate with a Village employee in violation of the restriction on ex parte communication provided by this Section.
- (2) No Village employee, Village advisor, Village representative, or member of his or her family shall have an interest in a licensee or franchisee.
- (3) No Village employee or member of his family shall, directly or indirectly:
- (a) Solicit or accept an interest in, expenditure from, or any other thing of value or transaction conferring an economic benefit, from a licensee or franchisee or spokesperson.
 - (b) Solicit, request from or recommend to any licensee or franchisee, or spokesperson, the appointment of any person to a place or position or the provision of an interest, expenditure, or any other thing of value or transaction conferring an economic benefit, to any person.

(H) Additional Remedies: In addition to any other remedies provided by this Section or other applicable law, violations of the provisions of this Section shall be subject to the following additional penalties.

- (1) Violations of Subsections (B), (D), (E) and (G) shall render a licensee or franchisee ineligible for a license or franchise at the option of the Village Board, and shall render any license or franchise ordinance or other Village action relating to the licensee or franchisee voidable at the option of the Village Board.
- (2) When a Village employee, Village advisor, Village representative, family member of the above, or a person with whom a Village representative maintains a close economic association acquires or otherwise has an interest in the licensee or franchisee, the Village Board may revoke any license or franchise held by the licensee or franchisee.
- (3) When an interest in a licensee or franchisee is acquired or otherwise held by a person who, within 18 months prior to obtaining such interest, was a Village representative, a family member of a Village representative, or a person with whom a Village representative maintains a close economic relationship, any license or franchise held by the grantee shall be voidable at the option of the Village Board.

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